

# House Bill 2031

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of State Lands)

## 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**.

Designates Department of State Lands as state agency that acts for state in transactions concerning mineral and geothermal resource rights in low-potential resource real property. Specifies when department may retain such natural resource rights. Specifies when department shall release and transfer such natural resource rights to owners of low-potential resource real property.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to natural resource rights in real property; creating new provisions; amending ORS 273.780  
3 and 273.787; and declaring an emergency.

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

5 **SECTION 1.** ORS 273.780 is amended to read:

6 273.780. (1) Mineral and geothermal resource rights in **real** property owned by any state agency  
7 and mineral and geothermal resource rights retained as an interest in lands previously sold, granted  
8 or otherwise conveyed by the state or any agency thereof are property of the State of Oregon. Ex-  
9 cept as provided in ORS 273.785 **and 273.787**, proceeds therefrom shall accrue to the Common School  
10 Fund, and the State Land Board is declared to be the state agency acting for the state in any  
11 transaction respecting such mineral and geothermal resource rights.

12 (2) In addition to applicable requirements of ORS chapter 522, such mineral and geothermal re-  
13 source rights shall be subject to exploration permit or lease by the Department of State Lands, in  
14 accordance with rules and conditions established by law or adopted by the department.

15 (3) **Except as provided in ORS 273.787**, the mineral and geothermal resource rights shall be  
16 retained by the state in the absence of a finding by the State Land Board upon adequate facts pre-  
17 sented to it that their sale or exchange is for the purpose of obtaining the greatest benefit for the  
18 people of this state, consistent with the conservation of lands under its jurisdiction under sound  
19 techniques of land management.

20 *[(4) Notwithstanding subsection (3) of this section, when the Department of State Lands offers real*  
21 *property for sale, the department may not retain the rights to mineral or geothermal resources if:]*

22 *[(a) On January 1, 2004, the real property was located:]*

23 *[(A) Inside an urban growth boundary; or]*

24 *[(B) Within an area zoned for residential use on a lot or parcel that is three acres or smaller in*  
25 *size; and]*

26 *[(b) The value, if any, of the rights to the mineral or geothermal resources is included in the total*  
27 *sale price of the real property.]*

28 **SECTION 2.** ORS 273.787 is amended to read:

29 273.787. (1) As used in this section:

**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) "Owner" means:]

2 [(A) The record holder of fee title interest in residential real property; or]

3 [(B) The contract purchaser of residential real property.]

4 [(b)] (a) ["Residential] **"Low-potential resource real property"** means real property that is [sold  
5 by the Department of State Lands for the State Land Board and is] located:

6 (A) Inside an urban growth boundary; or

7 (B) Within an area zoned for residential use on a lot or parcel that is three acres or smaller in  
8 size.

9 [(2) An owner may apply to the department for release and transfer of the rights to mineral or  
10 geothermal resources reserved by the State of Oregon.]

11 [(3) Upon application by the owner, the department shall release and transfer to the owner the re-  
12 served rights to mineral and geothermal resources within 30 days after the first board meeting that is  
13 at least 60 days after the department received the completed application for release and transfer of the  
14 rights, unless the board finds that a significant mineral or geothermal resource exists. If the board  
15 finds that a significant mineral or geothermal resource exists, the owner may:]

16 [(a) Offer to purchase the resource for the value of the resource; or]

17 [(b) Withdraw the application.]

18 [(4) If the board finds that a significant mineral or geothermal resource exists under subsection (3)  
19 of this section and the owner offers to purchase the resource for the value of the resource:]

20 [(a) The board shall determine the value of the resource on the basis of an appraisal conducted by  
21 a state certified appraiser certified under ORS 674.310 or by a geologist who is registered under ORS  
22 672.505 to 672.705 and qualified to assess the value of mineral and geothermal deposits.]

23 **(b) "Owner" means:**

24 **(A) The record holder of fee title interest in low-potential resource real property; or**

25 **(B) The contract purchaser of low-potential resource real property.**

26 **(2) The Department of State Lands is declared to be the state agency acting for the state  
27 in any transaction respecting mineral and geothermal resource rights in low-potential re-  
28 source real property.**

29 **(3) The department may not reserve mineral and geothermal resource rights in low-  
30 potential resource real property sold or exchanged by the state, unless the department de-  
31 termines that a significant mineral or geothermal resource exists in the low-potential  
32 resource real property.**

33 **(4)(a) An owner may apply at any time to the department for the release and transfer  
34 of mineral and geothermal resource rights in low-potential resource real property that were  
35 reserved by the state before the effective date of this 2013 Act.**

36 **(b) Upon application by the owner under this subsection, the department shall release  
37 and transfer to the owner the reserved rights to mineral and geothermal resources in low-  
38 potential resource real property within 60 days after the department receives the completed  
39 application, unless the department determines that a significant mineral or geothermal re-  
40 source exists in the low-potential resource real property.**

41 [(b)] (5) The [board] **department** may not:

42 [(A)] (a) Require an owner to obtain an appraisal under this section; or

43 [(B)] (b) Require an owner to pay the cost of an appraisal conducted at the request of the  
44 [board] **department** under this section.

45 [(5)] (6) The department may charge a reasonable fee, not to exceed \$150, to process an appli-

1 cation under this section.

2 [(6)] (7) The department may adopt rules to implement this section.

3 **SECTION 3. Except as provided in ORS 273.787 (4) as amended by section 2 of this 2013**  
4 **Act, the amendments to ORS 273.780 and 273.787 by sections 1 and 2 of the 2013 Act apply**  
5 **to low-potential resource real property sold or exchanged by the state on or after the effec-**  
6 **tive date of this 2013 Act.**

7 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**  
8 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
9 **on its passage.**

10

# Senate Bill 558

Sponsored by Senators BOQUIST, BEYER, ROSENBAUM; Senator BATES

## 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 beneficiary under residential trust deed to request resolution conference with grantor for purposes of negotiating foreclosure avoidance measure, unless beneficiary is eligible to claim exemption from requirement. Specifies manner in which beneficiary must request resolution conference. Permits grantor to request resolution conference under certain circumstances.

Specifies documents that beneficiary and grantor must provide and specifies procedure for and duties of beneficiary and grantor with respect to resolution conference.

Requires beneficiary to obtain certificate of compliance after resolution conference in order to foreclose residential trust deed. Specifies conditions under which beneficiary may obtain certificate of compliance.

Changes name of Foreclosure Avoidance Mediation Fund to Foreclosure Avoidance Fund and continuously appropriates moneys in fund to Attorney General for purposes of paying service provider to coordinate program to implement provisions of Act and paying related expenses.

Requires beneficiary to send notice to grantor if beneficiary determines that grantor is not eligible for foreclosure avoidance measure or has not complied with terms of foreclosure avoidance measure.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to foreclosures of residential trust deeds; creating new provisions; amending ORS 86.735,  
3 86.740, 88.010 and 646.607 and sections 2, 4 and 4a, chapter 112, Oregon Laws 2012; repealing  
4 sections 2a and 3, chapter 112, Oregon Laws 2012; and declaring an emergency.

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

6 **SECTION 1. Sections 2, 3, 4, 5 and 6 of this 2013 Act are added to and made a part of**  
7 **ORS 86.705 to 86.795.**

8 **SECTION 2. (1)(a) Except as provided in paragraph (b) of this subsection, a beneficiary**  
9 **that intends to foreclose a residential trust deed shall first request a resolution conference**  
10 **with the grantor before the beneficiary or the trustee files a notice of default under ORS**  
11 **86.735 or before the beneficiary brings suit under ORS 88.010.**

12 **(b)(A) The requirement to request or participate in a resolution conference with a**  
13 **grantor in accordance with subsection (2) or (3) of this section does not apply to a beneficiary**  
14 **if the beneficiary submits to the Attorney General a sworn affidavit that states that during**  
15 **the preceding calendar year the beneficiary did not commence or cause an affiliate, subsid-**  
16 **iary or agent of the beneficiary to commence more than 100 actions to foreclose a residential**  
17 **trust deed by advertisement and sale under ORS 86.735 or by suit under ORS 88.010. A ben-**  
18 **eficiary that is a trustee shall include as part of the total number of foreclosure actions that**  
19 **the beneficiary commenced in the previous calendar year all foreclosure actions that the**  
20 **beneficiary commenced in the beneficiary's capacity as a trustee. A beneficiary that intends**  
21 **to claim an exemption under this subparagraph shall submit the affidavit either:**

22 **(i) Not later than January 31 in any calendar year in which the beneficiary intends to**

**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 claim the exemption for the remainder of the calendar year; or

2 (ii) At the time the beneficiary files a notice of default under ORS 86.735 or brings suit  
3 under ORS 88.010.

4 (B) An exemption under subparagraph (A) of this paragraph expires at the end of the  
5 calendar year in which the beneficiary claims the exemption.

6 (c) A beneficiary that claims an exemption under this subsection is not exempt from the  
7 requirements set forth in section 4a, chapter 112, Oregon Laws 2012.

8 (2) The beneficiary shall request a resolution conference through the service provider.  
9 The beneficiary shall submit the request to the service provider electronically or by mail and  
10 shall submit a processing fee in an amount the Attorney General specifies by rule. The ser-  
11 vice provider shall pay to the Attorney General, for deposit into the Foreclosure Avoidance  
12 Fund established under section 4, chapter 112, Oregon Laws 2012, moneys the service pro-  
13 vider receives from the beneficiary under this subsection. The beneficiary's request under  
14 this subsection must identify the residential trust deed that the beneficiary intends to fore-  
15 close and list the name, title, address, telephone number and other available contact infor-  
16 mation for:

17 (a) The beneficiary;

18 (b) Any agent of the beneficiary that will attend the resolution conference;

19 (c) Any person other than a person identified in paragraph (a) or (b) of this subsection  
20 that will receive, on the beneficiary's behalf, notices or other communications related to the  
21 resolution conference; and

22 (d) The grantor.

23 (3)(a) If a beneficiary does not request a resolution conference under subsection (1) of  
24 this section, a grantor may request a resolution conference with the beneficiary if:

25 (A) The beneficiary or the trustee has not filed a notice of default under ORS 86.735 or  
26 the beneficiary has not commenced a suit under ORS 88.010; and

27 (B) The grantor first obtains from a housing counselor a certification in writing that the  
28 grantor is more than 30 days in default on the obligation that the residential trust deed se-  
29 cures or, if the grantor is not in default, that the grantor has a financial hardship that the  
30 housing counselor believes may qualify the grantor for a foreclosure avoidance measure.

31 (b) A grantor shall request a resolution conference through the service provider. The  
32 grantor shall submit the request to the service provider electronically or by mail and shall  
33 enclose with the request the written certification the housing counselor provides under par-  
34 agraph (a)(B) of this subsection. The Attorney General by rule shall specify the information  
35 that the request must include.

36 (c) A beneficiary that receives a notice from a service provider after the service provider  
37 receives a request from a grantor under paragraph (b) of this subsection is subject to the  
38 requirements set forth in this section and sections 3, 4 and 5 of this 2013 Act and section 4a,  
39 chapter 112, Oregon Laws 2012.

40 (4) A beneficiary that submitted an affidavit in accordance with subsection (1)(b) of this  
41 section may, without waiving the exemption the beneficiary claimed in the affidavit, request  
42 a resolution conference with a grantor. The beneficiary shall submit a request under this  
43 subsection in accordance with the requirements set forth in subsection (2) of this section,  
44 except that submitting the request does not require a processing fee.

45 **SECTION 3.** (1)(a) Within 10 days after a service provider receives a request for a resol-

1 **ution conference under section 2 of this 2013 Act, the service provider shall schedule the**  
2 **resolution conference and mail a notice to the beneficiary and to the grantor. The service**  
3 **provider shall schedule the resolution conference to occur within 75 days after the date on**  
4 **which the service provider sends the notice.**

5 **(b) A notice under this subsection must:**

6 **(A) Specify the date, time and location of the resolution conference;**

7 **(B) State that the beneficiary and the grantor each must pay the facilitator's fees for the**  
8 **resolution conference;**

9 **(C) List and describe the documents that the beneficiary and the grantor must submit**  
10 **to the service provider;**

11 **(D) State that the grantor must consult a housing counselor before attending the resolu-**  
12 **tion conference unless the grantor notifies the service provider that the grantor could not**  
13 **obtain an appointment with a housing counselor before the date of the resolution conference;**

14 **(E) State that the grantor may have an attorney or housing counselor present to repre-**  
15 **sent the grantor at the resolution conference; and**

16 **(F) Include any other information the Attorney General requires by rule.**

17 **(2) Within 25 days after the date on which the service provider sends a notice under**  
18 **subsection (1) of this section:**

19 **(a) The grantor shall pay a fee to the service provider for the facilitator's services in an**  
20 **amount the Attorney General specifies by rule. The grantor's fee may not exceed \$200.**

21 **(b) The grantor shall submit to the service provider:**

22 **(A) Information about the grantor's income, expenses, debts and other obligations;**

23 **(B) A description of the grantor's financial hardship, if any;**

24 **(C) Documents that verify the grantor's income; and**

25 **(D) Any other information the Attorney General requires by rule.**

26 **(3) Within 25 days after the service provider makes the information the grantor submit-**  
27 **ted under subsection (2) of this section available to the beneficiary, the beneficiary shall:**

28 **(a) Pay a fee to the service provider for the facilitator's services in an amount the At-**  
29 **torney General specifies by rule; and**

30 **(b) Submit to the service provider:**

31 **(A) The residential trust deed and a certified true copy of the promissory note that is**  
32 **evidence of the obligation that the residential trust deed secures;**

33 **(B) The name and address of the person that owns the obligation that is secured by the**  
34 **residential trust deed;**

35 **(C) A record of the grantor's payment history for the longer of the preceding 12 months**  
36 **or since the beneficiary last deemed the grantor current on the obligation;**

37 **(D) An itemized statement that shows:**

38 **(i) The amount the grantor owes on the obligation;**

39 **(ii) The amount of fees and charges the beneficiary has assessed; and**

40 **(iii) The amount the grantor must pay to cure the grantor's default;**

41 **(E) A document that identifies:**

42 **(i) Each net present value model that the beneficiary or the beneficiary's agent uses to**  
43 **evaluate the grantor's eligibility for a foreclosure avoidance measure;**

44 **(ii) The input values that the beneficiary or the beneficiary's agent uses for each net**  
45 **present value model; and**

1 (iii) The output values that each net present value model produces;

2 (F) The appraisal or price opinion the beneficiary relied on most recently to determine  
3 the value of the property that is the subject of the residential trust deed;

4 (G) The portion of any pooling agreement, servicing agreement or other agreement that  
5 the beneficiary cites as a limitation or prohibition on modifying the terms of the obligation,  
6 together with a statement that describes the extent to which the beneficiary sought to have  
7 the limitation or prohibition waived;

8 (H) A description of any additional documents the beneficiary requires to evaluate the  
9 grantor's eligibility for a foreclosure avoidance measure; and

10 (I) Any other information the Attorney General requires by rule.

11 (4)(a) The service provider may postpone or reschedule a resolution conference that the  
12 service provider scheduled under subsection (1) of this section if:

13 (A) The beneficiary and the grantor agree to a new date;

14 (B) The beneficiary or the grantor requests a new date in writing and can show good  
15 cause for the request; or

16 (C) The beneficiary does not pay the fee required under subsection (3)(a) of this section  
17 by the date the fee is due. The service provider may wait until the beneficiary has paid the  
18 fee before rescheduling the resolution conference.

19 (b) The service provider shall cancel a resolution conference that the service provider  
20 scheduled under subsection (1) of this section if the grantor does not pay the fee required  
21 under subsection (2)(a) of this section by the date the fee is due.

22 (5)(a) A resolution conference conducted in accordance with this section and sections 2,  
23 4 and 5 of this 2013 Act is not subject to ORS chapter 36 and does not preclude mediation  
24 that a court or another provision of law requires.

25 (b) A facilitator is not subject to a subpoena in any proceeding between a beneficiary and  
26 a grantor that is related to and occurs after a resolution conference.

27 (c) A facilitator's act or omission in the course of a resolution conference does not sub-  
28 ject the facilitator to civil liability unless the facilitator acted or made an omission in bad  
29 faith, with malicious intent or in a manner that exhibited a willful or wanton disregard of  
30 the rights, safety or property of another person.

31 (d) Information that a beneficiary or a grantor submits to a service provider under this  
32 section is not subject to disclosure under ORS 192.410 to 192.505. A service provider may  
33 disclose information that relates to the result of a resolution conference under ORS 192.410  
34 to 192.505 if the information does not identify a party that participated in the resolution  
35 conference.

36 **SECTION 4.** (1)(a) Except as provided in paragraph (b) of this subsection, a beneficiary  
37 that must request a resolution conference with a grantor under section 2 of this 2013 Act  
38 shall attend and participate in the resolution conference in person.

39 (b) A beneficiary may send an agent to the resolution conference if the agent attends the  
40 resolution conference in person and has complete authority to negotiate on the beneficiary's  
41 behalf and commit the beneficiary to a foreclosure avoidance measure or, if the agent who  
42 attends the resolution conference in person does not have complete authority, the benefi-  
43 ciary also requires a person who does have complete authority to participate in the resolution  
44 conference by remote communication in accordance with rules that the Attorney General  
45 adopts.

1       **(2) If the beneficiary agrees to a foreclosure avoidance measure with the grantor, the**  
 2 **beneficiary and the grantor shall sign a written document that sets forth the terms of the**  
 3 **foreclosure avoidance measure.**

4       **(3) A facilitator may suspend or postpone a resolution conference after the resolution**  
 5 **conference has begun:**

6       **(a) One time only on the facilitator’s initiative or in response to a request for a suspen-**  
 7 **sion or postponement from the beneficiary or the grantor;**

8       **(b) After a suspension or postponement under paragraph (a) of this subsection only if the**  
 9 **beneficiary and the grantor agree to the additional suspension or postponement; or**

10       **(c) If the beneficiary or the grantor needs additional time to write or sign a document**  
 11 **that sets forth the terms of a foreclosure avoidance measure.**

12       **(4) After the resolution conference concludes, the facilitator shall submit to the service**  
 13 **provider a written report that:**

14       **(a) Lists the date or dates on which the resolution conference occurred;**

15       **(b) Lists the name, title, address, telephone number and other available contact infor-**  
 16 **mation for each person that participated in the resolution conference, noting whether the**  
 17 **person attended the resolution conference in person or participated by remote communi-**  
 18 **cation;**

19       **(c) States whether the beneficiary or the agent of the beneficiary who attended the re-**  
 20 **solution conference had complete authority to negotiate and commit to a foreclosure avoid-**  
 21 **ance measure;**

22       **(d) Summarizes the terms of the foreclosure avoidance measure to which the beneficiary**  
 23 **and the grantor agreed or notes that the beneficiary and the grantor did not agree to a**  
 24 **foreclosure avoidance measure; and**

25       **(e) Provides any other information the Attorney General requires by rule.**

26       **SECTION 5. (1)(a) The service provider shall issue, within five days after receiving a re-**  
 27 **port from a facilitator under section 4 (4) of this 2013 Act, a certificate of compliance to a**  
 28 **beneficiary that:**

29       **(A) Complied with sections 2, 3 and 4 of this 2013 Act;**

30       **(B) Submitted the materials required under section 3 (3) of this 2013 Act to the service**  
 31 **provider;**

32       **(C) Appeared in person at, or sent an agent in person to, the resolution conference with**  
 33 **complete authority to negotiate and commit to a foreclosure avoidance measure or, if the**  
 34 **beneficiary or agent did not have complete authority, required a person with complete au-**  
 35 **thority to participate in the resolution conference by remote communication in accordance**  
 36 **with rules the Attorney General adopts; and**

37       **(D) Signed a document that sets forth the terms of any foreclosure avoidance measure**  
 38 **to which the beneficiary and the grantor agreed.**

39       **(b) A certificate of compliance expires one year after the date on which the service pro-**  
 40 **vider issues the certificate of compliance under paragraph (a) of this subsection.**

41       **(c) The service provider shall notify a beneficiary that failed to meet a requirement to**  
 42 **which the beneficiary was subject under paragraph (a) of this subsection that the service**  
 43 **provider will not issue a certificate of compliance, explaining in the notice why the service**  
 44 **provider will not issue the certificate of compliance. The service provider shall provide a copy**  
 45 **of a notice under this paragraph to the grantor and to the Attorney General.**

1       (2) Notwithstanding the requirements set forth in subsection (1) of this section, if a ser-  
 2 vice provider cancels a resolution conference under section 3 (4)(b) of this 2013 Act, the  
 3 service provider shall issue a certificate of compliance to the beneficiary within five days  
 4 after cancelling the resolution conference.

5       **SECTION 6.** (1) The Attorney General shall:

6       (a) Appoint and enter into an agreement with a service provider to coordinate a program  
 7 to implement the provisions of sections 2, 3 4 and 5 of this 2013 Act. The Attorney General  
 8 shall pay for the service provider's services from the Foreclosure Avoidance Fund estab-  
 9 lished in section 4, chapter 112, Oregon Laws 2012. The appointment and the agreement are  
 10 not subject to ORS chapter 279A or 279B.

11       (b) Receive affidavits submitted under section 2 (1)(b) of this 2013 Act and copies of no-  
 12 tices sent under section 4a (1), chapter 112, Oregon Laws 2012.

13       (c) Specify the amount a beneficiary must pay as a processing fee to the service provider  
 14 under section 2 (2) of this 2013 Act and the amounts that the grantor must pay for the  
 15 facilitator's services under section 3 (2)(a) of this 2013 Act and the beneficiary must pay for  
 16 the facilitator's services under section 3 (3)(a) of this 2013 Act.

17       (d) Adopt rules to implement sections 2, 3, 4 and 5 of this 2013 Act and sections 4 and  
 18 4a, chapter 112, Oregon Laws 2012.

19       (2) In addition to and not in lieu of any other penalty provided by law, a beneficiary's  
 20 violation of section 2 (1)(a) or (2), section 3 (3) or section 4 (1) or (2) of this 2013 Act is an  
 21 unlawful practice under ORS 646.607 that is subject to enforcement under ORS 646.632.

22       **SECTION 7.** Section 2, chapter 112, Oregon Laws 2012, is amended to read:

23       **Sec. 2.** [(1)] As used in this section and [sections 3 and 4a of this 2012 Act,] sections 2, 3, 4, 5  
 24 and 6 of this 2013 Act and sections 4 and 4a, chapter 112, Oregon Laws 2012:

25       (1) "Facilitator" means a person that a service provider selects to conduct a resolution  
 26 conference.

27       (2) "Foreclosure avoidance measure" means an agreement between a beneficiary and a grantor  
 28 that uses one or more of the following methods to modify an obligation that is secured by a resi-  
 29 dential trust deed:

30       (a) The beneficiary defers or forbears from collecting one or more payments due on the obli-  
 31 gation.

32       (b) The beneficiary modifies, temporarily or permanently, the payment terms or other terms of  
 33 the obligation.

34       (c) The beneficiary accepts a deed in lieu of foreclosure from the grantor.

35       (d) The grantor conducts a short sale.

36       (e) The beneficiary provides the grantor with other assistance that enables the grantor to avoid  
 37 a foreclosure.

38       (3) "Housing counselor" means a counselor employed by a nonprofit housing counseling  
 39 agency that the Housing and Community Services Department or a successor state agency  
 40 approves by rule.

41       (4) "Resolution conference" means a meeting at which a grantor and a beneficiary at-  
 42 tempt to negotiate and agree upon a foreclosure avoidance measure.

43       (5) "Service provider" means a person that the Attorney General appoints under section  
 44 6 of this 2013 Act to coordinate a program to implement the provisions of sections 2, 3, 4 and  
 45 5 of this 2013 Act.

1        *[(2)(a) Except as provided in paragraph (d) of this subsection, a beneficiary that seeks to foreclose*  
2 *a residential trust deed under ORS 86.735 shall enter into mediation with the grantor for the purpose*  
3 *of negotiating a foreclosure avoidance measure in accordance with the provisions of this section.]*

4        *[(b) The Attorney General shall:]*

5        *[(A) Appoint a mediation service provider to coordinate a mediation program and shall enter into*  
6 *an agreement to pay the mediation service provider for the mediation service provider's services from*  
7 *the Foreclosure Avoidance Mediation Fund established in section 4 of this 2012 Act. The appointment*  
8 *and the agreement are not subject to ORS chapter 279A or 279B.]*

9        *[(B) Prescribe qualifications, training and experience requirements for mediators by rule.]*

10       *[(C) Set the schedule of fees for the mediation by rule.]*

11       *[(c) The beneficiary and the grantor shall share the cost of the mediation, except that the grantor's*  
12 *portion of the cost may not exceed \$200. The mediator may waive the grantor's portion of the fee in*  
13 *accordance with rules that the Attorney General adopts to describe circumstances that permit a*  
14 *waiver.]*

15       *[(d) The requirement to enter into mediation with a grantor does not apply:]*

16       *[(A) To an individual, a financial institution, as defined in ORS 706.008, a mortgage banker, as*  
17 *defined in ORS 86A.100, or a licensee, as defined in ORS 725.010, if the individual, financial institu-*  
18 *tion, mortgage banker or licensee provides to the Attorney General a sworn affidavit that states that*  
19 *during the preceding calendar year the individual, financial institution, mortgage banker or licensee*  
20 *did not commence or cause an affiliate or agent of the individual, financial institution, mortgage banker*  
21 *or licensee to commence more than a total of 250 actions to foreclose a residential trust deed by ad-*  
22 *vertisement and sale under ORS 86.735 or a residential mortgage by suit under ORS 88.010. An indi-*  
23 *vidual, financial institution, mortgage banker or licensee that intends to claim an exemption under this*  
24 *subparagraph shall file the affidavit either:]*

25       *[(i) Within 30 days after the operative date specified in section 11 of this 2012 Act to claim the*  
26 *exemption for calendar year 2012 and not later than January 31 in any subsequent calendar year in*  
27 *which the individual, financial institution, mortgage banker or licensee intends to claim the exemption;*  
28 *or]*

29       *[(ii) At the time the individual, financial institution, mortgage banker or licensee files a notice of*  
30 *default under ORS 86.735.]*

31       *[(B) If the grantor fails to confirm that the grantor will enter into mediation by the date specified*  
32 *under subsection (3)(c) of this section.]*

33       *[(3) Within 30 days after the date on which the beneficiary caused a notice of mediation to be*  
34 *served or mailed as provided in ORS 86.740, the mediation service provider shall send a notice to the*  
35 *grantor and the beneficiary that:]*

36       *[(a) Schedules a date, time and location for the mediation. The date must be not earlier than 45*  
37 *days and not later than 90 days after the date on which the notice of mediation was served or mailed*  
38 *as provided in ORS 86.740.]*

39       *[(b) Identifies and provides contact information for the mediation service provider.]*

40       *[(c) Specifies a date at least 30 days before the scheduled date of the mediation by which the*  
41 *grantor must contact the mediation service provider to confirm that the grantor will enter into medi-*  
42 *ation. The notice must state that the mediation service provider will deem the grantor to have declined*  
43 *to enter into mediation if the grantor fails to confirm by the specified date.]*

44       *[(d) Lists the costs of the mediation and specifies the portion of the costs for which the grantor is*  
45 *responsible.]*

1        *[(e) Provides any other information that the Attorney General requires by rule.]*

2        *[(4)(a) If the grantor confirms by the date specified under subsection (3)(c) of this section that the*  
3 *grantor will enter into mediation, the beneficiary or the beneficiary's agent shall appear at the time and*  
4 *the location identified in the mediation service provider's notice under subsection (3) of this section with*  
5 *the documentation described in paragraph (b) of this subsection.]*

6        *[(b) The beneficiary or the beneficiary's agent must appear in person at the location of the medi-*  
7 *ation unless the mediator permits the beneficiary or the beneficiary's agent to appear in another manner*  
8 *for good cause shown. The fact that a beneficiary or beneficiary's agent is located outside this state*  
9 *does not alone constitute good cause for the purposes of this paragraph. The beneficiary or the*  
10 *beneficiary's agent must appear at the mediation with:]*

11        *[(A) The grantor's complete payment history for the obligation that is secured by the residential*  
12 *trust deed that the beneficiary seeks to foreclose;]*

13        *[(B) Evidence that the beneficiary is the real party in interest with respect to the obligation, in-*  
14 *cluding but not limited to:]*

15        *[(i) A true copy of the original debt instrument that is the basis for the right the beneficiary claims*  
16 *to foreclose the trust deed; and]*

17        *[(ii) Documents that show the chain of title for the property that is subject to the residential trust*  
18 *deed from the date of the original loan for which the beneficiary seeks foreclosure to the date of the*  
19 *notices given under ORS 86.740, including conveyances, endorsements and assignments of the residen-*  
20 *tial trust deed, the note and the security instrument, whether recorded or unrecorded;]*

21        *[(C) A copy of the authorization from the beneficiary to the beneficiary's agent, if the beneficiary's*  
22 *agent appears at the mediation;]*

23        *[(D) A copy of any of the following documents that apply to the note or obligation that is secured*  
24 *by the trust deed:]*

25        *[(i) A servicing agreement the beneficiary entered into with another person; or]*

26        *[(ii) An agreement by means of which the beneficiary pledged as collateral for a security the ben-*  
27 *eficiary issued or sold all or a portion of the ownership interest in the note or other obligation; and]*

28        *[(E) Other documentation the Attorney General specifies by rule.]*

29        *[(c) The beneficiary or the beneficiary's agent that enters into mediation with the grantor must have*  
30 *or be able to obtain, before the initial mediation session concludes, authority to accept or reject a pro-*  
31 *posal for a foreclosure avoidance measure and authority to enter with the grantor into an agreement*  
32 *for a foreclosure avoidance measure.]*

33        *[(5)(a) The beneficiary or the beneficiary's agent must enter into mediation in accordance with me-*  
34 *diation guidelines the Attorney General establishes by rule.]*

35        *[(b) If the beneficiary or the beneficiary's agent agrees with the grantor on a foreclosure avoidance*  
36 *measure, the beneficiary or beneficiary's agent and the grantor shall set forth the terms of the foreclo-*  
37 *sure avoidance measure in a written agreement, a copy of which the beneficiary or beneficiary's agent*  
38 *shall provide to the Attorney General. The beneficiary may elect to pay the grantor's portion of the cost*  
39 *of the mediation or the grantor and the beneficiary may agree to include the cost of the mediation as*  
40 *part of and in accordance with any payment plan that is part of the foreclosure avoidance measure.]*

41        *[(c) If the beneficiary or the beneficiary's agent and the grantor do not agree on a foreclosure*  
42 *avoidance measure, the mediation service provider shall notify the Attorney General that the mediation*  
43 *did not result in an agreement.]*

44        *[(6)(a) At the conclusion of the mediation, if the beneficiary has complied with the requirements of*  
45 *subsections (4) and (5) of this section, the mediation service provider shall provide the beneficiary or*

1 *the beneficiary's agent with a certificate of compliance in a form and with contents that the Attorney*  
 2 *General specifies by rule. The certificate must state that the beneficiary has complied with the require-*  
 3 *ments of this section.]*

4 *[(b) If the grantor does not confirm by the date specified under subsection (3)(c) of this section that*  
 5 *the grantor will enter into mediation, the mediation service provider shall provide the beneficiary or the*  
 6 *beneficiary's agent with a certificate of compliance in a form and with contents that the Attorney*  
 7 *General specifies by rule. The certificate must state that the grantor declined to enter into mediation*  
 8 *with the beneficiary.]*

9 *[(c) The mediation service provider shall provide a copy of the certificate the mediation service*  
 10 *provider issues under paragraph (a) or (b) of this subsection to the grantor and to the Attorney Gen-*  
 11 *eral.]*

12 *[(7)(a) A grantor that is at risk of default before the beneficiary or the trustee has filed a notice*  
 13 *of default for recording under ORS 86.735 may notify the beneficiary or trustee in the trust deed or the*  
 14 *beneficiary's or trustee's agent that the grantor wants to enter into mediation. Within 15 days after*  
 15 *receiving the request, the beneficiary or trustee or the beneficiary's or trustee's agent shall respond to*  
 16 *the grantor's request and shall notify the Attorney General and the mediation service provider identi-*  
 17 *fied in subsection (2)(b) of this section. The response to the grantor must include contact information*  
 18 *for the Attorney General and the mediation service provider.]*

19 *[(b) A grantor that requests mediation under paragraph (a) of this subsection may also notify the*  
 20 *Attorney General and the mediation service provider of the request. The Attorney General shall post*  
 21 *on the Department of Justice website contact information for the mediation service provider and an*  
 22 *address or method by which the grantor may notify the Attorney General.]*

23 *[(c) Within 10 days after receiving notice of the request under paragraph (a) of this subsection, the*  
 24 *mediation service provider shall send a notice to the grantor and the beneficiary that, except with re-*  
 25 *spect to the date by which the mediation service provider must send the notice, is otherwise in accord-*  
 26 *ance with the provisions of subsection (3) of this section.]*

27 *[(d) A beneficiary or beneficiary's agent that receives a request under paragraph (a) of this sub-*  
 28 *section is subject to the same duties as are described in subsections (2), (4) and (5) of this section.]*

29 **SECTION 8.** Section 4, chapter 112, Oregon Laws 2012, is amended to read:

30 **Sec. 4.** (1) The Foreclosure Avoidance [*Mediation*] Fund is established in the State Treasury,  
 31 separate and distinct from the General Fund. The **Foreclosure Avoidance** Fund consists of moneys  
 32 the Attorney General collects or receives for the purpose of paying [*the expenses of coordinating a*  
 33 *mediation program under section 2 of this 2012 Act and*] **a service provider to coordinate a pro-**  
 34 **gram to implement the provisions of sections 2, 3, 4 and 5 of this 2013 Act and to pay** related  
 35 expenses. The moneys in the fund are continuously appropriated to the Attorney General for the  
 36 purposes of paying [*the expenses of coordinating the mediation program and*] **a service provider to**  
 37 **coordinate a program to implement sections 2, 3, 4 and 5 of this 2013 Act and paying** related  
 38 expenses.

39 (2) The Attorney General may receive moneys for the purposes set forth in subsection (1) of this  
 40 section from any public or private source.

41 *[(3)(a) Except as provided in paragraph (b) of this subsection, a trustee or beneficiary that files a*  
 42 *notice of default under ORS 86.735 shall pay to the county clerk that records the notice \$100 in addi-*  
 43 *tion to and not in lieu of any fee that the county clerk charges for recording the notice of default. The*  
 44 *county clerk at the end of each month shall forward the proceeds of the \$100 charge to the Attorney*  
 45 *General for deposit into the fund described in subsection (1) of this section.]*

1        *[(b) An individual, a financial institution, as defined in ORS 706.008, a mortgage banker, as de-*  
 2 *finied in ORS 86A.100, or a licensee, as defined in ORS 725.010, is not subject to the \$100 charge de-*  
 3 *scribed in paragraph (a) of this subsection if the individual, financial institution, mortgage banker or*  
 4 *licensee provides to the county clerk a sworn affidavit that states that during the preceding calendar*  
 5 *year the individual, financial institution, mortgage banker or licensee did not commence or cause an*  
 6 *affiliate or agent of the individual, financial institution, mortgage banker or licensee to commence more*  
 7 *than a total of 250 actions to foreclose a residential trust deed by advertisement and sale under ORS*  
 8 *86.735 or a residential mortgage by suit under ORS 88.010. An individual, financial institution, mort-*  
 9 *gage banker or licensee that intends to claim an exemption under this paragraph shall provide the af-*  
 10 *fidavit either:]*

11        *[(A) Within 30 days after the operative date specified in section 11 of this 2012 Act to claim the*  
 12 *exemption for calendar year 2012 and not later than January 31 in any subsequent calendar year in*  
 13 *which the individual, financial institution, mortgage banker or licensee intends to claim the exemption;*  
 14 *or]*

15        *[(B) At the time the individual, financial institution, mortgage banker or licensee files a notice of*  
 16 *default under ORS 86.735.]*

17        **SECTION 9.** Section 4a, chapter 112, Oregon Laws 2012, is amended to read:

18        **Sec. 4a.** *[(1)(a)]* **(1) Whether or not a beneficiary participates in a resolution conference**  
 19 **under section 2 of this 2013 Act,** if *[a]* **the beneficiary determines that a grantor of a residential**  
 20 **trust deed** is not eligible for any foreclosure avoidance measure or that the grantor has not com-  
 21 plied with the terms of a foreclosure avoidance measure to which the grantor has agreed, the ben-  
 22 efitary *[or the beneficiary's agent, at least 30 days before the date specified for the trustee's sale in*  
 23 *a notice served under ORS 86.740 or 86.755 (2)(b), shall notify the grantor in writing of the*  
 24 *beneficiary's determination and shall cause the notice to be served as provided in ORS 86.740 (1).]*  
 25 **shall notify the grantor within 10 days after making the determination by mailing a written**  
 26 **notice that explains in plain language the basis for the beneficiary's determination. The**  
 27 **beneficiary shall mail a copy of the notice to the Department of Justice on the same date**  
 28 **that the beneficiary mails the notice to the grantor.**

29        *[(b) The notice must in plain language explain the basis for the beneficiary's determination.]*

30        *[(2) The beneficiary or the beneficiary's agent shall mail a copy of the notice of the determination*  
 31 *described in subsection (1) of this section to the Department of Justice on the same date on which the*  
 32 *notice is served.]*

33        *[(3)(a)]* **(2)** At least *[20]* **five** days before *[the date specified for the trustee's sale in a notice served*  
 34 *under ORS 86.740 or 86.755 (2)(b),]* **the trustee sells the property that is subject to foreclosure,**  
 35 **the beneficiary** *[or the beneficiary's agent shall:]*

36        *[(A)]* **shall** record in the mortgage records *[for the property that is subject to the trustee's sale,]*  
 37 **in the county or in one of the counties in which the property is located[,] an affidavit that states**  
 38 **that the beneficiary has complied with the requirements set forth in subsection (1) of this section.**  
 39 *[subsections (1) and (2) of this section; and]*

40        *[(B) Mail a copy of the affidavit to the department.]*

41        *[(b) The affidavit described in paragraph (a) of this subsection must:]*

42        *[(A) Identify the property that is the subject of the trustee's sale;]*

43        *[(B) Identify the grantor and, as of the date of the affidavit, the trustee and the beneficiary;]*

44        *[(C) State that the beneficiary or beneficiary's agent has complied with the requirements set forth*  
 45 *in subsections (1) and (2) of this section; and]*

1       [(D) *Include proof of service on the grantor for the notice described in subsection (1) of this*  
2 *section.*]

3       [(4) *The Attorney General by rule shall specify a form for and the contents of the notice of the*  
4 *determination described in subsection (1) of this section and shall identify an address to which the*  
5 *beneficiary or beneficiary's agent must mail the copy of the notice under subsection (2) of this section*  
6 *and the affidavit under subsection (3) of this section.*]

7       [(5)(a)] **(3)(a)** A beneficiary [*or an agent of the beneficiary*] that fails to comply with the pro-  
8 visions of this section is liable to the grantor in the amount of \$500 plus the amount of the grantor's  
9 actual damages for each failure to comply with a provision of this section.

10       (b) A grantor may bring an action against a beneficiary [*or an agent of the beneficiary*] in a  
11 circuit court of this state to recover the amounts described in paragraph (a) of this subsection. The  
12 grantor shall commence the action within [*two years*] **one year** after the date on which the benefi-  
13 ciary [*or the beneficiary's agent*] should have complied, but did not comply, with the provisions of this  
14 section.

15       (c) Notwithstanding an agreement to the contrary, a court may award reasonable attorney fees,  
16 costs and disbursements to a grantor that obtains a final judgment in the grantor's favor.

17       **SECTION 10.** ORS 86.735, as amended by section 6, chapter 112, Oregon Laws 2012, is amended  
18 to read:

19       86.735. A trustee may **not** foreclose a trust deed by advertisement and sale in the manner pro-  
20 vided in ORS 86.740 to 86.755 [*if*] **unless**:

21       (1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any  
22 appointment of a successor trustee are recorded in the mortgage records in the counties in which  
23 the property described in the deed is situated;

24       (2) There is a default by the grantor or other person that owes an obligation, the performance  
25 of which is secured by the trust deed, or by the grantor's or other person's successors in interest  
26 with respect to a provision in the deed that authorizes sale in the event of default of the provision;

27       (3) The trustee or beneficiary has filed for record in the county clerk's office in each county  
28 where the trust property, or some part of the trust property, is situated, a notice of default con-  
29 taining the information required by ORS 86.745 and containing the trustee's or beneficiary's election  
30 to sell the property to satisfy the obligation;

31       (4) The beneficiary [*or the beneficiary's agent*] has filed for recording in the official records of  
32 the county or counties in which the property that is subject to the residential trust deed is located  
33 [*the certificate of compliance the beneficiary received under section 2, chapter 112, Oregon Laws 2012,*  
34 *if the beneficiary must enter into mediation with the grantor under section 2 (2)(a), chapter 112, Oregon*  
35 *Laws 2012;*];

36       **(a) A valid and unexpired certificate of compliance that a service provider issued to the**  
37 **beneficiary under section 5 of this 2013 Act; or**

38       **(b) A copy of the affidavit with which the beneficiary claimed, under section 2 (1)(b) of**  
39 **this 2013 Act, an exemption that has not expired;**

40       [(5)(a)] **(5)** The beneficiary [*or the beneficiary's agent*] has complied with the provisions of section  
41 4a, chapter 112, Oregon Laws 2012; [*and*]

42       [(b)] **(6)** The grantor [*is not in compliance*] **has not complied** with the terms of [*a*] **any** foreclo-  
43 sure avoidance measure upon which the beneficiary and the grantor have agreed; and

44       [(6)] **(7)** An action has not been commenced to recover the debt or any part of the debt then  
45 remaining secured by the trust deed, or, if an action has been commenced, the action has been dis-

1 missed, except that:

2 (a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action may  
3 be commenced to appoint a receiver or to obtain a temporary restraining order during foreclosure  
4 of a trust deed by advertisement and sale, except that a receiver may not be appointed with respect  
5 to a single-family residence that the grantor, the grantor's spouse or the grantor's minor or de-  
6 pendent child occupies as a principal residence.

7 (b) An action may be commenced to foreclose, judicially or nonjudicially, the same trust deed  
8 as to any other property covered by the trust deed, or any other trust deeds, mortgages, security  
9 agreements or other consensual or nonconsensual security interests or liens that secure repayment  
10 of the debt.

11 **SECTION 11.** ORS 86.740, as amended by section 7, chapter 112, Oregon Laws 2012, is amended  
12 to read:

13 86.740. [(1)(a)] (1) [Subsequent to] **After** recording a notice of default as provided in ORS 86.735  
14 and at least 120 days before the day the trustee conducts the sale, notice of the sale with the con-  
15 tents described in ORS 86.745 must be served pursuant to ORCP 7 D(2) and 7 D(3) or mailed by both  
16 first class and certified mail with return receipt requested.

17 [(b) If the sale is for the purpose of foreclosing a residential trust deed and the beneficiary in the  
18 trust deed must enter into mediation with the grantor under section 2 (2)(a), chapter 112, Oregon Laws  
19 2012, a separate notice of mediation, in the form and with the contents described in section 3, chapter  
20 112, Oregon Laws 2012, must be served or mailed in the manner provided in paragraph (a) of this  
21 subsection at least 60 days before the notice of sale described in paragraph (a) of this subsection is  
22 served or mailed.]

23 (2) The [notices] **notice** described in subsection (1) of this section must be served or mailed to  
24 the last-known address of the following persons or the legal representatives of the persons, if any:

25 (a) The grantor in the trust deed.

26 (b) Any successor in interest to the grantor whose interest appears of record, or of whose in-  
27 terest the trustee or the beneficiary has actual notice.

28 (c) Any person, including the Department of Revenue or another state agency, that has a lien  
29 or interest subsequent to the trust deed if the lien or interest appears of record or the beneficiary  
30 has actual notice of the lien or interest.

31 (d) A person that requests notice as provided in ORS 86.785.

32 [(e) The mediation service provider that the Attorney General appoints under section 2 (2)(b),  
33 chapter 112, Oregon Laws 2012, if the notices are served or mailed under subsection (1)(b) of this sec-  
34 tion.]

35 (3) A notice served by mail under subsection (1) of this section is effective when the notice is  
36 mailed.

37 (4)(a) The disability, insanity or death of a person to whom the [notices] **notice** required under  
38 this section must be given does not delay or impair in any way the trustee's right under a trust deed  
39 to foreclose under the deed. If the disability, insanity or death occurs before the notice of default  
40 is recorded, the [notices] **notice** required under this section must be given instead to the guardian,  
41 the conservator of the estate of the person or the administrator or personal representative of the  
42 person in the manner and by the time set forth in this section.

43 (b) If the disability, insanity or death of a person to whom the [notices] **notice** required under  
44 this section must be given occurs on or after the notice of default is recorded, the trustee shall, if  
45 and when the trustee has knowledge of the disability, insanity or death, promptly give the guardian,

1 the conservator of the estate or the administrator or personal representative **the** required [notices]  
 2 **notice** by sending the [notices] **notice** by first class and certified mail with return receipt requested  
 3 to the last-known address of the guardian, conservator or administrator or personal representative.

4 (c) If there is no administrator or personal representative of the estate of the person to whom  
 5 the [notices] **notice** required under this section must be given, the [notices] **notice** may be given in-  
 6 stead to the heirs at law or devisees of the deceased person in the manner and by the time set forth  
 7 in this section.

8 (5) If the owner of real property subject to foreclosure dies and the real property is also subject  
 9 to a transfer on death deed, as provided by ORS 93.948 to 93.979, the [notices] **notice** required under  
 10 this section must be given to the beneficiary designated under the transfer on death deed.

11 **SECTION 12.** ORS 88.010 is amended to read:

12 88.010. (1) Except as otherwise provided by law, a lien upon real or personal property, other  
 13 than that of a judgment, whether created by mortgage or otherwise, [shall] **must** be foreclosed, and  
 14 the property adjudged to be sold to satisfy the debt [secured thereby] **the lien secures**, by [a]  
 15 **bringing** suit. Except as provided in ORS 88.070, in addition to the judgment of foreclosure and sale,  
 16 if **the lien debtor or another person, as principal or otherwise, has given** a promissory note or  
 17 other personal obligation for the payment of the debt [has been given by the lien debtor or any other  
 18 person as principal or otherwise], the court also shall enter a judgment for the amount of the debt  
 19 against the [person or persons] **lien debtor or other person**. The provisions of this chapter as to  
 20 liens upon personal property [are not intended to] **do not** exclude a person [having such] **that has**  
 21 **a lien from any other remedy or right [in regard to such property] that the person otherwise has**  
 22 **with respect to the property.**

23 (2)(a) **A complaint in a suit to foreclose a residential trust deed under this section must**  
 24 **include as an attachment a true copy of:**

25 (A) **A valid and unexpired certificate of compliance that a service provider issued to a**  
 26 **beneficiary under section 5 of this 2013 Act;**

27 (B) **The affidavit the person submitted under section 2 (1)(b) of this 2013 Act, provided**  
 28 **that the exemption the person claimed in the affidavit has not expired; or**

29 (C) **The notice the beneficiary received under section 5 (1)(c) of this 2013 Act.**

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

33 (i) **Fails to file with the court the certificate described in paragraph (a)(A) of this sub-**  
 34 **section or the affidavit described in paragraph (a)(B) of this subsection; or**

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

36 (B) **The court may release a stay the court granted under subparagraph (A) of this par-**  
 37 **agraph if the person files with the court the certificate described in paragraph (a)(A) of this**  
 38 **subsection or the affidavit described in paragraph (a)(B) of this subsection.**

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

42 **SECTION 13.** ORS 646.607 is amended to read:

43 646.607. A person engages in an unlawful practice [when] **if** in the course of the person's busi-  
 44 ness, vocation or occupation the person:

45 (1) **Employs any unconscionable tactic in connection with [the sale, rental or other disposition]**

1 **selling, renting or disposing** of real estate, goods or services, or [*collection or enforcement of*] **col-**  
 2 **lecting or enforcing** an obligation;

3 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and [*upon*  
 4 *request of the customer*] **at a customer's request**, fails to refund [*any*] money that [*has been received*  
 5 *from the customer that was for the purchase of*] **the customer gave to the person to purchase** the  
 6 undelivered real estate, goods or services and that [*is not retained by the seller pursuant to*] **the**  
 7 **person does not retain pursuant to** any right, claim or defense [*asserted*] **the person may assert**  
 8 in good faith. This subsection does not create a warranty obligation and does not apply to a dispute  
 9 over the quality of real estate, goods or services delivered to a customer;

10 (3) Violates ORS 401.965 (2);

11 (4) Violates a provision of ORS 646A.725 to 646A.750;

12 (5) Violates ORS 646A.530; [*or*]

13 (6) Employs a collection practice that is unlawful under ORS 646.639[.]; **or**

14 (7) **Is a beneficiary that violates section 2 (1)(a) or (2), section 3 (3) or section 4 (1) or (2)**  
 15 **of this 2013 Act.**

16 **SECTION 14. Sections 2a and 3, chapter 112, Oregon Laws 2012, are repealed.**

17 **SECTION 15. (1) Sections 2 to 6 of this 2013 Act, the amendments to ORS 86.735, 86.740,**  
 18 **88.010 and 646.607 and sections 2, 4 and 4a, chapter 112, Oregon Laws 2012, by sections 7 to**  
 19 **13 of this 2013 Act and the repeal of sections 2a and 3, chapter 112, Oregon Laws 2012, by**  
 20 **section 14 of this 2013 Act become operative 91 days after the effective date of this 2013 Act.**

21 (2) **The Attorney General may take any action before the operative date specified in**  
 22 **subsection (1) of this section that is necessary to enable the Attorney General to exercise,**  
 23 **on and after the operative date specified in subsection (1) of this section, all of the duties,**  
 24 **functions and powers conferred on the Attorney General by sections 2 to 6 of this 2013 Act**  
 25 **and the amendments to ORS 86.735, 86.740, 88.010 and 646.607 and sections 2, 4 and 4a, chap-**  
 26 **ter 112, Oregon Laws 2012, by sections 7 to 13 of this 2013 Act.**

27 **SECTION 16. Sections 2 to 6 of this 2013 Act, the amendments to ORS 86.735, 86.740,**  
 28 **88.010 and 646.607 and sections 2, 4 and 4a, chapter 112, Oregon Laws 2012, by sections 7 to**  
 29 **13 of this 2013 Act and the repeal of sections 2a and 3, chapter 112, Oregon Laws 2012, by**  
 30 **section 14 of this 2013 Act apply to requests for resolution conferences that a beneficiary or**  
 31 **grantor submits, to notices of sale that a trustee or beneficiary or an agent of the trustee**  
 32 **or beneficiary sends, and to suits to foreclose a residential trust deed that commence, on or**  
 33 **after the operative date specified in section 15 of this 2013 Act.**

34 **SECTION 17. This 2013 Act being necessary for the immediate preservation of the public**  
 35 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
 36 **on its passage.**

37

# Senate Bill 447

Sponsored by Senator GEORGE (Presession 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 **as introduced**.

Reduces monthly interest on delinquent property tax payments to lesser of prime rate plus one percent, multiplied by one-twelfth, or two-thirds of one percent.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to property taxation; amending ORS 311.505; and prescribing an effective date.

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

4 **SECTION 1.** ORS 311.505 is amended to read:

5 311.505. (1) Except as provided in subsection (6) of this section, the first one-third of all taxes  
6 and other charges due from the taxpayer or property, levied or imposed and charged on the latest  
7 tax roll, shall be paid on or before November 15, the second one-third on or before February 15, and  
8 the remaining one-third on or before May 15 next following.

9 (2)(a) Interest shall be charged and collected on any taxes on property, other charges, and on  
10 any additional taxes or penalty imposed for disqualification of property for special assessment or  
11 exemption, or installment thereof not paid when due, [*at the rate of one and one-third percent*] **pay-**  
12 **able** per month[, ] or fraction of a month until paid[, ], **at a rate equal to the lesser of:**

13 **(A) The prime rate on the date the amounts owing become delinquent plus one percent,**  
14 **multiplied by one-twelfth; or**

15 **(B) Two-thirds of one percent.**

16 **(b) As used in this subsection, "prime rate" means the primary credit rate of the dis-**  
17 **count window program of the United States Federal Reserve System.**

18 (3) Discounts shall be allowed on partial or full payments of such taxes, made on or before No-  
19 vember 15 as follows:

20 (a) Two percent on two-thirds of such taxes so paid.

21 (b) Three percent where all of such taxes are so paid.

22 (4) For purposes of this section, "taxes" includes all taxes on property as defined in ORS 310.140  
23 and certified to the assessor under ORS 310.060 except taxes assessed on any other property which  
24 have by any means become a lien against the property for which the payment was made.

25 (5) All interest collected and all discounts allowed shall be prorated to the several municipal  
26 corporations, taxing districts and governmental agencies sharing in the taxes or assessments.

27 (6) If the total property tax is less than \$40, no installment payment of taxes shall be allowed.

28 **SECTION 2. This 2013 Act takes effect on the 91st day after the date on which the 2013**  
29 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

30

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**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.

# Senate Bill 414

Sponsored by Senator SHIELDS (at the request of Autism Society of Oregon) (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 **as introduced**.

Permits Director of Department of Consumer and Business Services to seek restitution on behalf of consumer that suffered actual damages as result of insurer's violation of Insurance Code or breach of insurance contract or policy and to seek other equitable relief that director deems appropriate under circumstances.

Requires director to acknowledge receiving complaint about insurer, to investigate complaint and to notify person that submitted complaint concerning results of investigation and director's determinations at periodic intervals.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to administration of the Insurance Code; creating new provisions; amending ORS 731.256  
3 and 731.264; and declaring an emergency.

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

5 **SECTION 1.** ORS 731.256 is amended to read:

6 731.256. (1) The Director of the Department of Consumer and Business Services may institute  
7 [*such*] actions or other lawful proceedings [*as*] **that** the director [*may deem*] **deems** necessary [*for*  
8 *the enforcement of any*] **to enforce a** provision of the Insurance Code or any order or action [*made*  
9 *or taken by the director*] **the director makes or takes** in pursuance of law.

10 **(2) As part of or in addition to any action or proceeding the director institutes against**  
11 **an insurer under subsection (1) of this section, the director may:**

12 **(a) Seek restitution on a consumer's behalf for actual damages the consumer suffers as**  
13 **a result of the insurer's violation of a provision of the Insurance Code or applicable federal**  
14 **law or the insurer's breach of an insurance contract or policy the insurer has with the**  
15 **consumer; and**

16 **(b) Seek other equitable relief the director deems appropriate under the circumstances.**

17 [(2)] **(3) If the director has reason to believe that [*any*] a person has violated [*any*] a provision**  
18 **of the Insurance Code or [*other*] another law [*applicable*] that applies to insurance operations, [*for***  
19 ***which*] and if the violation is subject to criminal prosecution [*is provided*] and in the opinion of**  
20 **the director [*would be in order*] criminal prosecution is warranted,** the director shall give the  
21 information [*relative thereto*] **about the violation** to the Attorney General or district attorney  
22 [*having*] **that has jurisdiction [*of any such*] over the violation.** The Attorney General or district  
23 attorney promptly shall institute [*such*] **an action or [*proceedings*] a proceeding** against [*such*] **the**  
24 person as the information requires or justifies.

25 **SECTION 2.** ORS 731.264 is amended to read:

26 731.264. (1) A complaint made to the Director of the Department of Consumer and Business  
27 Services against any person regulated by the Insurance Code, and the record [*thereof*] **of the com-**  
28 **plaint, [*shall be*] is confidential and may not be disclosed except as provided in ORS 705.137. [*No***

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New sections are in **boldfaced** type.

1 *such complaint, or the record thereof, shall*] **The complaint or a record of the complaint may not**  
2 **be used in any action, suit or proceeding except to the extent** [*considered*] **the director considers**  
3 **necessary** [*by the director in the prosecution of*] **for prosecuting** apparent violations of the Insurance  
4 Code or other law.

5 (2) Data gathered pursuant to [*an*] **the director's** investigation [*by the director*] of a complaint  
6 [*shall be*] **is** confidential, may not be disclosed except as provided in ORS 705.137 and may not be  
7 used in any action, suit or proceeding except to the extent [*considered*] **the director considers**  
8 **necessary** [*by the director in the investigation or prosecution of*] **for investigating or prosecuting**  
9 apparent violations of the Insurance Code or other law.

10 (3) Notwithstanding subsections (1) and (2) of this section, the director shall establish by rule  
11 a method for publishing an annual statistical report [*containing*] **that lists** the insurer's name and  
12 the number, percentage, type and disposition of complaints [*received by*] **that** the Department of  
13 Consumer and Business Services **receives concerning** [*against*] each insurer [*transacting*] **that**  
14 **transacts** insurance within this state.

15 (4) **The director shall acknowledge receiving a complaint described in subsection (1) of**  
16 **this section within 10 days after receiving the complaint. The director shall investigate the**  
17 **complaint in a timely manner and shall notify the person that submitted the complaint of**  
18 **the results of the investigation and the director's determinations within 45 days after the**  
19 **director first received the complaint and, after the first notice, at regular intervals of 45**  
20 **days or fewer until the director has completed the investigation.**

21 (5) **The director shall establish by rule procedures for conducting investigations into**  
22 **complaints the director receives under subsection (1) of this section.**

23 **SECTION 3. (1) The amendments to ORS 731.256 and 731.264 by sections 1 and 2 of this**  
24 **2013 Act become operative January 1, 2014.**

25 (2) **The Director of the Department of Consumer and Business Services may take any**  
26 **action before the operative date specified in subsection (1) of this section that is necessary**  
27 **to enable the director to exercise, on and after the operative date specified in subsection (1)**  
28 **of this section, all of the duties, functions and powers conferred on the director by the**  
29 **amendments to ORS 731.256 and 731.264 by sections 1 and 2 of this 2013 Act.**

30 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**  
31 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
32 **on its passage.**

33

# Senate Bill 374

Sponsored by Senator BATES (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 **as introduced**.

Requires person that brings suit to foreclose residential trust deed to enter into mediation with grantor before bringing suit. Provides exceptions.

Requires person to serve on or mail to grantor notice of mediation at least 120 days before bringing suit to foreclose residential trust deed.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to foreclosures of residential trust deeds; amending ORS 88.010 and sections 2, 3, 4 and 4a,  
3 chapter 112, Oregon Laws 2012; and declaring an emergency.

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

5 **SECTION 1.** Section 2, chapter 112, Oregon Laws 2012, is amended to read:

6 **Sec. 2.** (1) As used in this section and sections 3 and 4a, **chapter 112, Oregon Laws 2012**, [*of*  
7 *this 2012 Act*,] "foreclosure avoidance measure" means an agreement between a beneficiary and a  
8 grantor that uses one or more of the following methods to modify an obligation that is secured by  
9 a trust deed:

10 (a) The beneficiary defers or forbears from collecting one or more payments due on the obli-  
11 gation.

12 (b) The beneficiary modifies, temporarily or permanently, the payment terms or other terms of  
13 the obligation.

14 (c) The beneficiary accepts a deed in lieu of foreclosure from the grantor.

15 (d) The grantor conducts a short sale.

16 (e) The beneficiary provides the grantor with other assistance that enables the grantor to avoid  
17 a foreclosure.

18 (2)(a) Except as provided in paragraph (d) of this subsection, a beneficiary that seeks to fore-  
19 close a residential trust deed under ORS 86.735 **or 88.010** shall enter into mediation with the grantor  
20 for the purpose of negotiating a foreclosure avoidance measure in accordance with the provisions  
21 of this section.

22 (b) The Attorney General shall:

23 (A) Appoint a mediation service provider to coordinate a mediation program and shall enter into  
24 an agreement to pay the mediation service provider for the mediation service provider's services  
25 from the Foreclosure Avoidance Mediation Fund established in section 4, **chapter 112, Oregon**  
26 **Laws 2012** [*of this 2012 Act*]. The appointment and the agreement are not subject to ORS chapter  
27 279A or 279B.

28 (B) Prescribe qualifications, training and experience requirements for mediators by rule.

29 (C) Set the schedule of fees for the mediation by rule.

30 (c) The beneficiary and the grantor shall share the cost of the mediation, except that the

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New sections are in **boldfaced** type.

1 grantor's portion of the cost may not exceed \$200. The mediator may waive the grantor's portion  
2 of the fee in accordance with rules that the Attorney General adopts to describe circumstances that  
3 permit a waiver.

4 (d) The requirement to enter into mediation with a grantor does not apply:

5 (A) To an individual, a financial institution, as defined in ORS 706.008, a mortgage banker, as  
6 defined in ORS 86A.100, or a licensee, as defined in ORS 725.010, if the individual, financial insti-  
7 tution, mortgage banker or licensee provides to the Attorney General a sworn affidavit that states  
8 that during the preceding calendar year the individual, financial institution, mortgage banker or  
9 licensee did not commence or cause an affiliate or agent of the individual, financial institution,  
10 mortgage banker or licensee to commence more than a total of 250 actions to foreclose a residential  
11 trust deed by advertisement and sale under ORS 86.735 or a residential mortgage by suit under ORS  
12 88.010. An individual, financial institution, mortgage banker or licensee that intends to claim an  
13 exemption under this subparagraph shall file the affidavit either:

14 (i) Within 30 days after [*the operative date specified in section 11 of this 2012 Act*] **July 11, 2012**,  
15 to claim the exemption for calendar year 2012 and not later than January 31 in any subsequent  
16 calendar year in which the individual, financial institution, mortgage banker or licensee intends to  
17 claim the exemption; or

18 (ii) At the time the individual, financial institution, mortgage banker or licensee files a notice  
19 of default under ORS 86.735 **or at least 120 days before the individual, financial institution,**  
20 **mortgage banker or licensee or an agent of the individual, financial institution, mortgage**  
21 **banker or licensee brings suit to foreclose a residential trust deed under ORS 88.010.**

22 (B) If the grantor fails to confirm that the grantor will enter into mediation by the date specified  
23 under subsection (3)(c) of this section.

24 (3) Within 30 days after the date on which the beneficiary caused a notice of mediation to be  
25 served or mailed as provided in ORS 86.740 **or 88.010 (2)(b)(A)**, the mediation service provider shall  
26 send a notice to the grantor and the beneficiary that:

27 (a) Schedules a date, time and location for the mediation. The date must be not earlier than  
28 45 days and not later than 90 days after the date on which the notice of mediation was served or  
29 mailed as provided in ORS 86.740 **or 88.010 (2)(b)(A)**.

30 (b) Identifies and provides contact information for the mediation service provider.

31 (c) Specifies a date at least 30 days before the scheduled date of the mediation by which the  
32 grantor must contact the mediation service provider to confirm that the grantor will enter into  
33 mediation. The notice must state that the mediation service provider will deem the grantor to have  
34 declined to enter into mediation if the grantor fails to confirm by the specified date.

35 (d) Lists the costs of the mediation and specifies the portion of the costs for which the grantor  
36 is responsible.

37 (e) Provides any other information that the Attorney General requires by rule.

38 (4)(a) If the grantor confirms by the date specified under subsection (3)(c) of this section that the  
39 grantor will enter into mediation, the beneficiary or the beneficiary's agent shall appear at the time  
40 and the location identified in the mediation service provider's notice under subsection (3) of this  
41 section with the documentation described in paragraph (b) of this subsection.

42 (b) The beneficiary or the beneficiary's agent must appear in person at the location of the me-  
43 diation unless the mediator permits the beneficiary or the beneficiary's agent to appear in another  
44 manner for good cause shown. The fact that a beneficiary or beneficiary's agent is located outside  
45 this state does not alone constitute good cause for the purposes of this paragraph. The beneficiary

1 or the beneficiary's agent must appear at the mediation with:

2 (A) The grantor's complete payment history for the obligation that is secured by the residential  
3 trust deed that the beneficiary seeks to foreclose;

4 (B) Evidence that the beneficiary is the real party in interest with respect to the obligation,  
5 including but not limited to:

6 (i) A true copy of the original debt instrument that is the basis for the right the beneficiary  
7 claims to foreclose the trust deed; and

8 *[(ii) Documents that show the chain of title for the property that is subject to the residential trust*  
9 *deed from the date of the original loan for which the beneficiary seeks foreclosure to the date of the*  
10 *notices given under ORS 86.740, including conveyances, endorsements and assignments of the residen-*  
11 *tial trust deed, the note and the security instrument, whether recorded or unrecorded;]*

12 **(ii) Documents that show the chain of title for the property that is subject to the resi-**  
13 **dential trust deed, including conveyances, endorsements and assignments of the residential**  
14 **trust deed, the note and the security instrument, over a period of time that begins on the**  
15 **date of the original loan the beneficiary seeks to foreclose and ends on the date on which the**  
16 **notices were given under ORS 86.740 or 88.010 (2)(b)(A);**

17 (C) A copy of the authorization from the beneficiary to the beneficiary's agent, if the  
18 beneficiary's agent appears at the mediation;

19 (D) A copy of any of the following documents that apply to the note or obligation that is secured  
20 by the trust deed:

21 (i) A servicing agreement the beneficiary entered into with another person; or

22 (ii) An agreement by means of which the beneficiary pledged as collateral for a security the  
23 beneficiary issued or sold all or a portion of the ownership interest in the note or other obligation;  
24 and

25 (E) Other documentation the Attorney General specifies by rule.

26 (c) The beneficiary or the beneficiary's agent that enters into mediation with the grantor must  
27 have or be able to obtain, before the initial mediation session concludes, authority to accept or re-  
28 ject a proposal for a foreclosure avoidance measure and authority to enter with the grantor into an  
29 agreement for a foreclosure avoidance measure.

30 (5)(a) The beneficiary or the beneficiary's agent must enter into mediation in accordance with  
31 mediation guidelines the Attorney General establishes by rule.

32 (b) If the beneficiary or the beneficiary's agent agrees with the grantor on a foreclosure avoid-  
33 ance measure, the beneficiary or beneficiary's agent and the grantor shall set forth the terms of the  
34 foreclosure avoidance measure in a written agreement, a copy of which the beneficiary or  
35 beneficiary's agent shall provide to the Attorney General. The beneficiary may elect to pay the  
36 grantor's portion of the cost of the mediation or the grantor and the beneficiary may agree to in-  
37 clude the cost of the mediation as part of and in accordance with any payment plan that is part of  
38 the foreclosure avoidance measure.

39 (c) If the beneficiary or the beneficiary's agent and the grantor do not agree on a foreclosure  
40 avoidance measure, the mediation service provider shall notify the Attorney General that the medi-  
41 ation did not result in an agreement.

42 (6)(a) At the conclusion of the mediation, if the beneficiary has complied with the requirements  
43 of subsections (4) and (5) of this section, the mediation service provider shall provide the beneficiary  
44 or the beneficiary's agent with a certificate of compliance in a form and with contents that the At-  
45 torney General specifies by rule. The certificate must state that the beneficiary has complied with

1 the requirements of this section.

2 (b) If the grantor does not confirm by the date specified under subsection (3)(c) of this section  
3 that the grantor will enter into mediation, the mediation service provider shall provide the benefi-  
4 ciary or the beneficiary's agent with a certificate of compliance in a form and with contents that  
5 the Attorney General specifies by rule. The certificate must state that the grantor declined to enter  
6 into mediation with the beneficiary.

7 (c) The mediation service provider shall provide a copy of the certificate the mediation service  
8 provider issues under paragraph (a) or (b) of this subsection to the grantor and to the Attorney  
9 General.

10 (7)(a) [A grantor that is at risk of default] **If**, before the beneficiary or the trustee has filed a  
11 notice of default for recording under ORS 86.735 **or brought suit to foreclose the residential**  
12 **trust deed under ORS 88.010, the grantor has failed for 30 days or more to make a regular**  
13 **periodic payment for the obligation that is secured by the residential trust deed or the**  
14 **grantor is otherwise at risk of default, the grantor** may notify the beneficiary or trustee in the  
15 trust deed or the beneficiary's or trustee's agent that the grantor wants to enter into mediation.  
16 Within 15 days after receiving the request, the beneficiary or trustee or the beneficiary's or trustee's  
17 agent shall respond to the grantor's request and shall notify the Attorney General and the mediation  
18 service provider identified in subsection (2)(b) of this section. The response to the grantor must in-  
19 clude contact information for the Attorney General and the mediation service provider.

20 (b) A grantor that requests mediation under paragraph (a) of this subsection may also notify the  
21 Attorney General and the mediation service provider of the request. The Attorney General shall  
22 post on the Department of Justice website contact information for the mediation service provider  
23 and an address or method by which the grantor may notify the Attorney General.

24 (c) Within 10 days after receiving notice of the request under paragraph (a) of this subsection,  
25 the mediation service provider shall send a notice to the grantor and the beneficiary that, except  
26 with respect to the date by which the mediation service provider must send the notice, is otherwise  
27 in accordance with the provisions of subsection (3) of this section.

28 (d) A beneficiary or beneficiary's agent that receives a request under paragraph (a) of this sub-  
29 section is subject to the same duties as are described in subsections (2), (4) and (5) of this section.

30 **SECTION 2.** Section 3, chapter 112, Oregon Laws 2012, is amended to read:

31 **Sec. 3.** The notice of mediation required under ORS 86.740 (1)(b) **or 88.010 (2)(b)(A)** must be in  
32 a form and with the contents the Attorney General specifies by rule and must:

33 (1) List the name, address, telephone number and other contact information for the grantor or  
34 other person named in the residential trust deed.

35 (2) Specify the account number or other means by which the beneficiary or trustee or an agent  
36 of the beneficiary or trustee identifies the obligation that is secured by the residential trust deed.

37 (3) Provide the address, telephone number and other contact information for:

38 (a) The beneficiary or an agent of the beneficiary that the beneficiary authorizes to negotiate  
39 on the beneficiary's behalf;

40 (b) The Oregon State Bar's Lawyer Referral Service;

41 (c) Service agencies or other providers that offer free or low-cost legal services from a list of  
42 agencies or providers that the Attorney General adopts by rule; and

43 (d) A list of not-for-profit housing counselors approved by the United States Department of  
44 Housing and Urban Development or an agency of this state.

45 (4) State that section 2, **chapter 112, Oregon Laws 2012**, [of this 2012 Act] requires the bene-

1 ficiary to enter into mediation with the grantor for the purpose of negotiating a foreclosure avoid-  
2 ance measure.

3 (5) List the documents the grantor must bring to the mediation. The Attorney General by rule  
4 shall specify the documents the grantor must bring.

5 (6) State that the grantor may choose to have an attorney or a housing counselor approved by  
6 the United States Department of Housing and Urban Development represent the grantor at the me-  
7 diation.

8 (7) State the costs of the mediation and specify the maximum cost for which the grantor will  
9 be responsible.

10 (8) State that the mediation and mediation communications, as defined in ORS 36.110, are con-  
11 fidential in accordance with and to the extent provided in ORS 36.220 to 36.238.

12 (9) State that within 30 days after the date of the notice a mediation service provider will send  
13 another notice to the grantor with a date, time and location for the mediation and with the other  
14 information specified in section 2 (3), **chapter 112, Oregon Laws 2012** [of this 2012 Act].

15 **SECTION 3.** Section 4, chapter 112, Oregon Laws 2012, is amended to read:

16 **Sec. 4.** (1) The Foreclosure Avoidance Mediation Fund is established in the State Treasury,  
17 separate and distinct from the General Fund. The fund consists of moneys the Attorney General  
18 collects or receives for the purpose of paying the expenses of coordinating a mediation program  
19 under section 2, **chapter 112, Oregon Laws 2012**, [of this 2012 Act] and related expenses. The  
20 moneys in the fund are continuously appropriated to the Attorney General for the purposes of pay-  
21 ing the expenses of coordinating the mediation program and related expenses.

22 (2) The Attorney General may receive moneys for the purposes set forth in subsection (1) of this  
23 section from any public or private source.

24 (3)(a) Except as provided in paragraph [(b)] (c) of this subsection, a trustee or beneficiary that  
25 files a notice of default under ORS 86.735 shall pay to the county clerk that records the notice \$100  
26 in addition to and not in lieu of any fee that the county clerk charges for recording the notice of  
27 default. The county clerk at the end of each month shall forward the proceeds of the \$100 charge  
28 to the Attorney General for deposit into the fund described in subsection (1) of this section.

29 **(b) Except as provided in paragraph (c) of this subsection, a beneficiary that brings suit**  
30 **to foreclose a residential trust deed under ORS 88.010 shall on the same date on which the**  
31 **beneficiary brings the suit remit to the Attorney General a fee of \$100, which the Attorney**  
32 **General shall deposit into the fund described in subsection (1) of this section.**

33 [(b)] (c) An individual, a financial institution, as defined in ORS 706.008, a mortgage banker, as  
34 defined in ORS 86A.100, or a licensee, as defined in ORS 725.010, is not subject to the \$100 charge  
35 described in paragraph (a) **or (b)** of this subsection if the individual, financial institution, mortgage  
36 banker or licensee provides to the county clerk a sworn affidavit that states that during the pre-  
37 ceding calendar year the individual, financial institution, mortgage banker or licensee did not com-  
38 mence or cause an affiliate or agent of the individual, financial institution, mortgage banker or  
39 licensee to commence more than a total of 250 actions to foreclose a residential trust deed by ad-  
40 vertisement and sale under ORS 86.735 or a residential mortgage by suit under ORS 88.010. An in-  
41 dividual, financial institution, mortgage banker or licensee that intends to claim an exemption under  
42 this paragraph shall provide the affidavit either:

43 (A) Within 30 days after [the operative date specified in section 11 of this 2012 Act] **July 11, 2012**,  
44 to claim the exemption for calendar year 2012 and not later than January 31 in any subsequent  
45 calendar year in which the individual, financial institution, mortgage banker or licensee intends to

1 claim the exemption; or

2 (B) At the time the individual, financial institution, mortgage banker or licensee files a notice  
3 of default under ORS 86.735 **or brings suit to foreclose a residential trust deed under ORS**  
4 **88.010.**

5 **SECTION 4.** Section 4a, chapter 112, Oregon Laws 2012, is amended to read:

6 **Sec. 4a.** (1)(a) If a beneficiary determines that a grantor is not eligible for any foreclosure  
7 avoidance measure or that the grantor has not complied with the terms of a foreclosure avoidance  
8 measure to which the grantor has agreed, the beneficiary or the beneficiary's agent, at least 30 days  
9 before the date specified for the trustee's sale in a notice served under ORS 86.740 or 86.755  
10 (2)(b)[.] **or at least 30 days before the first scheduled proceeding in a suit to foreclose the**  
11 **residential trust deed under ORS 88.010,** shall notify the grantor in writing of the beneficiary's  
12 determination and shall cause the notice to be served as provided in ORS 86.740 (1).

13 (b) The notice must in plain language explain the basis for the beneficiary's determination.

14 (2) The beneficiary or the beneficiary's agent shall mail a copy of the notice of the determination  
15 described in subsection (1) of this section to the Department of Justice on the same date on which  
16 the notice is served.

17 (3)(a) At least 20 days before the date specified for the trustee's sale in a notice served under  
18 ORS 86.740 or 86.755 (2)(b)[.] **or at least 20 days before the first scheduled proceeding in a suit**  
19 **to foreclose the residential trust deed under ORS 88.010,** the beneficiary or the beneficiary's  
20 agent shall:

21 (A) Record in the mortgage records for the property that is subject to the trustee's sale, in the  
22 county or in one of the counties in which the property is located, an affidavit that states that the  
23 beneficiary has complied with the requirements set forth in subsections (1) and (2) of this section;  
24 and

25 (B) Mail a copy of the affidavit to the department.

26 (b) The affidavit described in paragraph (a) of this subsection must:

27 (A) Identify the property that is the subject of the trustee's sale;

28 (B) Identify the grantor and, as of the date of the affidavit, the trustee and the beneficiary;

29 (C) State that the beneficiary or beneficiary's agent has complied with the requirements set  
30 forth in subsections (1) and (2) of this section; and

31 (D) Include proof of service on the grantor for the notice described in subsection (1) of this  
32 section.

33 (4) The Attorney General by rule shall specify a form for and the contents of the notice of the  
34 determination described in subsection (1) of this section and shall identify an address to which the  
35 beneficiary or beneficiary's agent must mail the copy of the notice under subsection (2) of this sec-  
36 tion and the affidavit under subsection (3) of this section.

37 (5)(a) A beneficiary or an agent of the beneficiary that fails to comply with the provisions of this  
38 section is liable to the grantor in the amount of \$500 plus the amount of the grantor's actual dam-  
39 ages for each failure to comply with a provision of this section.

40 (b) A grantor may bring an action against a beneficiary or an agent of the beneficiary in a cir-  
41 cuit court of this state to recover the amounts described in paragraph (a) of this subsection. The  
42 grantor shall commence the action within two years after the date on which the beneficiary or the  
43 beneficiary's agent should have complied, but did not comply, with the provisions of this section.

44 (c) Notwithstanding an agreement to the contrary, a court may award reasonable attorney fees,  
45 costs and disbursements to a grantor that obtains a final judgment in the grantor's favor.

1        **SECTION 5.** ORS 88.010 is amended to read:

2        88.010. (1) Except as otherwise provided by law, a lien upon real or personal property, other  
3 than that of a judgment, whether created by mortgage or otherwise, *[shall]* **must** be foreclosed, and  
4 the property adjudged to be sold to satisfy the debt *[secured thereby]* **the lien secures**, by *[a]*  
5 **bringing** suit. Except as provided in ORS 88.070, in addition to the judgment of foreclosure and sale,  
6 if **the lien debtor or another person, as principal or otherwise, has given** a promissory note or  
7 other personal obligation *[for the payment of]* **to repay** the debt *[has been given by the lien debtor*  
8 *or any other person as principal or otherwise]*, the court also shall enter a judgment for the amount  
9 of the debt against the *[person or persons]* **lien debtor or other person**. The provisions of this  
10 chapter as to liens upon personal property *[are not intended to]* **do not** exclude a person *[having*  
11 *such]* **that has a lien** from any other remedy or right *[in regard]* **with respect** to *[such]* **the property**  
12 **that the person otherwise has.**

13        (2)(a) **A person may not proceed under this section with a suit to foreclose a residential**  
14 **trust deed unless the person has complied with applicable provisions of sections 2, 3, 4 and**  
15 **4a, chapter 112, Oregon Laws 2012, or unless the person is exempt under section 2 (2)(d),**  
16 **chapter 112, Oregon Laws 2012, from a requirement to enter into mediation with the grantor.**

17        (b) **For the purposes of the requirement in paragraph (a) of this subsection, a person has**  
18 **not complied with applicable requirements of sections 2, 3, 4 and 4a, chapter 112, Oregon**  
19 **Laws 2012, if the person has not:**

20        (A) **Served a notice of mediation in the form and with the contents described in section**  
21 **3, chapter 112, Oregon Laws 2012, as provided in ORCP 7 D(2) and 7 D(3), or mailed the notice**  
22 **by both first class and certified mail with return receipt requested, at least 120 days before**  
23 **bringing suit under this section;**

24        (B) **Responded to a grantor's request for mediation as provided in section 2 (7), chapter**  
25 **112, Oregon Laws 2012;**

26        (C) **Filed for recording in the official records of the county or counties in which the**  
27 **property that is subject to the residential trust deed is located the certificate of compliance**  
28 **the person received under section 2, chapter 112, Oregon Laws 2012; or**

29        (D) **Remitted to the Attorney General the fee described in section 4 (3)(b), chapter 112,**  
30 **Oregon Laws 2012, unless the person is exempt from the fee under section 4 (3)(c), chapter**  
31 **112, Oregon Laws 2012.**

32        (c) **Notwithstanding a person's exemption under section 2 (2)(d), chapter 112, Oregon**  
33 **Laws 2012, from the requirement to enter into mediation with a grantor, the person may not**  
34 **proceed with a suit to foreclose a residential trust deed under this section unless the person**  
35 **has complied with the provisions of section 4a, chapter 112, Oregon Laws 2012.**

36        **SECTION 6.** This 2013 Act being necessary for the immediate preservation of the public  
37 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
38 **on its passage.**

39

# Senate Bill 368

Sponsored by Senator BATES (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 **as introduced**.

Requires trustee, mortgagee or agent of trustee or mortgagee to record all assignments of beneficial interest in real property that is secured, in whole or in part, by trust deed or mortgage. Specifies certain requirements for recordation.

Provides that trustee's or mortgagee's ability to foreclose on trust deed or mortgage is contingent on proper recordation of assignments of beneficial interest.

Provides that requirement to record assignment becomes operative 91 days after effective date of Act and is retroactive to January 1, 2007.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to requirements to record assignments of beneficial interests in real property; creating new  
3 provisions; amending ORS 86.735; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 93.600 to 93.800.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Beneficial interest" means any right or entitlement to receive income, profit, a**  
8 **payment, a distribution or any other monetary benefit under the terms of a note or other**  
9 **instrument that is evidence of an obligation for which a trust deed or mortgage is security.**

10 (b) **"Residential trust deed" means a trust deed on property upon which are situated four**  
11 **or fewer residential units, one of which the grantor of the trust deed, the grantor's spouse**  
12 **or the grantor's minor or dependent child occupies as a principal residence.**

13 (2) **The trustee named in a residential trust deed, the mortgagee named in a mortgage**  
14 **instrument or an authorized agent of the trustee or mortgagee shall record, in accordance**  
15 **with subsections (3) and (4) of this section, every assignment of any beneficial interest in real**  
16 **property that is secured, in whole or in part, by a residential trust deed or a mortgage, if**  
17 **the mortgagor uses the real property as the mortgagor's primary residence.**

18 (3) **The trustee or mortgagee, or the authorized agent of the trustee or mortgagee, shall**  
19 **record each assignment of a beneficial interest in accordance with the provisions set forth**  
20 **in ORS 93.804 for recording an instrument that conveys an interest in real property.**

21 (4) **The trustee or mortgagee, or the authorized agent of the trustee or mortgagee, shall**  
22 **record each assignment of a beneficial interest in the mortgage records of the county or**  
23 **counties within which the real property is situated.**

24 **SECTION 3. Section 4 of this 2013 Act is added to and made a part of ORS chapter 88.**

25 **SECTION 4. An action to foreclose a mortgage given to secure real property that the**  
26 **mortgagor uses as the mortgagor's primary residence may not be brought unless the**  
27 **mortgagee or other person that seeks to foreclose the mortgage, or the mortgagee's or**  
28 **person's agent, has complied with the requirements of section 2 of this 2013 Act.**

**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 5.** ORS 86.735, as amended by section 6, chapter 112, Oregon Laws 2012, is amended  
2 to read:

3        86.735. A trustee may foreclose a trust deed by advertisement and sale in the manner provided  
4 in ORS 86.740 to 86.755 **only** if:

5        (1) [*The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any*  
6 *appointment of a successor trustee are recorded in the mortgage records in the counties in which the*  
7 *property described in the deed is situated;*] **The following documents are recorded in the mort-**  
8 **gage records of the county or counties in which the property described in the deed is situ-**  
9 **ated:**

10        (a) **The trust deed;**

11        (b) **Any assignments that a trustee or beneficiary makes of the trust deed and any ben-**  
12 **eficial interest, as defined in section 2 of this 2013 Act, in any note secured by the trust deed,**  
13 **all of which must be recorded in accordance with section 2 of this 2013 Act; and**

14        (c) **Any appointment of a successor trustee;**

15        (2) There is a default by the grantor or other person that owes an obligation, the performance  
16 of which is secured by the trust deed, or by the grantor's or other person's successors in interest  
17 with respect to a provision in the deed that authorizes sale in the event of default of the provision;

18        (3) The trustee or beneficiary has filed for record in the county clerk's office in each county  
19 where the trust property, or some part of the trust property, is situated, a notice of default con-  
20 taining the information required by ORS 86.745 and containing the trustee's or beneficiary's election  
21 to sell the property to satisfy the obligation;

22        (4) The beneficiary or the beneficiary's agent has filed for recording in the official records of  
23 the county or counties in which the property that is subject to the residential trust deed is located  
24 the certificate of compliance the beneficiary received under section 2, chapter 112, Oregon Laws  
25 2012, if the beneficiary must enter into mediation with the grantor under section 2 (2)(a), chapter  
26 112, Oregon Laws 2012;

27        (5)(a) The beneficiary or the beneficiary's agent has complied with the provisions of section 4a,  
28 chapter 112, Oregon Laws 2012; and

29        (b) The grantor is not in compliance with the terms of a foreclosure avoidance measure upon  
30 which the beneficiary and the grantor have agreed; and

31        (6) An action has not been commenced to recover the debt or any part of the debt then re-  
32 maining secured by the trust deed, or, if an action has been commenced, the action has been dis-  
33 missed, except that:

34        (a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action may  
35 be commenced to appoint a receiver or to obtain a temporary restraining order during foreclosure  
36 of a trust deed by advertisement and sale, except that a receiver may not be appointed with respect  
37 to a single-family residence that the grantor, the grantor's spouse or the grantor's minor or de-  
38 pendent child occupies as a principal residence.

39        (b) An action may be commenced to foreclose, judicially or nonjudicially, the same trust deed  
40 as to any other property covered by the trust deed, or any other trust deeds, mortgages, security  
41 agreements or other consensual or nonconsensual security interests or liens that secure repayment  
42 of the debt.

43        **SECTION 6. Sections 2 and 4 of this 2013 Act and the amendments to ORS 86.735 by**  
44 **section 5 of this 2013 Act apply to all assignments of a beneficial interest in real property**  
45 **that occurred on or after January 1, 2007, to the extent that the assignments are subject to**

1 section 2 of this 2013 Act.

2 SECTION 7. Sections 2 and 4 of this 2013 Act and the amendments to ORS 86.735 by  
3 section 5 of this 2013 Act become operative 91 days after the effective date of this 2013 Act.

4 SECTION 8. This 2013 Act being necessary for the immediate preservation of the public  
5 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect  
6 on its passage.

7

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# Senate Bill 367

Sponsored by Senator BATES (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 **as introduced**.

Requires person that brings suit to foreclose residential trust deed to enter into mediation with grantor before bringing suit. Provides exceptions.

Requires person to serve on or mail to grantor notice of mediation at least 120 days before bringing suit to foreclose residential trust deed.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to foreclosures of residential trust deeds; amending ORS 88.010 and sections 2, 3, 4 and 4a,  
3 chapter 112, Oregon Laws 2012; and declaring an emergency.

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

5 **SECTION 1.** Section 2, chapter 112, Oregon Laws 2012, is amended to read:

6 **Sec. 2.** (1) As used in this section and sections 3 and 4a, **chapter 112, Oregon Laws 2012**, [*of*  
7 *this 2012 Act*,] "foreclosure avoidance measure" means an agreement between a beneficiary and a  
8 grantor that uses one or more of the following methods to modify an obligation that is secured by  
9 a trust deed:

10 (a) The beneficiary defers or forbears from collecting one or more payments due on the obli-  
11 gation.

12 (b) The beneficiary modifies, temporarily or permanently, the payment terms or other terms of  
13 the obligation.

14 (c) The beneficiary accepts a deed in lieu of foreclosure from the grantor.

15 (d) The grantor conducts a short sale.

16 (e) The beneficiary provides the grantor with other assistance that enables the grantor to avoid  
17 a foreclosure.

18 (2)(a) Except as provided in paragraph (d) of this subsection, a beneficiary that seeks to fore-  
19 close a residential trust deed under ORS 86.735 **or 88.010** shall enter into mediation with the grantor  
20 for the purpose of negotiating a foreclosure avoidance measure in accordance with the provisions  
21 of this section.

22 (b) The Attorney General shall:

23 (A) Appoint a mediation service provider to coordinate a mediation program and shall enter into  
24 an agreement to pay the mediation service provider for the mediation service provider's services  
25 from the Foreclosure Avoidance Mediation Fund established in section 4, **chapter 112, Oregon**  
26 **Laws 2012** [*of this 2012 Act*]. The appointment and the agreement are not subject to ORS chapter  
27 279A or 279B.

28 (B) Prescribe qualifications, training and experience requirements for mediators by rule.

29 (C) Set the schedule of fees for the mediation by rule.

30 (c) The beneficiary and the grantor shall share the cost of the mediation, except that the

**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 grantor's portion of the cost may not exceed \$200. The mediator may waive the grantor's portion  
2 of the fee in accordance with rules that the Attorney General adopts to describe circumstances that  
3 permit a waiver.

4 (d) The requirement to enter into mediation with a grantor does not apply:

5 (A) To an individual, a financial institution, as defined in ORS 706.008, a mortgage banker, as  
6 defined in ORS 86A.100, or a licensee, as defined in ORS 725.010, if the individual, financial insti-  
7 tution, mortgage banker or licensee provides to the Attorney General a sworn affidavit that states  
8 that during the preceding calendar year the individual, financial institution, mortgage banker or  
9 licensee did not commence or cause an affiliate or agent of the individual, financial institution,  
10 mortgage banker or licensee to commence more than a total of 250 actions to foreclose a residential  
11 trust deed by advertisement and sale under ORS 86.735 or a residential mortgage by suit under ORS  
12 88.010. An individual, financial institution, mortgage banker or licensee that intends to claim an  
13 exemption under this subparagraph shall file the affidavit either:

14 (i) Within 30 days after [*the operative date specified in section 11 of this 2012 Act*] **July 11, 2012**,  
15 to claim the exemption for calendar year 2012 and not later than January 31 in any subsequent  
16 calendar year in which the individual, financial institution, mortgage banker or licensee intends to  
17 claim the exemption; or

18 (ii) At the time the individual, financial institution, mortgage banker or licensee files a notice  
19 of default under ORS 86.735 **or at least 120 days before the individual, financial institution,**  
20 **mortgage banker or licensee or an agent of the individual, financial institution, mortgage**  
21 **banker or licensee brings suit to foreclose a residential trust deed under ORS 88.010.**

22 (B) If the grantor fails to confirm that the grantor will enter into mediation by the date specified  
23 under subsection (3)(c) of this section.

24 (3) Within 30 days after the date on which the beneficiary caused a notice of mediation to be  
25 served or mailed as provided in ORS 86.740 **or 88.010 (2)(b)(A)**, the mediation service provider shall  
26 send a notice to the grantor and the beneficiary that:

27 (a) Schedules a date, time and location for the mediation. The date must be not earlier than  
28 45 days and not later than 90 days after the date on which the notice of mediation was served or  
29 mailed as provided in ORS 86.740 **or 88.010 (2)(b)(A)**.

30 (b) Identifies and provides contact information for the mediation service provider.

31 (c) Specifies a date at least 30 days before the scheduled date of the mediation by which the  
32 grantor must contact the mediation service provider to confirm that the grantor will enter into  
33 mediation. The notice must state that the mediation service provider will deem the grantor to have  
34 declined to enter into mediation if the grantor fails to confirm by the specified date.

35 (d) Lists the costs of the mediation and specifies the portion of the costs for which the grantor  
36 is responsible.

37 (e) Provides any other information that the Attorney General requires by rule.

38 (4)(a) If the grantor confirms by the date specified under subsection (3)(c) of this section that the  
39 grantor will enter into mediation, the beneficiary or the beneficiary's agent shall appear at the time  
40 and the location identified in the mediation service provider's notice under subsection (3) of this  
41 section with the documentation described in paragraph (b) of this subsection.

42 (b) The beneficiary or the beneficiary's agent must appear in person at the location of the me-  
43 diation unless the mediator permits the beneficiary or the beneficiary's agent to appear in another  
44 manner for good cause shown. The fact that a beneficiary or beneficiary's agent is located outside  
45 this state does not alone constitute good cause for the purposes of this paragraph. The beneficiary

1 or the beneficiary's agent must appear at the mediation with:

2 (A) The grantor's complete payment history for the obligation that is secured by the residential  
3 trust deed that the beneficiary seeks to foreclose;

4 (B) Evidence that the beneficiary is the real party in interest with respect to the obligation,  
5 including but not limited to:

6 (i) A true copy of the original debt instrument that is the basis for the right the beneficiary  
7 claims to foreclose the trust deed; and

8 *[(ii) Documents that show the chain of title for the property that is subject to the residential trust*  
9 *deed from the date of the original loan for which the beneficiary seeks foreclosure to the date of the*  
10 *notices given under ORS 86.740, including conveyances, endorsements and assignments of the residen-*  
11 *tial trust deed, the note and the security instrument, whether recorded or unrecorded;]*

12 **(ii) Documents that show the chain of title for the property that is subject to the resi-**  
13 **dential trust deed, including conveyances, endorsements and assignments of the residential**  
14 **trust deed, the note and the security instrument, over a period of time that begins on the**  
15 **date of the original loan the beneficiary seeks to foreclose and ends on the date on which the**  
16 **notices were given under ORS 86.740 or 88.010 (2)(b)(A);**

17 (C) A copy of the authorization from the beneficiary to the beneficiary's agent, if the  
18 beneficiary's agent appears at the mediation;

19 (D) A copy of any of the following documents that apply to the note or obligation that is secured  
20 by the trust deed:

21 (i) A servicing agreement the beneficiary entered into with another person; or

22 (ii) An agreement by means of which the beneficiary pledged as collateral for a security the  
23 beneficiary issued or sold all or a portion of the ownership interest in the note or other obligation;  
24 and

25 (E) Other documentation the Attorney General specifies by rule.

26 (c) The beneficiary or the beneficiary's agent that enters into mediation with the grantor must  
27 have or be able to obtain, before the initial mediation session concludes, authority to accept or re-  
28 ject a proposal for a foreclosure avoidance measure and authority to enter with the grantor into an  
29 agreement for a foreclosure avoidance measure.

30 (5)(a) The beneficiary or the beneficiary's agent must enter into mediation in accordance with  
31 mediation guidelines the Attorney General establishes by rule.

32 (b) If the beneficiary or the beneficiary's agent agrees with the grantor on a foreclosure avoid-  
33 ance measure, the beneficiary or beneficiary's agent and the grantor shall set forth the terms of the  
34 foreclosure avoidance measure in a written agreement, a copy of which the beneficiary or  
35 beneficiary's agent shall provide to the Attorney General. The beneficiary may elect to pay the  
36 grantor's portion of the cost of the mediation or the grantor and the beneficiary may agree to in-  
37 clude the cost of the mediation as part of and in accordance with any payment plan that is part of  
38 the foreclosure avoidance measure.

39 (c) If the beneficiary or the beneficiary's agent and the grantor do not agree on a foreclosure  
40 avoidance measure, the mediation service provider shall notify the Attorney General that the medi-  
41 ation did not result in an agreement.

42 (6)(a) At the conclusion of the mediation, if the beneficiary has complied with the requirements  
43 of subsections (4) and (5) of this section, the mediation service provider shall provide the beneficiary  
44 or the beneficiary's agent with a certificate of compliance in a form and with contents that the At-  
45 torney General specifies by rule. The certificate must state that the beneficiary has complied with

1 the requirements of this section.

2 (b) If the grantor does not confirm by the date specified under subsection (3)(c) of this section  
3 that the grantor will enter into mediation, the mediation service provider shall provide the benefi-  
4 ciary or the beneficiary's agent with a certificate of compliance in a form and with contents that  
5 the Attorney General specifies by rule. The certificate must state that the grantor declined to enter  
6 into mediation with the beneficiary.

7 (c) The mediation service provider shall provide a copy of the certificate the mediation service  
8 provider issues under paragraph (a) or (b) of this subsection to the grantor and to the Attorney  
9 General.

10 (7)(a) [*A grantor that is at risk of default*] **If**, before the beneficiary or the trustee has filed a  
11 notice of default for recording under ORS 86.735 **or brought suit to foreclose the residential**  
12 **trust deed under ORS 88.010, the grantor has failed for 30 days or more to make a regular**  
13 **periodic payment for the obligation that is secured by the residential trust deed or the**  
14 **grantor is otherwise at risk of default, the grantor** may notify the beneficiary or trustee in the  
15 trust deed or the beneficiary's or trustee's agent that the grantor wants to enter into mediation.  
16 Within 15 days after receiving the request, the beneficiary or trustee or the beneficiary's or trustee's  
17 agent shall respond to the grantor's request and shall notify the Attorney General and the mediation  
18 service provider identified in subsection (2)(b) of this section. The response to the grantor must in-  
19 clude contact information for the Attorney General and the mediation service provider.

20 (b) A grantor that requests mediation under paragraph (a) of this subsection may also notify the  
21 Attorney General and the mediation service provider of the request. The Attorney General shall  
22 post on the Department of Justice website contact information for the mediation service provider  
23 and an address or method by which the grantor may notify the Attorney General.

24 (c) Within 10 days after receiving notice of the request under paragraph (a) of this subsection,  
25 the mediation service provider shall send a notice to the grantor and the beneficiary that, except  
26 with respect to the date by which the mediation service provider must send the notice, is otherwise  
27 in accordance with the provisions of subsection (3) of this section.

28 (d) A beneficiary or beneficiary's agent that receives a request under paragraph (a) of this sub-  
29 section is subject to the same duties as are described in subsections (2), (4) and (5) of this section.

30 **SECTION 2.** Section 3, chapter 112, Oregon Laws 2012, is amended to read:

31 **Sec. 3.** The notice of mediation required under ORS 86.740 (1)(b) **or 88.010 (2)(b)(A)** must be in  
32 a form and with the contents the Attorney General specifies by rule and must:

33 (1) List the name, address, telephone number and other contact information for the grantor or  
34 other person named in the residential trust deed.

35 (2) Specify the account number or other means by which the beneficiary or trustee or an agent  
36 of the beneficiary or trustee identifies the obligation that is secured by the residential trust deed.

37 (3) Provide the address, telephone number and other contact information for:

38 (a) The beneficiary or an agent of the beneficiary that the beneficiary authorizes to negotiate  
39 on the beneficiary's behalf;

40 (b) The Oregon State Bar's Lawyer Referral Service;

41 (c) Service agencies or other providers that offer free or low-cost legal services from a list of  
42 agencies or providers that the Attorney General adopts by rule; and

43 (d) A list of not-for-profit housing counselors approved by the United States Department of  
44 Housing and Urban Development or an agency of this state.

45 (4) State that section 2, **chapter 112, Oregon Laws 2012**, [*of this 2012 Act*] requires the bene-

1 ficiary to enter into mediation with the grantor for the purpose of negotiating a foreclosure avoid-  
2 ance measure.

3 (5) List the documents the grantor must bring to the mediation. The Attorney General by rule  
4 shall specify the documents the grantor must bring.

5 (6) State that the grantor may choose to have an attorney or a housing counselor approved by  
6 the United States Department of Housing and Urban Development represent the grantor at the me-  
7 diation.

8 (7) State the costs of the mediation and specify the maximum cost for which the grantor will  
9 be responsible.

10 (8) State that the mediation and mediation communications, as defined in ORS 36.110, are con-  
11 fidential in accordance with and to the extent provided in ORS 36.220 to 36.238.

12 (9) State that within 30 days after the date of the notice a mediation service provider will send  
13 another notice to the grantor with a date, time and location for the mediation and with the other  
14 information specified in section 2 (3), **chapter 112, Oregon Laws 2012** [of this 2012 Act].

15 **SECTION 3.** Section 4, chapter 112, Oregon Laws 2012, is amended to read:

16 **Sec. 4.** (1) The Foreclosure Avoidance Mediation Fund is established in the State Treasury,  
17 separate and distinct from the General Fund. The fund consists of moneys the Attorney General  
18 collects or receives for the purpose of paying the expenses of coordinating a mediation program  
19 under section 2, **chapter 112, Oregon Laws 2012**, [of this 2012 Act] and related expenses. The  
20 moneys in the fund are continuously appropriated to the Attorney General for the purposes of pay-  
21 ing the expenses of coordinating the mediation program and related expenses.

22 (2) The Attorney General may receive moneys for the purposes set forth in subsection (1) of this  
23 section from any public or private source.

24 (3)(a) Except as provided in paragraph [(b)] (c) of this subsection, a trustee or beneficiary that  
25 files a notice of default under ORS 86.735 shall pay to the county clerk that records the notice \$100  
26 in addition to and not in lieu of any fee that the county clerk charges for recording the notice of  
27 default. The county clerk at the end of each month shall forward the proceeds of the \$100 charge  
28 to the Attorney General for deposit into the fund described in subsection (1) of this section.

29 **(b) Except as provided in paragraph (c) of this subsection, a beneficiary that brings suit**  
30 **to foreclose a residential trust deed under ORS 88.010 shall on the same date on which the**  
31 **beneficiary brings the suit remit to the Attorney General a fee of \$100, which the Attorney**  
32 **General shall deposit into the fund described in subsection (1) of this section.**

33 [(b)] (c) An individual, a financial institution, as defined in ORS 706.008, a mortgage banker, as  
34 defined in ORS 86A.100, or a licensee, as defined in ORS 725.010, is not subject to the \$100 charge  
35 described in paragraph (a) **or (b)** of this subsection if the individual, financial institution, mortgage  
36 banker or licensee provides to the county clerk a sworn affidavit that states that during the pre-  
37 ceding calendar year the individual, financial institution, mortgage banker or licensee did not com-  
38 mence or cause an affiliate or agent of the individual, financial institution, mortgage banker or  
39 licensee to commence more than a total of 250 actions to foreclose a residential trust deed by ad-  
40 vertisement and sale under ORS 86.735 or a residential mortgage by suit under ORS 88.010. An in-  
41 dividual, financial institution, mortgage banker or licensee that intends to claim an exemption under  
42 this paragraph shall provide the affidavit either:

43 (A) Within 30 days after [the operative date specified in section 11 of this 2012 Act] **July 11, 2012**,  
44 to claim the exemption for calendar year 2012 and not later than January 31 in any subsequent  
45 calendar year in which the individual, financial institution, mortgage banker or licensee intends to

1 claim the exemption; or

2 (B) At the time the individual, financial institution, mortgage banker or licensee files a notice  
3 of default under ORS 86.735 **or brings suit to foreclose a residential trust deed under ORS**  
4 **88.010.**

5 **SECTION 4.** Section 4a, chapter 112, Oregon Laws 2012, is amended to read:

6 **Sec. 4a.** (1)(a) If a beneficiary determines that a grantor is not eligible for any foreclosure  
7 avoidance measure or that the grantor has not complied with the terms of a foreclosure avoidance  
8 measure to which the grantor has agreed, the beneficiary or the beneficiary's agent, at least 30 days  
9 before the date specified for the trustee's sale in a notice served under ORS 86.740 or 86.755  
10 (2)(b)[.] **or at least 30 days before the first scheduled proceeding in a suit to foreclose the**  
11 **residential trust deed under ORS 88.010,** shall notify the grantor in writing of the beneficiary's  
12 determination and shall cause the notice to be served as provided in ORS 86.740 (1).

13 (b) The notice must in plain language explain the basis for the beneficiary's determination.

14 (2) The beneficiary or the beneficiary's agent shall mail a copy of the notice of the determination  
15 described in subsection (1) of this section to the Department of Justice on the same date on which  
16 the notice is served.

17 (3)(a) At least 20 days before the date specified for the trustee's sale in a notice served under  
18 ORS 86.740 or 86.755 (2)(b)[.] **or at least 20 days before the first scheduled proceeding in a suit**  
19 **to foreclose the residential trust deed under ORS 88.010,** the beneficiary or the beneficiary's  
20 agent shall:

21 (A) Record in the mortgage records for the property that is subject to the trustee's sale, in the  
22 county or in one of the counties in which the property is located, an affidavit that states that the  
23 beneficiary has complied with the requirements set forth in subsections (1) and (2) of this section;  
24 and

25 (B) Mail a copy of the affidavit to the department.

26 (b) The affidavit described in paragraph (a) of this subsection must:

27 (A) Identify the property that is the subject of the trustee's sale;

28 (B) Identify the grantor and, as of the date of the affidavit, the trustee and the beneficiary;

29 (C) State that the beneficiary or beneficiary's agent has complied with the requirements set  
30 forth in subsections (1) and (2) of this section; and

31 (D) Include proof of service on the grantor for the notice described in subsection (1) of this  
32 section.

33 (4) The Attorney General by rule shall specify a form for and the contents of the notice of the  
34 determination described in subsection (1) of this section and shall identify an address to which the  
35 beneficiary or beneficiary's agent must mail the copy of the notice under subsection (2) of this sec-  
36 tion and the affidavit under subsection (3) of this section.

37 (5)(a) A beneficiary or an agent of the beneficiary that fails to comply with the provisions of this  
38 section is liable to the grantor in the amount of \$500 plus the amount of the grantor's actual dam-  
39 ages for each failure to comply with a provision of this section.

40 (b) A grantor may bring an action against a beneficiary or an agent of the beneficiary in a cir-  
41 cuit court of this state to recover the amounts described in paragraph (a) of this subsection. The  
42 grantor shall commence the action within two years after the date on which the beneficiary or the  
43 beneficiary's agent should have complied, but did not comply, with the provisions of this section.

44 (c) Notwithstanding an agreement to the contrary, a court may award reasonable attorney fees,  
45 costs and disbursements to a grantor that obtains a final judgment in the grantor's favor.

1        **SECTION 5.** ORS 88.010 is amended to read:

2        88.010. (1) Except as otherwise provided by law, a lien upon real or personal property, other  
 3 than that of a judgment, whether created by mortgage or otherwise, *[shall]* **must** be foreclosed, and  
 4 the property adjudged to be sold to satisfy the debt *[secured thereby]* **the lien secures**, by *[a]*  
 5 **bringing** suit. Except as provided in ORS 88.070, in addition to the judgment of foreclosure and sale,  
 6 if **the lien debtor or another person, as principal or otherwise, has given** a promissory note or  
 7 other personal obligation *[for the payment of]* **to repay** the debt *[has been given by the lien debtor*  
 8 *or any other person as principal or otherwise]*, the court also shall enter a judgment for the amount  
 9 of the debt against the *[person or persons]* **lien debtor or other person**. The provisions of this  
 10 chapter as to liens upon personal property *[are not intended to]* **do not** exclude a person *[having*  
 11 *such]* **that has a lien** from any other remedy or right *[in regard]* **with respect** to *[such]* **the property**  
 12 **that the person otherwise has.**

13        (2)(a) **A person may not proceed under this section with a suit to foreclose a residential**  
 14 **trust deed unless the person has complied with applicable provisions of sections 2, 3, 4 and**  
 15 **4a, chapter 112, Oregon Laws 2012, or unless the person is exempt under section 2 (2)(d),**  
 16 **chapter 112, Oregon Laws 2012, from a requirement to enter into mediation with the grantor.**

17        (b) **For the purposes of the requirement in paragraph (a) of this subsection, a person has**  
 18 **not complied with applicable requirements of sections 2, 3, 4 and 4a, chapter 112, Oregon**  
 19 **Laws 2012, if the person has not:**

20        (A) **Served a notice of mediation in the form and with the contents described in section**  
 21 **3, chapter 112, Oregon Laws 2012, as provided in ORCP 7 D(2) and 7 D(3), or mailed the notice**  
 22 **by both first class and certified mail with return receipt requested, at least 120 days before**  
 23 **bringing suit under this section;**

24        (B) **Responded to a grantor's request for mediation as provided in section 2 (7), chapter**  
 25 **112, Oregon Laws 2012;**

26        (C) **Filed for recording in the official records of the county or counties in which the**  
 27 **property that is subject to the residential trust deed is located the certificate of compliance**  
 28 **the person received under section 2, chapter 112, Oregon Laws 2012; or**

29        (D) **Remitted to the Attorney General the fee described in section 4 (3)(b), chapter 112,**  
 30 **Oregon Laws 2012, unless the person is exempt from the fee under section 4 (3)(c), chapter**  
 31 **112, Oregon Laws 2012.**

32        (c) **Notwithstanding a person's exemption under section 2 (2)(d), chapter 112, Oregon**  
 33 **Laws 2012, from the requirement to enter into mediation with a grantor, the person may not**  
 34 **proceed with a suit to foreclose a residential trust deed under this section unless the person**  
 35 **has complied with the provisions of section 4a, chapter 112, Oregon Laws 2012.**

36        **SECTION 6.** This 2013 Act being necessary for the immediate preservation of the public  
 37 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
 38 **on its passage.**

# Senate Bill 339

Sponsored by Senator JOHNSON (at the request of Susan Romersa) (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 **as introduced**.

Exempts entire value of homestead from sale on execution, lien of judgment or liability for debts of owner if debt arises directly from or as result of catastrophic or terminal illness or injury. Defines "catastrophic or terminal illness or injury."

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to homestead exemptions for debts that arise from obligations to health care providers;  
3 creating new provisions; amending ORS 18.395, 18.402, 18.412, 18.845, 18.896 and 18.912; and de-  
4 claring an emergency.

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

6 **SECTION 1.** ORS 18.395 is amended to read:

7 18.395. (1)(a) A homestead [*shall be*] **is** exempt from sale on execution, from the lien of [*every*]  
8 **a** judgment and from liability in any form for the debts of the owner to the amount in value of  
9 \$40,000, except as **provided in paragraph (b) of this subsection or as** otherwise provided by law.  
10 The exemption [*shall be*] **is** effective without the necessity [*of a claim thereof by*] **for** the judgment  
11 debtor **to claim the exemption**. [*When*] **If** two or more members of a household are debtors whose  
12 interests in the homestead are subject to sale on execution, the lien of a judgment or liability in any  
13 form, [*their*] **the** combined exemptions **of the debtors** under this section [*shall*] **may** not exceed  
14 \$50,000. The homestead **property** must be the actual abode of and occupied by the owner, or the  
15 owner's spouse, parent or child, but the exemption [*shall*] **is** not [*be*] impaired by:

16 [(a)] **(A)** Temporary removal or temporary absence with the intention to reoccupy the [*same*]  
17 **property** as a homestead;

18 [(b)] **(B)** Removal or absence from the property; or

19 [(c)] **(C)** The sale of the property.

20 **(b) The homestead is exempt from sale on execution, from the lien of a judgment and**  
21 **from liability in any form for the owner's debts to the full value of the homestead, deter-**  
22 **mined as of a date one year before the execution occurs or the lien or liability attaches, if**  
23 **the owner demonstrates that the owner's debts arise directly from or as a result of a cat-**  
24 **astrophic or terminal illness or injury. For purposes of this paragraph, "catastrophic or**  
25 **terminal illness or injury" means an illness or injury that results in the owner incurring an**  
26 **uninsured obligation to a health care provider, as defined in ORS 30.792, that is more than**  
27 **\$10,000 and amounts to more than 50 percent of the owner's annual adjusted gross income,**  
28 **as determined by averaging the adjusted gross income shown in the owner's federal income**  
29 **tax returns for the three years preceding the date on which the owner incurred the most**  
30 **recent uninsured obligation.**

**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 (2) The exemption *[shall extend]* **extends** to the proceeds derived from *[such]* a sale **of the**  
 2 **homestead property** to an amount *[not exceeding \$40,000 or \$50,000, whichever]* **that does not ex-**  
 3 **ceed the applicable** amount *[is applicable]* **specified** under subsection (1) of this section, if the  
 4 proceeds are held *[for a period not exceeding one year and held with the intention to procure another*  
 5 *homestead therewith]* **for a period that does not exceed one year with the intention to procure**  
 6 **another homestead.**

7 (3) The exemption period under subsection *[(1)(b) and (c)]* **(1)(a)(B) and (C)** of this section *[shall*  
 8 *be]* **is** one year from the **date of the** removal, absence or sale, whichever occurs first.

9 (4) *[When]* **If** the owner of a homestead has been granted a discharge in bankruptcy or has  
 10 conveyed the homestead property, the value *[thereof]* **of the homestead property**, for the purpose  
 11 of determining a leviable interest, **if any**, in excess of the homestead exemption, *[shall be]* **is** the  
 12 value on the date of the petition in bankruptcy, whether the value is determined in the bankruptcy  
 13 proceedings or not, or on the date the conveyance becomes effective, whichever *[shall first occur]*  
 14 **occurs first.** However, with respect to judgments not discharged in the bankruptcy, or entered  
 15 against the owner after discharge, the value on the effective date of conveyance *[shall be*  
 16 *controlling]* **controls.**

17 (5) Except as provided in subsection (7) of this section, *[no]* homestead **property** that is the ac-  
 18 tual abode of and occupied by the judgment debtor, or that is the actual abode of and occupied by  
 19 a spouse, dependent parent or dependent child of the judgment debtor, *[shall]* **may not** be sold on  
 20 execution to satisfy a judgment that at the time of entry does not exceed \$3,000. However, *[such]*  
 21 **the judgment** *[shall remain]* **remains** a lien upon the real property, and the property may be sold  
 22 on execution:

23 (a) At any time after the *[sale of]* **judgment debtor sells** the property *[by the judgment*  
 24 *debtor]*; and

25 (b) At any time after the property is no longer the actual abode of and occupied by the judgment  
 26 debtor or the spouse, dependent parent or dependent child of the judgment debtor.

27 (6) The limitation on execution sales imposed by subsection (5) of this section is not impaired  
 28 by temporary removal or temporary absence with the intention to reoccupy the property as a  
 29 homestead.

30 (7) The limitation on execution sales imposed by subsection (5) of this section does not apply if  
 31 two or more judgments are owing to a single judgment creditor and the total amount owing to the  
 32 judgment creditor, determined by adding the amount of each individual judgment as of the date the  
 33 judgment was entered, is greater than \$3,000.

34 (8) Upon the issuance of an order authorizing sale as required by ORS 18.904, and in conform-  
 35 ance with subsection (5) of this section, the sheriff may proceed to sell the property. If the home-  
 36 stead exemption **set forth in subsection (1)(a) of this section** applies, the sheriff shall pay the  
 37 homestead owner out of the proceeds the sum of \$40,000 or \$50,000, whichever is applicable, and  
 38 apply the balance of the proceeds on the execution. *[However, no sale shall be made where]* **A sale**  
 39 **may not occur if the homestead exemption set forth in subsection (1)(b) of this section ap-**  
 40 **plies or if the homestead exemption set forth in subsection (1)(a) of this section** applies  
 41 *[unless]* **and** the sum bid for the homestead *[is in excess of]* **property does not exceed** the sum of  
 42 the costs of sale and \$40,000 or \$50,000, whichever is applicable. If *[no such]* **a qualifying bid is not**  
 43 received, the **petitioner shall bear the** expense of the sale *[shall be borne by the petitioner].*

44 (9) The homestead exemption provided by this section applies to a purchaser's interest under a  
 45 land sale contract, as defined by ORS 18.960.

1 (10) The homestead exemption provided by this section applies to:

2 (a) A floating home, as defined by ORS 830.700; and

3 (b) A manufactured dwelling, as defined by ORS 446.003.

4 **SECTION 2.** ORS 18.402 is amended to read:

5 18.402. The homestead [*mentioned*] **described** in ORS 18.395 [*shall consist, when*], **if** not located  
6 in [*any*] **a** town or city laid off into blocks and lots, **consists** of any quantity of land [*not*  
7 *exceeding*] **that does not exceed** 160 acres, and [*when*], **if** located in [*any such*] **a** town or city,  
8 **consists** of any quantity of land [*not exceeding*] **that does not exceed** one block. However, a  
9 homestead under this section [*shall*] **may** not exceed in value the sum of \$40,000 or \$50,000, which-  
10 ever amount is applicable under ORS 18.395 [(1)] (1)(a), **except in the circumstances described**  
11 **in ORS 18.395 (1)(b).**

12 **SECTION 3.** ORS 18.412 is amended to read:

13 18.412. (1) At any time after the date of execution of an agreement to transfer the ownership  
14 of property in which a homestead exemption exists [*pursuant to*] **under** ORS 18.395, the homestead  
15 owner or the owner's transferee may give notice of intent to discharge the property from the judg-  
16 ment lien to a judgment creditor. [*Each*] **The** notice shall bear the caption of the action in which  
17 the judgment was recovered and shall:

18 (a) Identify the property and the judgment and state that the judgment debtor is about to  
19 transfer, or has transferred, the property and that the transfer is intended to discharge the property  
20 from any lien effect of the judgment;

21 (b) State the fair market value of the property on the date of the notice or of any applicable  
22 petition in bankruptcy, whichever is applicable, and list the encumbrances against the property, in-  
23 cluding the nature and date of each encumbrance, the name of the encumbrancer and the amount  
24 presently secured by each encumbrance;

25 (c) State that the **person that gives the notice claims that the** property is [*claimed by the*  
26 *person giving the notice to be*] wholly exempt from the lien of the judgment **by reason of the**  
27 **homestead exemption set forth under ORS 18.395 (1)(b) or for another reason** or, if the value  
28 of the property exceeds the sum of the encumbrances specified as required under paragraph (b) of  
29 this subsection that are senior to the judgment lien and \$40,000 or \$50,000, whichever amount of the  
30 homestead exemption is applicable under ORS 18.395 [(1)] (1)(a), that the amount of the excess or  
31 the amount due on the judgment, whichever is less, will be deposited with the court administrator  
32 for the court in which the judgment was entered for the use of the judgment holder; and

33 (d) Advise the [*holder of the*] judgment **holder** that the property may be discharged from any lien  
34 arising from the judgment, without further notice to the judgment creditor, unless prior to a speci-  
35 fied date, which [*in no case*] may **not** be earlier than 14 days after the date of mailing of the notice,  
36 the judgment creditor files objections and a request for a hearing on the matter as provided in ORS  
37 18.415.

38 (2) [*Each*] **A** notice described [*by*] **in** subsection (1) of this section [*shall*] **must** be sent by cer-  
39 tified mail to the judgment creditor, as shown by the court records, at the judgment creditor's  
40 present or last-known address according to the best knowledge of the person sending the notice. A  
41 copy of [*each*] **the** notice, together with proof of mailing, may be filed with the court administrator  
42 for the court in which the judgment was entered and shall be filed by the court administrator with  
43 the records and files of the action in which the judgment was recovered.

44 **SECTION 4.** ORS 18.912 is amended to read:

45 18.912. (1) Whether or not the judgment debtor appears at the hearing, the court shall inquire

1 as to the facts alleged in a motion filed under ORS 18.906 and make a summary determination on  
 2 the motion.

3 (2) The court shall authorize sale of the property pursuant to a motion filed under ORS 18.906  
 4 unless the court finds **that**:

5 (a) *[That]* The property is the homestead of the judgment debtor;

6 (b) *[That]* The judgment is subject to the homestead exemption; and

7 (c) *[That]* The amount of the judgment or judgments was \$3,000 or less at the time of entry of  
 8 the judgment or judgments as described in ORS 18.395 (7) **or that the homestead exemption set**  
 9 **forth in ORS 18.395 (1)(b) applies.**

10 (3) If the court authorizes the sale of residential property, the order must state whether the  
 11 homestead exemption applies to the property. If the homestead exemption does apply to the property,  
 12 the order must state the allowed amount of the exemption.

13 (4) If the court authorizes the sale of residential property, the judgment creditor may recover  
 14 the costs of service of the motion and notice under ORS 18.908 as part of the costs of the sale.

15 **SECTION 5.** ORS 18.845 is amended to read:

16 18.845. A notice of exemptions form must be in substantially the form set forth in this section.  
 17 *[Nothing in]* The notice form described in this section *[is intended to]* **does not** expand or restrict  
 18 the law relating to exempt property. A determination as to whether property is exempt from exe-  
 19 cution, attachment and garnishment must be made by reference to other law. The form provided in  
 20 this section may be modified to provide more information or to update the notice based on subse-  
 21 quent changes in exemption laws.

---

22  
 23  
 24 **NOTICE OF EXEMPT PROPERTY**  
 25 **AND INSTRUCTIONS FOR**  
 26 **CHALLENGE TO GARNISHMENT**  
 27

28 Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be  
 29 reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers  
 30 are enclosed.

31 **YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CARE-**  
 32 **FULLY.**

33 State and federal law specify that certain property may not be taken. Some of the property that  
 34 you may be able to get back is listed below.

35 (1) Wages or a salary as described in ORS 18.375 and 18.385[. *Whichever of the following*  
 36 *amounts is greater]* **in an amount that does not exceed the greater of the following amounts:**

37 (a) 75 percent of your take-home wages; or

38 (b) \$218 per workweek.

39 (2) Social Security benefits.

40 (3) Supplemental Security Income (SSI).

41 (4) Public assistance (welfare).

42 (5) Unemployment benefits.

43 (6) Disability benefits (other than SSI benefits).

44 (7) Workers' compensation benefits.

45 (8) All Social Security benefits and Supplemental Security Income benefits, and up to \$7,500 in

1 exempt wages, retirement benefits, welfare, unemployment benefits and disability benefits, that are  
2 held in a bank account. You may attach copies of bank statements to the Challenge to Garnishment  
3 form if you claim this exemption.

4 (9) Spousal support, child support or separate maintenance to the extent reasonably necessary  
5 for your support or the support of any of your dependents.

6 (10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied  
7 by your spouse, parent or child. Up to \$40,000 of the value of the homestead is exempt. If you jointly  
8 own the homestead with another person who is also liable on the debt, up to \$50,000 of the value  
9 of the homestead is exempt. **If you can demonstrate that your debts arise from a catastrophic  
10 or terminal illness or injury, that your debts exceed \$10,000 and that the amount of your  
11 debts is more than 50 percent of your adjusted gross income, the entire value of your  
12 homestead may be exempt.**

13 (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in  
14 item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure  
15 another homestead.

16 (12) Household goods, furniture, radios, a television set and utensils with a combined value not  
17 to exceed \$3,000.

18 \*(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$3,000.

19 \*(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your  
20 occupation, with a combined value not to exceed \$5,000.

21 \*(15) Books, pictures and musical instruments with a combined value not to exceed \$600.

22 \*(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed  
23 \$1,800.

24 (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000  
25 and their food for 60 days.

26 (18) Provisions and fuel for your family for 60 days.

27 (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt  
28 may not exceed \$1,000.

29 (20) Public or private pensions.

30 (21) Veterans' benefits and loans.

31 (22) Medical assistance benefits.

32 (23) Health insurance proceeds and disability proceeds of life insurance policies.

33 (24) Cash surrender value of life insurance policies not payable to your estate.

34 (25) Federal annuities.

35 (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-  
36 emption as wages).

37 (27) Professionally prescribed health aids for you or any of your dependents.

38 \*(28) Elderly rental assistance allowed pursuant to ORS 310.635.

39 (29) Your right to receive, or property traceable to:

40 (a) An award under any crime victim reparation law.

41 (b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily in-  
42 jury suffered by you or an individual of whom you are a dependent.

43 (c) A payment in compensation of loss of future earnings of you or an individual of whom you  
44 are or were a dependent, to the extent reasonably necessary for your support and the support of  
45 any of your dependents.

1 (30) Amounts paid to you as an earned income tax credit under federal tax law.

2 \*(31) Interest in personal property to the value of \$400, but this cannot be used to increase the  
3 amount of any other exemption.

4 (32) Equitable interests in property.

5 (33) Security deposits or prepaid rent held by a residential landlord under ORS 90.300.

6 (34) If the amount shown as owing on the Debt Calculation form exceeds the amount you actu-  
7 ally owe to the creditor, the difference between the amount owed and the amount shown on the Debt  
8 Calculation form.

9  
10 Note: If two or more people in your household owe the claim or judgment, each of them may  
11 claim the exemptions marked by an asterisk (\*).

12  
13  
14 **SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND**  
15 **SPOUSAL SUPPORT.** Some property that may not otherwise be taken for payment against the debt  
16 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-  
17 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but  
18 only 50 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support  
19 obligation.

20  
21 **YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.**  
22 You may seek to reclaim your exempt property by doing the following:

23 (1) Fill out the Challenge to Garnishment form that you received with this notice.

24 (2) Mail or deliver the Challenge to Garnishment form to the court administrator at the address  
25 shown on the writ of garnishment, and mail or deliver a copy of the form to the Garnishor at the  
26 address shown on the writ of garnishment. If you wish to claim wages or salary as exempt, you must  
27 mail or deliver the form within 120 days after you receive this notice. If you wish to claim that any  
28 other money or property is exempt, or claim that the property is not subject to garnishment, you  
29 must mail or deliver the form within 30 days after you receive this notice. You have the burden of  
30 showing that your challenge is made on time, so you should keep records showing when the chal-  
31 lenge was mailed or delivered.

32 (3) The law only requires that the Garnishor hold the garnished money or property for 10 days  
33 before applying it to the Creditor's use. You may be able to keep the property from being used by  
34 the Creditor by promptly following (1) and (2) above.

35  
36 You should be prepared to explain your exemption in court. If you have any questions about the  
37 garnishment or the debt, you should see an attorney.

38 **YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOW-**  
39 **ING PURPOSES:**

40 (1) To claim such exemptions from garnishment as are permitted by law.

41 (2) To assert that property is not garnishable property under ORS 18.618.

42 (3) To assert that the amount specified in the writ of garnishment as being subject to  
43 garnishment is greater than the total amount owed.

44  
45 **YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE**

1 VALIDITY OF THE DEBT.

2 IF YOU FILE A CHALLENGE TO A GARNISHMENT IN BAD FAITH, YOU MAY BE SUB-  
3 JECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties  
4 that you could be subject to are listed in ORS 18.715.

5 When you file a Challenge to Garnishment form, the Garnishee may be required to make all  
6 payments under the garnishment to the court, and the Garnishor may be required to pay to the  
7 court all amounts received by the Garnishor that are subject to the challenge to the garnishment.  
8 The Garnishee and Garnishor are subject to penalties if they do not. For a complete explanation of  
9 their responsibilities, see ORS 18.705 and 18.708.

10 \_\_\_\_\_  
11  
12 **SECTION 6.** ORS 18.896 is amended to read:

13 18.896. (1) The challenge to execution form described in this section does not expand or restrict  
14 the law relating to exempt property. A determination as to whether property is exempt from at-  
15 tachment or execution must be made by reference to other law. The form provided in this section  
16 may be modified to provide more information or to update the notice based on subsequent changes  
17 in exemption laws.

18 (2) A challenge to execution form must be in substantially the following form:  
19 \_\_\_\_\_

20  
21 \_\_\_\_\_ COURT  
22 COUNTY OF \_\_\_\_\_

23  
24 \_\_\_\_\_ ) CHALLENGE TO  
25 Plaintiff, ) EXECUTION  
26 )  
27 vs. ) Case No. \_\_\_\_\_  
28 )  
29 \_\_\_\_\_ )  
30 Defendant. )

31  
32 THIS FORM MAY BE USED BY THE DEBTOR ONLY FOR THE FOLLOWING PURPOSES:

- 33 (1) To claim such exemptions from execution as are permitted by law.  
34 (2) To assert that the amount specified in the writ of execution as being subject to execution is  
35 greater than the total amount owed.

36  
37 THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM  
38 AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

39  
40 THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

41  
42 I/We claim that the following described property or money is exempt from execution:  
43 \_\_\_\_\_  
44 \_\_\_\_\_  
45 \_\_\_\_\_

1  
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45

I/We believe this property is exempt from execution because (the Notice of Exempt Property at the end of this form describes most types of property that you can claim as exempt from execution):

---

---

I am a person other than the Debtor and I have the following interest in the property:

---

---

Name _____	Name _____
Signature _____	Signature _____
Address _____	Address _____
_____	_____
Telephone _____	Telephone _____
Number _____	Number _____
(Required)	(Required)

**YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.**

You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the Challenge to Execution form that you received with this notice.
- (2) Mail or deliver the Challenge to Execution form to the court administrator at the address shown on the writ of execution.
- (3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the address shown on the writ of execution.

You should be prepared to explain your exemption in court. If you have any questions about the execution or the debt, you should see an attorney.

**YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY FOR THE FOLLOWING PURPOSES:**

- (1) To claim such exemptions from execution as are permitted by law.
- (2) To assert that the amount specified in the writ of execution as being subject to execution is greater than the total amount owed.

**YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE VALIDITY OF THE DEBT.**

**IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject**

1 to are listed in ORS 18.899.

2  
3 NOTICE OF EXEMPT PROPERTY  
4

5 Property belonging to you may have been taken or held in order to satisfy a debt. The debt may  
6 be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers  
7 are enclosed.

8 YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CARE-  
9 FULLY.

10 State and federal law specify that certain property may not be taken. Some of the property that  
11 you may be able to get back is listed below.

12 (1) Wages or a salary as described in ORS 18.375 and 18.385[. *Whichever of the following*  
13 *amounts is greater*] **in an amount that does not exceed the greater of the following amounts:**

- 14 (a) 75 percent of your take-home wages; or
- 15 (b) \$218 per workweek.
- 16 (2) Social Security benefits.
- 17 (3) Supplemental Security Income (SSI).
- 18 (4) Public assistance (welfare).
- 19 (5) Unemployment benefits.
- 20 (6) Disability benefits (other than SSI benefits).
- 21 (7) Workers' compensation benefits.

22 (8) All Social Security benefits and Supplemental Security Income benefits, and up to \$7,500 in  
23 exempt wages, retirement benefits, welfare, unemployment benefits and disability benefits, that are  
24 held in a bank account.

25 (9) Spousal support, child support or separate maintenance to the extent reasonably necessary  
26 for your support or the support of any of your dependents.

27 (10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied  
28 by your spouse, parent or child. Up to \$40,000 of the value of the homestead is exempt. If you jointly  
29 own the homestead with another person who is also liable on the debt, up to \$50,000 of the value  
30 of the homestead is exempt. **If you can demonstrate that your debts arise from a catastrophic  
31 or terminal illness or injury, that your debts exceed \$10,000 and that the amount of your  
32 debts is more than 50 percent of your adjusted gross income, the entire value of your  
33 homestead may be exempt.**

34 (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in  
35 item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure  
36 another homestead.

37 (12) Household goods, furniture, radios, a television set and utensils with a combined value not  
38 to exceed \$3,000.

39 \*(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$3,000.

40 \*(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your  
41 occupation, with a combined value not to exceed \$5,000.

42 \*(15) Books, pictures and musical instruments with a combined value not to exceed \$600.

43 \*(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed  
44 \$1,800.

45 (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000

1 and their food for 60 days.

2 (18) Provisions and fuel for your family for 60 days.

3 (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt  
4 may not exceed \$1,000.

5 (20) Public or private pensions.

6 (21) Veterans' benefits and loans.

7 (22) Medical assistance benefits.

8 (23) Health insurance proceeds and disability proceeds of life insurance policies.

9 (24) Cash surrender value of life insurance policies not payable to your estate.

10 (25) Federal annuities.

11 (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-  
12 emption as wages).

13 (27) Professionally prescribed health aids for you or any of your dependents.

14 \*(28) Elderly rental assistance allowed pursuant to ORS 310.635.

15 \*(29) Your right to receive, or property traceable to:

16 \*(a) An award under any crime victim reparation law.

17 \*(b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily in-  
18 jury suffered by you or an individual of whom you are a dependent.

19 \*(c) A payment in compensation of loss of future earnings of you or an individual of whom you  
20 are or were a dependent, to the extent reasonably necessary for your support and the support of  
21 any of your dependents.

22 (30) Amounts paid to you as an earned income tax credit under federal tax law.

23 (31) Interest in personal property to the value of \$400, but this cannot be used to increase the  
24 amount of any other exemption.

25 (32) Equitable interests in property.

26 Note: If two or more people in your household owe the claim or judgment, each of them may  
27 claim the exemptions marked by an asterisk (\*).

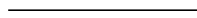
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29  
30 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND  
31 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt  
32 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-  
33 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but  
34 only 50 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support  
35 obligation.

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37  
38 **SECTION 7. The amendments to ORS 18.395, 18.402, 18.412, 18.845, 18.896 and 18.912 by**  
39 **sections 1 to 6 of this 2013 Act apply to liens or other liabilities that attach to, judgments**  
40 **that are entered against, or sales or other transfers of ownership that occur on or after the**  
41 **effective date of this 2013 Act in connection with residential real property that qualifies for**  
42 **a homestead exemption.**

43 **SECTION 8. This 2013 Act being necessary for the immediate preservation of the public**  
44 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
45 **on its passage.**



# Senate Bill 333

Sponsored by Senator WINTERS (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 **as introduced**.

Prohibits agencies from adopting any rule that becomes effective on or after effective date of Act and before July 1, 2014. Specifies exceptions.

Establishes Joint Legislative Committee on Rule Review. Directs committee to review all rules adopted by agencies. Requires report on rules reviewed. Allows committee to introduce legislation addressing subject matter of rules reviewed by committee.

Requires committee to review all rules in effect on effective date of Act before February 1, 2014, and prepare report reflecting committee's determinations.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to administrative rules; and declaring an emergency.

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

4 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 183.325 to**  
5 **183.410.**

6 **SECTION 2. (1) Except as provided in this section, an agency may not adopt any rule that**  
7 **becomes effective on or after the effective date of this 2013 Act and before July 1, 2014.**

8 **(2) Subsection (1) of this section does not apply to:**

9 **(a) Adoption of rules that are required by federal law;**

10 **(b) Adoption of rules for administration of laws that are enacted on or after January 1,**  
11 **2013; or**

12 **(c) Repeal of rules.**

13 **(3) The Governor may exempt a rule from the prohibitions of subsection (1) of this sec-**  
14 **tion if the Governor:**

15 **(a) Makes a written finding that public health, economic development or public safety**  
16 **would be jeopardized if the rule is not implemented; and**

17 **(b) Issues an executive order specifically exempting the rule from the prohibitions of**  
18 **subsection (1) of this section.**

19 **(4) Notwithstanding ORS 183.400, upon judicial review of a rule a court shall declare the**  
20 **rule invalid if the rule violates this section.**

21 **SECTION 3. (1) The Joint Legislative Committee on Rule Review is established and con-**  
22 **sists of:**

23 **(a) Five members of the Senate appointed by the President of the Senate; and**

24 **(b) Five members of the House of Representatives appointed by the Speaker of the House.**

25 **(2) The committee has a continuing existence and may meet, act and conduct business**  
26 **during sessions of the Legislative Assembly or any recess, and in the interim between ses-**  
27 **sions.**

28 **(3) The term of a member shall expire upon the date of the convening of the odd-**

**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 numbered year regular session of the Legislative Assembly next following the commence-  
2 ment of the member's term.

3 (4) Members of the committee shall receive an amount equal to that authorized under  
4 ORS 171.072 from funds appropriated to the Legislative Assembly for each day spent in the  
5 performance of their duties as members of the committee.

6 (5) The committee may not transact business unless a quorum is present. For purposes  
7 of this section, a quorum consists of a majority of committee members from the House of  
8 Representatives and a majority of committee members from the Senate.

9 (6) Action by the committee requires the affirmative vote of a majority of committee  
10 members from the House of Representatives and a majority of committee members from the  
11 Senate.

12 **SECTION 4.** (1) The Legislative Counsel shall provide to the Joint Legislative Committee  
13 on Rule Review established under section 3 of this 2013 Act a copy of every rule submitted  
14 to the Legislative Counsel under ORS 183.715.

15 (2) The committee shall review all rules provided to the committee under subsection (1)  
16 of this section for the purpose of determining:

17 (a) Whether the rule is consistent with legislative objectives in enacting the statutes  
18 implemented by the rule;

19 (b) Whether the underlying statutes should be revised to reflect changes in circum-  
20 stances that have occurred since the statutes were enacted;

21 (c) Whether the anticipated fiscal impact of the rule was underestimated or overesti-  
22 mated;

23 (d) Whether there is continued need for the rule; and

24 (e) Whether a less restrictive rule, or less costly rule, would better implement the intent  
25 of the enabling legislation.

26 (3) Based on the review conducted under this section, the committee shall prepare a re-  
27 port not later than February 1 of each odd-numbered year that reflects the determinations  
28 of the committee on the rules reviewed by the committee in the immediately preceding  
29 two-year period. The committee may introduce legislation addressing the subject matter of  
30 the rules reviewed by the committee.

31 **SECTION 5.** On or before February 1, 2014, the Joint Legislative Committee on Rule Re-  
32 view established under section 3 of this 2013 Act shall review all rules in effect on March 1,  
33 2013, in the manner described in section 4 (2) of this 2013 Act. The committee shall prepare  
34 a report not later than February 1, 2014, that reflects the determinations of the committee  
35 on the rules reviewed by the committee. The committee may introduce legislation addressing  
36 the subject matter of the rules reviewed by the committee under this section.

37 **SECTION 6.** This 2013 Act being necessary for the immediate preservation of the public  
38 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect  
39 on its passage.

40

# Senate Bill 322

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Finance and Revenue)

## 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**.

Extends sunset for tax credit for closure of manufactured dwelling park.

## A BILL FOR AN ACT

1  
2 Relating to tax credits for closure of manufactured dwelling park; amending section 18, chapter 906,  
3 Oregon Laws 2007.

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

5 **SECTION 1.** Section 18, chapter 906, Oregon Laws 2007, as amended by section 33, chapter 913,  
6 Oregon Laws 2009, is amended to read:

7 **Sec. 18.** Section 17, chapter 906, Oregon Laws 2007, applies to individuals whose household ends  
8 tenancy at a manufactured dwelling park during a tax year that begins on or after January 1, 2007,  
9 and before January 1, [2014] **2020**.

10

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**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.

# Senate Bill 236

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Business, Transportation and Economic Development)

## 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**.

Prohibits agencies from adopting rules during regular session of Legislative Assembly. Prohibits agencies from adopting rules that become effective before adjournment sine die of next regular legislative session. Specifies exceptions.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1 Relating to administrative rules; and declaring an emergency.

2 Whereas administrative rules should be adopted only for the purpose of implementing the laws  
3 enacted by the Legislative Assembly; and

4 Whereas in order to ensure that administrative rules accurately implement the legislative intent,  
5 the Legislative Assembly must have the opportunity to review proposed administrative rules before  
6 they take effect; now, therefore,

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

8 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 183.325 to**  
9 **183.410.**

10 **SECTION 2. (1) Except as provided in this section, an agency may not:**

11 **(a) Adopt rules during a regular legislative session; or**

12 **(b) Adopt rules that become effective before the adjournment sine die of the next regular**  
13 **legislative session.**

14 **(2) The Governor by executive order may exempt a rule from the provisions of this sec-**  
15 **tion if the Governor makes a written finding that adoption or implementation of the rule is**  
16 **necessary for:**

17 **(a) Public health or public safety; or**

18 **(b) To comply with federal law.**

19 **(3) This section does not apply to temporary rules adopted under ORS 183.335 (5).**

20 **(4) Notwithstanding ORS 183.400, upon judicial review of a rule a court shall declare the**  
21 **rule invalid if the rule violates this section.**

22 **SECTION 3. Section 2 of this 2013 Act applies to rules adopted on or after the effective**  
23 **date of this 2013 Act.**

24 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**  
25 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
26 **on its passage.**

27  
28  

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**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.

# Senate Bill 204

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber, M.D., for Housing and Community Services Department)

## 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 that certain provisions do not apply to certain real property acquired or sold by Housing and Community Services Department. Provides that certain provisions do not apply to mineral or geothermal resource rights or proceeds from those rights acquired and held by department.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to interests held by the Housing and Community Services Department; creating new pro-  
3 visions; amending ORS 270.100 and 273.785; and declaring an emergency.

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

5 **SECTION 1.** ORS 270.100 is amended to read:

6 270.100. (1)(a) Before offering for sale any real property or equitable interest therein owned by  
7 the state, the state agency acting for the state in such transaction shall report its intent of sale or  
8 transfer to the Oregon Department of Administrative Services. The department, or the agency spe-  
9 cifically designated by the department, shall notify other state agencies authorized to own real  
10 property of the intended sale or transfer to determine whether acquisition of the real property or  
11 interest therein would be advantageous to another state agency.

12 (b) The department shall give political subdivisions, as defined in ORS 271.005, the first oppor-  
13 tunity after other state agencies to acquire, purchase, exchange or lease real property to be sold  
14 or disposed of by the State of Oregon. The state agency responsible for selling or transferring the  
15 property may require at the time of the sale or transfer that any state real property sold or trans-  
16 ferred to a political subdivision, as defined in ORS 271.005, shall be for use for a public purpose or  
17 benefit, and not be for resale to a private purchaser.

18 (c) If property is not disposed of under paragraph (a) or (b) of this subsection, in accordance  
19 with rules adopted by the department, the state agency desiring to sell or transfer the property shall  
20 cause it to be appraised by one or more competent and experienced appraisers. Except as provided  
21 in ORS 273.825, if such property has an appraised value exceeding \$5,000 it shall not be sold to any  
22 private person except after notice calling for such proposals as set forth in ORS 270.130.

23 (d) The department shall adopt rules to carry out the provisions of this section.

24 (2) Before acquisition of any real property or interest therein by any state agency, except for  
25 highway right of way acquired by the Department of Transportation and park properties acquired  
26 by the State Parks and Recreation Department and property within the approved projected campus  
27 boundaries for public universities of the Oregon University System, the state agency shall report its  
28 intent of acquisition to the Oregon Department of Administrative Services. The department shall

**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 notify other state agencies owning land of the intended acquisition to determine whether another  
 2 state agency desires to sell or transfer property which would meet the needs of the purchasing  
 3 agency. In accordance with rules adopted by the Oregon Department of Administrative Services, if  
 4 no other state agency desires to sell or transfer property which would meet the needs of the agency,  
 5 the agency may acquire the real property or interest therein, consistent with applicable provisions  
 6 of law.

7 (3) Before any terminal disposition of real property or an interest in real property, the state  
 8 agency acting for the state in the transaction must secure approval of the transaction from the  
 9 Oregon Department of Administrative Services.

10 (4) Subsection (3) of this section does not apply to terminal disposition of the following real  
 11 property:

- 12 (a) Property controlled by the State Department of Fish and Wildlife;
- 13 (b) State forestlands controlled by the State Forestry Department;
- 14 (c) Property controlled by the Department of Transportation;
- 15 (d) Property controlled by the Department of State Lands;
- 16 (e) Property controlled by the Oregon University System;
- 17 (f) Property controlled by the legislative or judicial branches of state government; and
- 18 (g) Property controlled by the State Parks and Recreation Department.

19 (5) Notwithstanding the provisions of subsection (4) of this section, prior approval by the Oregon  
 20 Department of Administrative Services is required for the terminal disposition of public land for less  
 21 than the fair market value of that land.

22 (6) The provisions of ORS 184.634, 270.005 to 270.015, 270.100 to 270.190, 273.416, 273.426 to  
 23 273.436, 273.551 and 308A.709 (1) to (4) do not apply to:

24 (a) A home or farm acquired[,] or sold[, or both,] by the Department of Veterans' Affairs under  
 25 ORS 88.720, 406.050, 407.135, 407.145, 407.375 and 407.377.

26 (b) **Real property acquired or sold by the Housing and Community Services Department**  
 27 **under the provisions of ORS 456.515 to 456.725 or ORS chapter 458.**

28 **SECTION 2.** ORS 273.785 is amended to read:

29 273.785. ORS 273.551 and 273.775 to 273.790 do not apply to:

30 (1) Soil, clay, stone, sand and gravel acquired or used by state agencies for the purpose of con-  
 31 structing or repairing roads or other state facilities, or the proceeds from those materials.

32 (2) Mineral or geothermal resource rights or proceeds from those rights acquired by the State  
 33 Fish and Wildlife Commission pursuant to an agreement with the federal government under 16 U.S.C.  
 34 669 to 669i (P.L. 75-415).

35 (3) Mineral or geothermal resource rights or proceeds from those rights if other disposition is  
 36 required by federal rules or regulations or any agreement entered into at the time of acquisition of  
 37 the mineral or geothermal resource rights by the state.

38 (4) Proceeds of mineral and geothermal resource rights acquired by the state pursuant to ORS  
 39 530.010 and 530.030, other than those distributed under ORS 530.110 (1)(c).

40 (5) Mineral or geothermal resource rights or proceeds from those rights acquired after January  
 41 1, 1974, for the state by the Department of Veterans' Affairs pursuant to ORS 88.720, 406.050 (2),  
 42 407.135 or 407.145. After consultation, the Department of State Lands and the Department of  
 43 Veterans' Affairs shall enter into an interagency agreement governing consultation between them  
 44 concerning mineral and geothermal resource values on properties acquired for the state by the De-  
 45 partment of Veterans' Affairs. The Department of Veterans' Affairs shall adopt rules relating to the

1 release of mineral and geothermal rights on such properties.

2 (6) Mineral or geothermal resource rights or proceeds from those rights given by a donor to any  
 3 public university or office, department or activity under the control of the State Board of Higher  
 4 Education that are acquired or held for the state by the State Board of Higher Education pursuant  
 5 to ORS chapters 351 and 567. In managing mineral or geothermal resource leases, the State Board  
 6 of Higher Education shall consult with the Department of State Lands in accordance with an  
 7 interagency agreement established by the department and the State Board of Higher Education  
 8 governing consultation between the department and the State Board of Higher Education and gov-  
 9 erning management of the mineral or geothermal resources.

10 (7) Mineral or geothermal resource rights or proceeds from those rights acquired and held by  
 11 the Department of Transportation. In managing mineral or geothermal resource leases, the Depart-  
 12 ment of Transportation shall enter into an intergovernmental agreement with the Department of  
 13 State Lands governing consultation between the departments and governing management of the  
 14 mineral or geothermal resources.

15 **(8) Mineral or geothermal resource rights or proceeds from those rights acquired and**  
 16 **held by the Housing and Community Services Department.**

17 **SECTION 3. (1) The amendments to ORS 270.100 by section 1 of this 2013 Act apply to**  
 18 **real property acquired or sold by the Housing and Community Services Department under**  
 19 **the provisions of ORS 456.515 to 456.725 or ORS chapter 458 on or after the effective date of**  
 20 **this 2013 Act.**

21 **(2) The amendments to ORS 273.785 by section 2 of this 2013 Act apply to mineral or**  
 22 **geothermal resource rights or proceeds from those rights acquired and held by the Housing**  
 23 **and Community Services Department on or after the effective date of this 2013 Act.**

24 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**  
 25 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
 26 **on its passage.**

27 \_\_\_\_\_

# Senate Bill 126

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Veterans' and Military Affairs)

## 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**.

Imposes smoke alarm location requirements for transferred property having dwelling unit or lodging house. Eliminates option of installing smoke detectors in transferred dwelling unit or lodging house. Places age limit on smoke alarms in dwelling unit or lodging house being transferred.

Imposes smoke alarm locations for dwelling unit or lodging house made available as rental property or temporary housing. Eliminates option of installing smoke detectors in dwelling unit or lodging house used as rental property or temporary housing. Places age limit on smoke alarms in dwelling unit or lodging house made available as rental property or temporary housing.

Requires smoke alarms or smoke detectors in transferred manufactured dwelling in accordance with federal requirements and state building code. Places age limit on smoke alarms and smoke detectors in manufactured dwelling being transferred. Requires that replacement smoke detectors have certain features.

Requires certain features for sold or installed smoke alarm. Removes exemption of used manufactured dwelling from alarm feature requirement.

## A BILL FOR AN ACT

1  
2 Relating to smoke alerting devices; creating new provisions; amending ORS 90.680, 90.740, 479.265,  
3 479.270, 479.297 and 479.990; and repealing ORS 479.260 and 479.275.

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

5 **SECTION 1. Sections 2 to 5 of this 2013 Act are added to and made a part of ORS 479.250**  
6 **to 479.305.**

7 **SECTION 2. (1) A person may not convey fee title to any real property that includes a**  
8 **dwelling unit or lodging house or transfer possession of any dwelling unit or lodging house**  
9 **pursuant to a land sale contract unless the dwelling unit or lodging house has a smoke**  
10 **alarm:**

11 (a) **In each sleeping room;**

12 (b) **At a point outside of and near the entrance to each sleeping room; and**

13 (c) **In at least one location not described in paragraph (a) or (b) of this subsection on**  
14 **each level of the dwelling unit or lodging house.**

15 (2) **Except as provided in this subsection, a smoke alarm required under this section may**  
16 **not be located within 10 feet of a kitchen or other space used for cooking. A smoke alarm**  
17 **may be located within 10 feet of a kitchen or other space used for cooking if no other lo-**  
18 **cation is available that will allow placement of the smoke alarm to be in compliance with**  
19 **subsection (1) of this section.**

20 (3) **A smoke alarm required under this section must bear an age date code and be less**  
21 **than 10 years old on the date that the person conveys title to the property or transfers**  
22 **possession of the dwelling unit or lodging house.**

23 **SECTION 3. (1) A person may not make a dwelling unit or lodging house available as a**  
24 **rental property or temporary housing unless the dwelling unit or lodging house has a smoke**

**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 **alarm:**

2 (a) **In each sleeping room;**

3 (b) **At a point outside of and near the entrance to each sleeping room; and**

4 (c) **In at least one location not described in paragraph (a) or (b) of this subsection on**  
5 **each level of the dwelling unit or lodging house.**

6 (2) **Except as provided in this subsection, a smoke alarm required under this section may**  
7 **not be located within 10 feet of a kitchen or other space used for cooking. A smoke alarm**  
8 **may be located within 10 feet of a kitchen or other space used for cooking if no other lo-**  
9 **cation is available that will allow placement of the smoke alarm to be in compliance with**  
10 **subsection (1) of this section.**

11 (3) **A smoke alarm required under this section must bear an age date code and be less**  
12 **than 10 years old at all times during which the dwelling unit or lodging house is made**  
13 **available as a rental property or temporary housing.**

14 **SECTION 4.** (1) **As used in this section, “manufactured dwelling” has the meaning given**  
15 **that term in ORS 446.003.**

16 (2) **A person may not convey ownership of a manufactured dwelling or transfer pos-**  
17 **session of a manufactured dwelling under a land sale contract unless the manufactured**  
18 **dwelling has the required number of approved smoke alarms or smoke detectors, installed**  
19 **in accordance with the state building code or with the federal manufactured dwelling con-**  
20 **struction and safety standards adopted under ORS 446.155.**

21 (3) **A smoke alarm or smoke detector required under this section must bear an age date**  
22 **code and be less than 10 years old on the date that the person conveys ownership or trans-**  
23 **fers possession of the manufactured dwelling. A smoke alarm installed in a manufactured**  
24 **dwelling that is resold by a person other than the manufacturer or authorized dealer must**  
25 **meet the requirements of ORS 479.297.**

26 **SECTION 5.** (1) **The tenant of a rental dwelling unit shall perform tests on the smoke**  
27 **alarms or smoke detectors located in the part of the dwelling unit that the tenant is entitled**  
28 **to occupy to the exclusion of others. The tenant shall perform the tests as recommended in**  
29 **the manufacturer’s instructions. Testing intervals may not exceed six months.**

30 (2) **Except when a smoke alarm with dead batteries is subject to replacement under sec-**  
31 **tion 3 (3) of this 2013 Act, during the tenancy the tenant shall replace as needed any dead**  
32 **smoke alarm or smoke detector batteries. The tenant shall immediately notify the dwelling**  
33 **unit owner or the authorized agent of the owner, in writing, of any deficiencies in a smoke**  
34 **alarm or smoke detector other than dead batteries replaceable by the tenant.**

35 **SECTION 6.** ORS 90.680 is amended to read:

36 90.680. (1) **A landlord may not deny any manufactured dwelling or floating home space tenant**  
37 **the right to sell a manufactured dwelling or floating home on a rented space or require the tenant**  
38 **to remove the dwelling or home from the space solely on the basis of the sale.**

39 (2) **The landlord may not exact a commission or fee for the sale of a manufactured dwelling or**  
40 **floating home on a rented space unless the landlord has acted as agent for the seller pursuant to**  
41 **written contract.**

42 (3) **The landlord may not deny the tenant the right to place a “for sale” sign on or in a manu-**  
43 **factured dwelling or floating home owned by the tenant. The size, placement and character of such**  
44 **signs shall be subject to reasonable rules of the landlord.**

45 (4) **If the prospective purchaser of a manufactured dwelling or floating home desires to leave the**

1 dwelling or home on the rented space and become a tenant, the landlord may require in the rental  
2 agreement:

3 (a) Except when a termination or abandonment occurs, that a tenant give not more than 10 days'  
4 notice in writing prior to the sale of the dwelling or home on a rented space;

5 (b) That prior to the sale, the prospective purchaser submit to the landlord a complete and ac-  
6 curate written application for occupancy of the dwelling or home as a tenant after the sale is fi-  
7 nalized and that a prospective purchaser may not occupy the dwelling or home until after the  
8 prospective purchaser is accepted by the landlord as a tenant;

9 (c) That a tenant give notice to any lienholder, prospective purchaser or person licensed to sell  
10 dwellings or homes of the requirements of paragraphs (b) and (d) of this subsection, the location of  
11 all properly functioning smoke alarms **or smoke detectors** and any other rules and regulations of  
12 the facility such as those described in ORS 90.510 (5)(b), (f), (h) and (i); and

13 (d) If the sale is not by a lienholder, that the prospective purchaser pay in full all rents, fees,  
14 deposits or charges owed by the tenant as authorized under ORS 90.140 and the rental agreement,  
15 prior to the landlord's acceptance of the prospective purchaser as a tenant.

16 (5) If a landlord requires a prospective purchaser to submit an application for occupancy as a  
17 tenant under subsection (4) of this section, at the time that the landlord gives the prospective pur-  
18 chaser an application the landlord shall also give the prospective purchaser copies of the statement  
19 of policy, the rental agreement and the facility rules and regulations, including any conditions im-  
20 posed on a subsequent sale, all as provided by ORS 90.510. The terms of the statement, rental  
21 agreement and rules and regulations need not be the same as those in the selling tenant's statement,  
22 rental agreement and rules and regulations.

23 (6) The following apply if a landlord receives an application for tenancy from a prospective  
24 purchaser under subsection (4) of this section:

25 (a) The landlord shall accept or reject the prospective purchaser's application within seven days  
26 following the day the landlord receives a complete and accurate written application. An application  
27 is not complete until the prospective purchaser pays any required applicant screening charge and  
28 provides the landlord with all information and documentation, including any financial data and ref-  
29 erences, required by the landlord pursuant to ORS 90.510 (5)(h). The landlord and the prospective  
30 purchaser may agree to a longer time period for the landlord to evaluate the prospective purchaser's  
31 application or to allow the prospective purchaser to address any failure to meet the landlord's  
32 screening or admission criteria. If a tenant has not previously given the landlord the 10 days' notice  
33 required under subsection (4)(a) of this section, the period provided for the landlord to accept or  
34 reject a complete and accurate written application is extended to 10 days.

35 (b) The landlord may not unreasonably reject a prospective purchaser as a tenant. Reasonable  
36 cause for rejection includes, but is not limited to, failure of the prospective purchaser to meet the  
37 landlord's conditions for approval as provided in ORS 90.510 (5)(h) or failure of the prospective  
38 purchaser's references to respond to the landlord's timely request for verification within the time  
39 allowed for acceptance or rejection under paragraph (a) of this subsection. Except as provided in  
40 paragraph (c) of this subsection, the landlord shall furnish to the seller and purchaser a written  
41 statement of the reasons for the rejection.

42 (c) If a rejection under paragraph (b) of this subsection is based upon a consumer report, as  
43 defined in 15 U.S.C. 1681a for purposes of the federal Fair Credit Reporting Act, the landlord may  
44 not disclose the contents of the report to anyone other than the purchaser. The landlord shall dis-  
45 close to the seller in writing that the rejection is based upon information contained within a con-

1 sumer report and that the landlord may not disclose the information within the report.

2 (7) The following apply if a landlord does not require a prospective purchaser to submit an ap-  
3 plication for occupancy as a tenant under subsection (4) of this section or if the landlord does not  
4 accept or reject the prospective purchaser as a tenant within the time required under subsection (6)  
5 of this section:

6 (a) The landlord waives any right to bring an action against the tenant under the rental agree-  
7 ment for breach of the landlord's right to establish conditions upon and approve a prospective pur-  
8 chaser of the tenant's dwelling or home;

9 (b) The prospective purchaser, upon completion of the sale, may occupy the dwelling or home  
10 as a tenant under the same conditions and terms as the tenant who sold the dwelling or home; and

11 (c) If the prospective purchaser becomes a new tenant, the landlord may impose conditions or  
12 terms on the tenancy that are inconsistent with the terms and conditions of the seller's rental  
13 agreement only if the new tenant agrees in writing.

14 (8) A landlord may not, because of the age, size, style or original construction material of the  
15 dwelling or home or because the dwelling or home was built prior to adoption of the National  
16 Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5403), in compli-  
17 ance with the standards of that Act in effect at that time or in compliance with the state building  
18 code as defined in ORS 455.010:

19 (a) Reject an application for tenancy from a prospective purchaser of an existing dwelling or  
20 home on a rented space within a facility; or

21 (b) Require a prospective purchaser of an existing dwelling or home on a rented space within  
22 a facility to remove the dwelling or home from the rented space.

23 (9) A tenant who has received a notice pursuant to ORS 90.632 may sell the tenant's dwelling  
24 or home in compliance with this section during the notice period. The tenant shall provide a pro-  
25 spective purchaser with a copy of any outstanding notice given pursuant to ORS 90.632 prior to a  
26 sale. The landlord may also give any prospective purchaser a copy of any such notice. The landlord  
27 may require as a condition of tenancy that a prospective purchaser who desires to leave the dwell-  
28 ing or home on the rented space and become a tenant must comply with the notice within the notice  
29 period consistent with ORS 90.632. If the tenancy has been terminated pursuant to ORS 90.632, or  
30 the notice period provided in ORS 90.632 has expired without a correction of cause or extension of  
31 time to correct, a prospective purchaser does not have a right to leave the dwelling or home on the  
32 rented space and become a tenant.

33 (10) Except as provided by subsection (9) of this section, after a tenancy has ended and during  
34 the period provided by ORS 90.675 (6) and (8), a former tenant retains the right to sell the tenant's  
35 dwelling or home to a purchaser who wishes to leave the dwelling or home on the rented space and  
36 become a tenant as provided by this section, if the former tenant makes timely periodic payment of  
37 all storage charges as provided by ORS 90.675 (7)(b), maintains the dwelling or home and the rented  
38 space on which it is stored and enters the premises only with the written permission of the landlord.  
39 Payment of the storage charges or maintenance of the dwelling or home and the space does not  
40 create or reinstate a tenancy or create a waiver pursuant to ORS 90.412 or 90.417. A former tenant  
41 may not enter the premises without the written permission of the landlord, including entry to  
42 maintain the dwelling or home or the space or to facilitate a sale.

43 **SECTION 7.** ORS 90.740 is amended to read:

44 90.740. A tenant shall:

45 (1) Install the tenant's manufactured dwelling or floating home and any accessory building or

1 structure on a rented space in compliance with applicable laws and the rental agreement.

2 (2) Except as provided by the rental agreement, dispose from the dwelling or home and the  
 3 rented space all ashes, garbage, rubbish and other waste in a clean, safe and legal manner. With  
 4 regard to needles, syringes and other infectious waste, as defined in ORS 459.386, the tenant may  
 5 not dispose of these items by placing them in garbage receptacles or in any other place or manner  
 6 except as authorized by state and local governmental agencies.

7 (3) Behave, and require persons on the premises with the consent of the tenant to behave, in  
 8 compliance with the rental agreement and with any laws or ordinances that relate to the tenant's  
 9 behavior as a tenant.

10 (4) Except as provided by the rental agreement:

11 (a) Use the rented space and the facility common areas in a reasonable manner considering the  
 12 purposes for which they were designed and intended;

13 (b) Keep the rented space in every part free from all accumulations of debris, filth, rubbish,  
 14 garbage, rodents and vermin as the condition of the rented space permits and to the extent that the  
 15 tenant is responsible for causing the problem. The tenant shall cooperate to a reasonable extent in  
 16 assisting the landlord in any reasonable effort to remedy the problem;

17 (c) Keep the dwelling or home, and the rented space, safe from the hazards of fire;

18 (d) *[Install and Maintain in the dwelling or home a smoke alarm approved under applicable*  
 19 *law;]* **Ensure that the dwelling or home has smoke alarms or smoke detectors conforming**  
 20 **with applicable laws and properly maintain the smoke alarms or smoke detectors;**

21 (e) Install and maintain storm water drains on the roof of the dwelling or home and connect the  
 22 drains to the drainage system, if any;

23 (f) Use electrical, water, storm water drainage and sewage disposal systems in a reasonable  
 24 manner and maintain the connections to those systems;

25 (g) Refrain from deliberately or negligently destroying, defacing, damaging, impairing or remov-  
 26 ing any part of the facility, other than the tenant's own dwelling or home, or knowingly permitting  
 27 any person to do so;

28 (h) Maintain, water and mow or prune any trees, shrubbery or grass on the rented space; and

29 (i) Behave, and require persons on the premises with the consent of the tenant to behave, in a  
 30 manner that does not disturb the peaceful enjoyment of the premises by neighbors.

31 **SECTION 8.** ORS 479.265 is amended to read:

32 479.265. Any purchaser or transferee of a dwelling unit who is aggrieved by a violation of [*ORS*  
 33 *479.260*] **section 2 of this 2013 Act** may bring an individual action in an appropriate court to re-  
 34 cover actual damages or \$50, whichever is greater. In any action brought by a [*person*] **purchaser**  
 35 **or transferee** under this section, the court may award to the prevailing party, in addition to the  
 36 relief provided in this section, reasonable attorney fees at trial and on appeal and costs. Actions  
 37 brought under this section must be commenced within one year of the date of sale or transfer.  
 38 Notwithstanding the provisions of this section, violation of [*ORS 479.260*] **section 2 of this 2013**  
 39 **Act** does not affect the transfer of the title, ownership or possession of the dwelling unit.

40 **SECTION 9.** ORS 479.270 is amended to read:

41 479.270. (1) The owner of any rental dwelling unit or the owner's authorized agent shall be re-  
 42 sponsible for supplying, installing and maintaining the required smoke alarms or smoke detectors  
 43 and shall provide a written notice containing instructions for testing of the devices. The notice shall  
 44 be given to the tenant at the time the tenant first takes possession of the premises.

45 (2) The duty of the owner or authorized agent of the owner to maintain the required smoke

1 alarms or smoke detectors, including providing working batteries, arises only:

2 (a) Prior to the beginning of every new tenancy when the tenant first takes possession of the  
3 premises; *[and]*

4 (b) During the tenancy upon written notice from the tenant of any deficiency, not including re-  
5 placing dead batteries, as provided in *[ORS 479.275.]* **section 5 of this 2013 Act; and**

6 (c) **When the installation of a replacement smoke alarm is required under section 3 (3)**  
7 **of this 2013 Act.**

8 (3) Supplying and maintaining a smoke alarm or smoke detector under ORS 479.250 to 479.305  
9 shall be considered a habitable condition under ORS 90.320.

10 **SECTION 10.** ORS 479.297 is amended to read:

11 479.297. (1) All *[ionization]* smoke alarms sold **or installed** in this state that are solely battery-  
12 operated shall be packaged with a *[10-year battery]* **tamper-proof battery having a life expectancy**  
13 **of at least 10 years.**

14 (2) All *[ionization]* smoke alarms sold **or installed** in this state shall include a “hush” mech-  
15 anism that allows a person to temporarily disengage the alarm for a period of not more than 15  
16 minutes.

17 (3) The provisions of this section do not apply to:

18 (a) Smoke alarms specifically designed for persons who are hard of hearing;

19 (b) Smoke alarms sold in this state for shipment out of state; or

20 (c) Smoke alarms sold for installation in, **or installed in,** recreational vehicles, commercial ve-  
21 hicles, railroad equipment, aircraft, marine vessels or **new** manufactured dwellings.

22 (4) The sale of a recreational vehicle, commercial vehicle, railroad equipment, aircraft, marine  
23 vessel or new manufactured dwelling containing a smoke alarm does not constitute sale of a smoke  
24 alarm.

25 **SECTION 11.** ORS 479.990 is amended to read:

26 479.990. (1) Any owner or occupant of any building or premises who fails to comply with any  
27 order provided for in ORS 479.170 and not appealed from, or with any such order of the State Fire  
28 Marshal upon appeal to the State Fire Marshal, shall be punished by a civil penalty of not more  
29 than \$500 for each violation. All penalties, fees or forfeitures collected under the provisions of this  
30 subsection shall be paid into the State Treasury.

31 (2) Violation of ORS 479.255, *[479.260,]* 479.270, 479.280, 479.297 or 479.300 **or section 2, 3 or 4**  
32 **of this 2013 Act,** or rules adopted under ORS 479.255, *[479.260,]* 479.270, 479.280, 479.297 or 479.300,  
33 is punishable by a civil penalty imposed by the State Fire Marshal in an amount not to exceed \$250.

34 (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

35 **SECTION 12.** **ORS 479.260 and 479.275 are repealed.**

36 **SECTION 13.** **Notwithstanding sections 2 and 3 of this 2013 Act and ORS 479.270, a**  
37 **dwelling unit or lodging house described in section 2 or 3 of this 2013 Act that is equipped**  
38 **with smoke detectors that were installed in compliance with ORS 479.260 prior to the effec-**  
39 **tive date of this 2013 Act is not required to replace or supplement the smoke detectors in-**  
40 **stalled prior to the effective date of this 2013 Act with smoke alarms meeting the**  
41 **requirements established in sections 2 and 3 of this 2013 Act until one or more of the smoke**  
42 **detectors installed prior to the effective date of this 2013 Act is at least 10 years old.**

43 **SECTION 14.** **Section 2 of this 2013 Act applies to:**

44 (1) **Conveyances of title filed with a county clerk on or after the effective date of this 2013**  
45 **Act; and**

1       **(2) Transfers of possession pursuant to land sale contracts recorded by a county clerk**  
2 **on or after the effective date of this 2013 Act.**

3       **SECTION 15. Section 3 of this 2013 Act applies to dwelling units and lodging houses oc-**  
4 **cupied as rental property or temporary housing on or after the effective date of this 2013**  
5 **Act, regardless of the date on which the occupancy began.**

6       **SECTION 16. Section 4 of this 2013 Act applies to manufactured dwellings:**

7       **(1) Classified as personal property for which transfer of the ownership document is filed**  
8 **with the Department of Consumer and Business Services on or after the effective date of this**  
9 **2013 Act; or**

10       **(2) Classified as real property for which conveyance of title is filed with a county clerk**  
11 **on or after the effective date of this 2013 Act.**

12       **SECTION 17. (1) The amendments to ORS 479.265 by section 8 of this 2013 Act and the**  
13 **repeal of ORS 479.260 by section 12 of this 2013 Act do not affect any right of action that was**  
14 **available under ORS 479.265 prior to the effective date of this 2013 Act arising from a vio-**  
15 **lation of ORS 479.260. An action arising from a violation of ORS 479.260 that occurred prior**  
16 **to the effective date of this 2013 Act may be commenced or maintained as described in ORS**  
17 **479.265 as set forth in the 2011 Edition of Oregon Revised Statutes.**

18       **(2) The amendments to ORS 479.990 by section 11 of this 2013 Act and the repeal of ORS**  
19 **479.260 by section 12 of this 2013 Act do not affect the authority of the State Fire Marshal**  
20 **to impose a civil penalty on a person who violated ORS 479.260 prior to the effective date of**  
21 **this 2013 Act. The State Fire Marshal may impose the civil penalty as described in ORS**  
22 **479.990 as set forth in the 2011 Edition of Oregon Revised Statutes.**

23       **SECTION 18. The amendments to ORS 479.297 by section 10 of this 2013 Act apply to**  
24 **smoke alarms sold or installed on or after the effective date of this 2013 Act.**

25

# Senate Bill 73

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

## 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**.

Allows agricultural producer in danger of foreclosure on agricultural property to request mediation if producer owes more than \$50,000 to one or more creditors.

## A BILL FOR AN ACT

1  
2 Relating to mediation; creating new provisions; and amending ORS 36.256.

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

4 **SECTION 1.** ORS 36.256 is amended to read:

5 36.256. (1) An agricultural producer who is in danger of foreclosure on agricultural property  
6 under ORS 86.010 to 86.990, 87.001 to 87.920 or 88.710 to 88.740 or a creditor, before or after be-  
7 ginning foreclosure proceedings, may request mediation of the agricultural producer's indebtedness  
8 by filing a request with the mediation service on a form provided by the service[. *However, an ag-*  
9 *ricultural producer or creditor may not request mediation under this section unless] **if**, at the time the  
10 request is made, the agricultural producer owes more than [*\$100,000*] **\$50,000** to one or more credi-  
11 tors, and the debt is either:*

12 (a) Secured by one or more mortgages or trust deeds on the agricultural producer's agricultural  
13 property;

14 (b) Evidenced by a real estate contract covering the agricultural producer's agricultural prop-  
15 erty; or

16 (c) The subject of one or more statutory liens that have attached to the agricultural producer's  
17 agricultural property.

18 (2) In filing a mediation request, the agricultural producer shall provide:

19 (a) The name and address of each creditor;

20 (b) The amount claimed by each creditor;

21 (c) The amount of the periodic installment payments made to each creditor;

22 (d) Any financial statements and projected cash flow statements, including those related to any  
23 nonagricultural activities;

24 (e) The name of the person authorized to enter into a binding mediation agreement; and

25 (f) Any additional information the mediation service may require.

26 (3) In filing a mediation request, a creditor shall provide:

27 (a) Statements regarding the status of the agricultural producer's loan performance;

28 (b) The name and title of the representative of the creditor authorized to enter into a binding  
29 mediation agreement; and

30 (c) Any additional information the mediation service may require.

**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 (4) [Nothing in] ORS 36.250 to 36.270 [shall be construed to] **do not** require an agricultural pro-  
 2 ducer or creditor to engage or continue in the mediation of any dispute or controversy. Mediation  
 3 under ORS 36.250 to 36.270 [shall be] **is** entirely voluntary for all persons who are parties to the  
 4 dispute or controversy, and if such persons agree to engage in mediation, any one of the persons  
 5 may at any time withdraw from mediation.

6 (5) If an agricultural producer or a creditor files a mediation request with the mediation service,  
 7 the service shall within 10 days after receipt of the request give written notice of the request to any  
 8 other person who is identified in the request for mediation as parties to the dispute or controversy.  
 9 The notice [shall] **must**:

10 (a) Be accompanied by a copy of the request for mediation;

11 (b) Generally describe the mediation program created by ORS 36.250 to 36.270;

12 (c) Explain that participation in mediation is voluntary and that the recipient of the notice is  
 13 not required to engage in mediation or to continue to mediate if mediation is initiated;

14 (d) Request that the recipient of the notice advise the mediation service in writing and by cer-  
 15 tified mail within 10 days as to whether the recipient wishes to engage in mediation; and

16 (e) Explain that if the written advice required under paragraph (d) of this subsection is not re-  
 17 ceived by the mediation service within the 10-day period, the mediation request will be considered  
 18 denied.

19 (6) If the person who receives the notice of request for mediation under subsection (5) of this  
 20 section wishes to engage in mediation, the person shall advise the mediation service in writing  
 21 within the 10-day period specified in subsection (5) of this section. The response [shall] **must** include  
 22 the appropriate information that the responding person would have been required to include in a  
 23 request for mediation under subsection (2) or (3) of this section.

24 (7) If the person who receives notice of request for mediation under subsection (5) of this section  
 25 does not wish to engage in mediation, the person may, but [shall not be] **is not** required to, so advise  
 26 the mediation service.

27 (8) If the person who receives the notice of request for mediation under subsection (5) of this  
 28 section does not advise the mediation service in writing within the 10-day period specified in the  
 29 notice described in subsection (5) of this section that the person desires to mediate, the request for  
 30 mediation shall be considered denied.

31 (9) The submission of a request for mediation by an agricultural producer or a creditor [shall]  
 32 **does** not operate to stay, impede or delay in any manner whatsoever the commencement, prose-  
 33 cution or defense of any action or proceeding by any person.

34 (10) If requested by the agricultural producer, the coordinator shall provide the services of a  
 35 financial analyst to assist the agricultural producer in preparation of financial data for the first  
 36 mediation session.

37 (11) ORS 36.250 to 36.270 [are not applicable] **do not apply** to obligations or foreclosure pro-  
 38 ceedings with respect to which the creditor is a financial institution, as defined in ORS 706.008.

39 **SECTION 2. The amendments to ORS 36.256 by section 1 of this 2013 Act apply to re-**  
 40 **quests for mediation filed with the mediation service on or after the effective date of this**  
 41 **2013 Act.**

# Senate Bill 65

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

## 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**.

Increases statute of limitations from 10 to 12 years for causes of action with no specified statute of limitations.

## A BILL FOR AN ACT

1  
2 Relating to actions; creating new provisions; and amending ORS 12.140.

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

4 **SECTION 1.** ORS 12.140 is amended to read:

5 12.140. An action for any cause not otherwise provided for shall be commenced within [*10*] **12**  
6 years.

7 **SECTION 2.** The amendments to ORS 12.140 by section 1 of this 2013 Act apply to any  
8 action commenced on or after the effective date of this 2013 Act.  
9

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**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.

# Senate Bill 63

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

## 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**.

Extends statute of limitations from 10 years to 12 years for action for recovery of real property or for recovery of possession of real property.

## A BILL FOR AN ACT

1  
2 Relating to statute of limitations; creating new provisions; and amending ORS 12.050.

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

4 **SECTION 1.** ORS 12.050 is amended to read:

5 12.050. An action for the recovery of real property, or for the recovery of the possession thereof,  
6 shall be commenced within [*10*] **12** years. [*No*] **An** action [*shall*] **may not** be maintained for such  
7 recovery unless it [*appear*] **appears** that the plaintiff, an ancestor, a predecessor[,] or a grantor was  
8 seized or possessed of the premises in question within [*10*] **12** years before the commencement of the  
9 action.

10 **SECTION 2.** The amendments to ORS 12.050 by section 1 of this 2013 Act apply to any  
11 action commenced as described in ORS 12.020 on or after the effective date of this 2013 Act.  
12

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**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.

# Senate Bill 46

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

## 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 action against person registered to practice architecture, landscape architecture or engineering arising out of construction, alteration or repair of improvement to real property to be commenced within six years after substantial completion or abandonment of construction, alteration or repair, regardless of date of discovery of damage or injury.

## A BILL FOR AN ACT

1  
2 Relating to actions against construction professionals; creating new provisions; and amending ORS  
3 12.135.

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

5 **SECTION 1.** ORS 12.135 is amended to read:

6 12.135. (1) An action against a person by a plaintiff who is not a public body, whether in con-  
7 tract, tort or otherwise, arising from the person having performed the construction, alteration or  
8 repair of any improvement to real property or the supervision or inspection thereof, or from the  
9 person having furnished design, planning, surveying, architectural or engineering services for the  
10 improvement, must be commenced before the earliest of:

11 (a) The applicable period of limitation otherwise established by law;

12 (b) Ten years after substantial completion or abandonment of the construction, alteration or  
13 repair of a small commercial structure, as defined in ORS 701.005, a residential structure, as defined  
14 in ORS 701.005, or a large commercial structure, as defined in ORS 701.005, that is owned or main-  
15 tained by a homeowners association, as defined in ORS 94.550, or that is owned or maintained by  
16 an association of unit owners, as defined in ORS 100.005; or

17 (c) Six years after substantial completion or abandonment of the construction, alteration or re-  
18 pair of a large commercial structure, as defined in ORS 701.005, other than a large commercial  
19 structure described in paragraph (b) of this subsection.

20 (2) An action against a person by a public body, whether in contract, tort or otherwise, arising  
21 from the person having performed the construction, alteration or repair of any improvement to real  
22 property or the supervision or inspection thereof, or from the person having furnished design, plan-  
23 ning, surveying, architectural or engineering services for the improvement, must be commenced not  
24 more than 10 years after substantial completion or abandonment of such construction, alteration or  
25 repair of the improvement to real property.

26 (3)(a) Notwithstanding subsections (1) and (2) of this section, an action against a person [*for the*  
27 *practice of architecture, as defined in ORS 671.010, the practice of landscape architecture, as defined*  
28 *in ORS 671.310, or the practice of engineering, as defined in ORS 672.005,*] **registered to practice**  
29 **architecture under ORS 671.010 to 671.220, a person registered to practice landscape archi-**

**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 **ecture under ORS 671.310 to 671.459 or a person registered to practice engineering under**  
 2 **ORS 672.002 to 672.325** to recover damages for injury to a person, property or to any interest in  
 3 property, including damages for delay or economic loss, regardless of legal theory, arising out of the  
 4 construction, alteration or repair of any improvement to real property [*shall*] **must** be commenced  
 5 within **the earliest of:**

6 (A) Two years after the date the injury or damage is first discovered or in the exercise of rea-  
 7 sonable care should have been discovered; *but in any event the action shall be commenced within*  
 8 *10*; **or**

9 (B) **Six** years after substantial completion or abandonment of the construction, alteration or  
 10 repair.

11 (b) This subsection applies to actions brought by any person or public body.

12 (4) For purposes of this section:

13 (a) “Public body” has the meaning given that term in ORS 174.109; and

14 (b) “Substantial completion” means the date when the contractee accepts in writing the con-  
 15 struction, alteration or repair of the improvement to real property or any designated portion thereof  
 16 as having reached that state of completion when it may be used or occupied for its intended purpose  
 17 or, if there is no such written acceptance, the date of acceptance of the completed construction,  
 18 alteration or repair of such improvement by the contractee.

19 (5) For purposes of this section, an improvement to real property [*shall be*] **is** considered aban-  
 20 doned on the same date that the improvement is considered abandoned under ORS 87.045.

21 (6) This section:

22 (a) Applies to an action against a manufacturer, distributor, seller or lessor of a manufactured  
 23 dwelling, as defined in ORS 446.003, or of a prefabricated structure, as defined in ORS 455.010; and

24 (b) Does not apply to actions against any person in actual possession and control of the im-  
 25 provement, as owner, tenant or otherwise, at the time such cause of action accrues.

26 **SECTION 2. The amendments to ORS 12.135 by section 1 of this 2013 Act apply only to**  
 27 **causes of action arising on or after the effective date of this 2013 Act.**

28

# Senate Bill 35

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber, M.D., for Department of Veterans' Affairs)

## 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**.

Modifies limit on amount of home and farm loans made by Department of Veterans' Affairs.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to limits on loans made by the Department of Veterans' Affairs; amending ORS 407.225 and  
3 407.305; and declaring an emergency.

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

5 **SECTION 1.** ORS 407.225 is amended to read:

6 407.225. (1) When the Department of Veterans' Affairs receives an application pursuant to ORS  
7 407.205, the department shall immediately investigate and process it as provided by law. The secu-  
8 rity for the loan shall consist of the property to be acquired by the veteran as a home or a farm.  
9 The security shall be secured by a mortgage or security agreement in the full amount of the loan  
10 which mortgage or security agreement shall be either a first lien or a lien insured by mortgagee's  
11 title insurance against loss from any prior encumbrance. The department may make subsequent  
12 loans for improvements to the security if there are no intervening liens between the first lien of the  
13 department created under this section and the recorded liens upon the security securing repayment  
14 of such subsequent improvement loans. Such consecutive liens, for the purposes of this chapter, shall  
15 be deemed collectively as a first lien upon the security. The mortgage or security agreement shall  
16 provide that the borrower, or any subsequent owner of the secured property, may pay all or any part  
17 of the loan at any time without penalty.

18 (2) A mobile home shall be secured by a security agreement in the full amount of the loan and  
19 the department shall perfect a security interest in favor of the State of Oregon. The security  
20 agreement shall provide that the borrower or any subsequent owner of the mobile home, may pay  
21 all or any part of the loan at any time without penalty. The security agreement shall provide for  
22 immediate acceleration of the unpaid balance of the loan if the mobile home is moved from the ori-  
23 ginal site listed in the security agreement without first obtaining the written consent of the de-  
24 partment. The security agreement shall also provide that removal of the mobile home to a site  
25 outside of this state shall constitute an act of default and result in immediate acceleration of the  
26 unpaid balance of the loan.

27 (3) Loans may not exceed:

28 [*(a) 100 percent of the net appraised value on homes that are real property;*]

29 **(a) The maximum loan-to-value ratio or combined loan-to-value ratio permitted by the**  
30 **United States Department of Veterans Affairs for its Home Loan Guaranty Program (38**

**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 **U.S.C. 3701 et seq.; 38 C.F.R. part 36);**

2 (b) 85 percent of the net appraised value on homes that are not real property; and

3 (c) 90 percent of the net appraised value on farms that are real property.

4 **SECTION 2.** ORS 407.305 is amended to read:

5 407.305. When a veteran who is eligible for a loan under this chapter and Article XI-A of the  
6 Oregon Constitution seeks to acquire a home or farm that is serving as security for a previous loan  
7 made under this chapter, the veteran may choose either to receive a new loan for the property or  
8 to assume the previous loan. If the loan balance for the loan being assumed does not exceed the  
9 amount of the veteran's entitlement under ORS 407.205, the interest rate to be paid on the assumed  
10 loan balance shall be the rate per annum prescribed under ORS 407.315. In addition to the amount  
11 assumed, the veteran may apply for and receive additional funds to be applied to the purchase price.  
12 The interest rate to be paid on the additional funds shall be the rate per annum currently prescribed  
13 under ORS 407.325. The sum of the assumed loan balance and the additional funds shall not exceed  
14 the amount of the veteran's entitlement under ORS 407.205 or the [*percentage of the net appraised*  
15 *value*] **maximum loan amount** prescribed by ORS 407.225 (3). An assumption or an assumption with  
16 additional funds under this section shall be deemed to be one loan and the veteran making the as-  
17 sumption or the assumption with additional funds shall be deemed to be a borrower for the purposes  
18 of ORS 407.145, 407.205, 407.215, 407.325, 407.385, 407.465 and 407.475.

19 **SECTION 3. This 2013 Act being necessary for the immediate preservation of the public**  
20 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
21 **on its passage.**

22

# Senate Bill 34

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber, M.D., for Department of Veterans' Affairs)

## 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**.

Removes limit on number of loans eligible individual may receive or assume from Department of Veterans' Affairs.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to loans from the Department of Veterans' Affairs; amending ORS 407.205; and declaring  
3 an emergency.

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

5 **SECTION 1.** ORS 407.205 is amended to read:

6 407.205. (1) Applications for loans for acquisition of a home or farm under this chapter shall be  
7 made to the Department of Veterans' Affairs. Loans exclusive of funds disbursed under ORS 407.145  
8 (2) and 407.275 (4) may not exceed the maximum original principal balance permitted on a single-  
9 family first mortgage loan by the Federal National Mortgage Association, as published in its an-  
10 nouncements and subsequently included in its Selling Guide, at a rate of interest provided by ORS  
11 407.325. [*Except as provided in subsection (2) of this section, an eligible individual may not receive or,*  
12 *under ORS 407.305, assume more than two loans under this chapter.*] An applicant may not borrow  
13 more than the maximum amount allowed under this section, except that when a loan is made on  
14 property that is destroyed by fire or other natural hazard, taken through condemnation or lost or  
15 disposed of for a compelling reason devoid of fault on the part of the applicant and when the loan  
16 is repaid or the property is transferred by deed or otherwise, the loan may be excluded from con-  
17 sideration in computing the maximum loan allowable. However, the loan right provided in this sec-  
18 tion may be restored not more than once while an unrepaid balance remains on a previous loan  
19 granted to the applicant.

20 [*(2) The department may allow an eligible individual to receive or, under ORS 407.305, assume*  
21 *more than two loans under this chapter when:]*

22 [*(a) The loan received or assumed is an additional loan made for the improvement of the farm or*  
23 *home acquired with an initial loan for the acquisition of that property; or]*

24 [*(b) The last official certification of record by the United States Department of Veterans Affairs*  
25 *or any branch of the Armed Forces of the United States shows the eligible individual to be at least 50*  
26 *percent disabled. However, a loan may be made to an eligible disabled veteran under this paragraph*  
27 *only if the veteran must acquire a different principal residence for compelling medical reasons or be-*  
28 *cause the veteran is transferred by an employer for employment purposes or because the veteran's*  
29 *spouse is transferred by an employer for employment purposes and the spouse provides more than 50*  
30 *percent of the household income.]*

**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        [(3)] (2) For the purposes of this section, an applicant owns a home when the applicant has fee  
2 simple title to the home or is the purchaser of the home under a contract of sale or other instrument  
3 of sale. Earnest money or preliminary sales agreements, options or rights of first refusal are not  
4 contracts or instruments of sale under this subsection.

5        [(4)] (3) As used in this section, "home" includes mobile homes and houseboats.

6        **SECTION 2. This 2013 Act being necessary for the immediate preservation of the public**  
7 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
8 **on its passage.**

9

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# Senate Bill 28

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber, M.D., for Oregon State Police)

## 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**.

Authorizes publishing notice of criminal forfeiture, civil forfeiture and intent to dispose of unclaimed property on Internet.

Directs Oregon Criminal Justice Commission to maintain website and post notices for at least 30 days.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to publishing notice on the Internet; creating new provisions; amending ORS 98.245,  
3 131.570, 131A.150 and 131A.230; and declaring an emergency.

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

5 **SECTION 1. (1) The Oregon Criminal Justice Commission shall maintain a website for the**  
6 **purpose of providing notice to interested parties of:**

7 (a) **The seizure of property for criminal forfeiture under ORS 131.570;**

8 (b) **The seizure of property for civil forfeiture under ORS 131A.150;**

9 (c) **The commencement of a civil forfeiture action under ORS 131A.230; and**

10 (d) **The intent to dispose of unclaimed property under ORS 98.245.**

11 (2) **When the commission receives a notice described in subsection (1) of this section**  
12 **from a seizing agency, forfeiting agency or removing authority, the commission shall post a**  
13 **copy of the notice on the website for at least 30 consecutive days.**

14 (3) **The commission may adopt rules to carry out the provisions of this section.**

15 (4) **As used in this section:**

16 (a) **"Forfeiting agency" has the meaning given that term in ORS 131A.005.**

17 (b) **"Removing authority" has the meaning given that term in ORS 98.245.**

18 (c) **"Seizing agency" has the meaning given that term in ORS 131.550.**

19 **SECTION 2. ORS 131A.150 is amended to read:**

20 131A.150. (1) A forfeiture notice must contain:

21 (a) A copy of the inventory prepared by the police officer under ORS 131A.055, with any  
22 amendments made under ORS 131A.055 (3);

23 (b) The name of the person from whom the property was seized;

24 (c) The name, address and telephone number of the seizing agency;

25 (d) The address and telephone number of the office or other place where further information  
26 concerning the seizure may be obtained; and

27 (e) A statement in substantially the following form:  
28

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**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.

NOTICE OF SEIZURE FOR FORFEITURE

Notice to Potential Claimant -

Read These Papers Carefully ! !

If you have any interest in the seized property described in these papers, you must claim that interest or you will automatically lose that interest. If you do not file a claim for the property, the property may be forfeited even if you are not convicted of any crime. To claim an interest, you must file a written claim with the forfeiture counsel named below. The written claim must be signed by you, under penalty of perjury, and state: (a) Your true name; (b) The address at which you will accept future mailings from the court and forfeiture counsel; and (c) A statement that you have an interest in the seized property. Your deadline for filing the claim document is 21 days from the day this form is given to you. If you have any questions, you should see an attorney immediately.

(2) A police officer who seizes property for forfeiture may serve a forfeiture notice on the person from whose possession the property is taken, or on the person in apparent control of the property, at the time the property is seized.

(3) If a police officer seizes property for forfeiture and does not serve a forfeiture notice under subsection (2) of this section, the forfeiting agency shall issue the forfeiture notice not more than 15 days after the seizure.

(4)(a) Except as provided in subsections (5) and (6) of this section, a forfeiting agency shall make reasonable efforts to serve a forfeiture notice on all persons known to have an interest in the seized property.

(b) A person may be served as provided in ORCP 7 D except that summons must include information regarding the right to file a claim as provided by ORS 131A.165, if applicable, and the deadline for filing the claim.

(c) If the property is cash in the amount of \$1,000 or less, or if the fair market value of the property is \$1,000 or less, the forfeiting agency may publish [*notice of seizure for forfeiture*] **the forfeiture notice:**

(A) In a newspaper as provided in ORCP 7 D(6)(b) to (d); or

(B) **On the website maintained by the Oregon Criminal Justice Commission under section 1 of this 2013 Act.**

(d) [*In all other cases,*] **If the property is cash in an amount of more than \$1,000, or if the fair market value of the property is more than \$1,000,** the forfeiting agency shall publish [*notice of seizure for forfeiture*] **the forfeiture notice:**

(A) In a newspaper as provided in ORCP 7 D(6)(b) to (d); or

(B) **On the website maintained by the Oregon Criminal Justice Commission under section 1 of this 2013 Act.**

(e) A copy of the **forfeiture** notice [*and inventory*] shall be provided to the forfeiting agency's forfeiture counsel.

(5) If a forfeiting agency publishes forfeiture notice under subsection (4) of this section, the agency may include [*in a single publication*] as many forfeiture notices as the agency considers convenient. The publication may contain a single statement of matters from the forfeiture notices that are common to all of the notices and that would otherwise result in needless repetition. The publication must contain for each forfeiture notice a separate copy of the inventory and a separate

1 statement of the identity of the person from whose custody the property was seized.

2 (6) A forfeiture notice need not be served on a person who has received a receipt under ORS  
3 131A.055 if:

4 (a) The receipt contains an estimate of the value of the property seized;

5 (b) The seizing agency has not amended the inventory under ORS 131A.055 (3); and

6 (c) The receipt contains information regarding the right to file a claim as described in ORS  
7 131A.165 and the deadline for filing the claim.

8 (7) If a person received a receipt as described in subsection (6) of this section, but the person  
9 must be served with a forfeiture notice because the seizing agency has amended the inventory under  
10 ORS 131A.055 (3), the seizing agency may serve a forfeiture notice on the person by mailing a true  
11 copy of the notice to the person by certified mail, return receipt requested.

12 **SECTION 3.** ORS 131A.230 is amended to read:

13 131A.230. (1) Upon commencement of a forfeiture action, the forfeiting agency must serve the  
14 summons and complaint on all persons known to have an interest in the property in the manner  
15 provided by ORCP 5 and 7 D. [*In addition, notice of the action must be published as provided in*  
16 *ORCP 7 D(6)(b) to (d)*] Unless the forfeiture notice for the property was previously published in the  
17 manner provided in ORS 131A.150 (4), **the forfeiting agency must also publish notice of the**  
18 **action:**

19 (a) **In a newspaper as provided in ORCP 7 D(6)(b) to (d); or**

20 (b) **On the website maintained by the Oregon Criminal Justice Commission under section**  
21 **1 of this 2013 Act.**

22 (2) If the property to be forfeited in a forfeiture action is a vehicle, and [*substitute*] **substituted**  
23 service on the claimant is required because personal service cannot be reasonably accomplished,  
24 service in the manner provided by ORCP 7 D(4) is sufficient to establish jurisdiction over a regis-  
25 tered owner or operator of a vehicle.

26 (3) If the property to be forfeited in a forfeiture action is in whole or part a manufactured  
27 dwelling as defined in ORS 446.003 or a floating home as defined in ORS 830.700, the forfeiting  
28 agency must record a notice of seizure containing a description of the manufactured dwelling or  
29 floating home in all public offices maintaining records that impart constructive notice of matters  
30 relating to manufactured dwellings or floating homes.

31 **SECTION 4.** ORS 131.570 is amended to read:

32 131.570. (1)(a) As soon as practicable after seizure for criminal forfeiture, the seizing agency  
33 shall review the inventory prepared by the police officer under ORS 131.561. Within 30 days after  
34 seizure for criminal forfeiture, the forfeiture counsel shall file a criminal information or an  
35 indictment alleging facts sufficient to establish that the property is subject to criminal forfeiture.  
36 Within 30 days after seizure for criminal forfeiture, the seizing agency or forfeiture counsel shall  
37 prepare a notice of seizure for criminal forfeiture containing a copy of the inventory prepared pur-  
38 suant to ORS 131.561, the identity of the person from whom the property was seized, the name, ad-  
39 dress and telephone number of the seizing agency and the address and telephone number of the  
40 office or other place where further information concerning the seizure and criminal forfeiture may  
41 be obtained, and shall make reasonable efforts to serve the notice of seizure for criminal forfeiture  
42 on all persons, other than the defendant, known to have an interest in the seized property.

43 (b) A person may be served as provided in ORCP 7 D except that the notice must also include  
44 information regarding the right to file a claim under subsection (2) of this section, if applicable, and  
45 the deadline for filing the claim.

1 (c) If the property is cash in the amount of \$1,000 or less, or if the fair market value of the  
 2 property is \$1,000 or less, the seizing agency may publish **the** notice of seizure for criminal forfei-  
 3 ture:

4 (A) In a newspaper as provided in ORCP 7 D(6)(b) to D(6)(d); **or**

5 (B) **On the website maintained by the Oregon Criminal Justice Commission under section**  
 6 **1 of this 2013 Act.**

7 (d) [*In all other cases,*] **If the property is cash in an amount of more than \$1,000, or if the**  
 8 **fair market value of the property is more than \$1,000,** the seizing agency shall publish **the** no-  
 9 tice of seizure for criminal forfeiture:

10 (A) In a newspaper as provided in ORCP 7 D(6)(b) to D(6)(d); **or**

11 (B) **On the website maintained by the Oregon Criminal Justice Commission under section**  
 12 **1 of this 2013 Act.**

13 (e) The seizing agency shall provide a copy of the notice[, *inventory*] **of seizure for criminal**  
 14 **forfeiture** and estimate of value to the forfeiture counsel.

15 (2) Except as otherwise provided in ORS 131.579 (1) to (3), if notice of seizure for criminal  
 16 forfeiture:

17 (a) Is given in a manner other than by publication, any person, other than the defendant,  
 18 claiming an interest in the property must file a claim with the forfeiture counsel within 21 days after  
 19 service of notice of seizure for criminal forfeiture.

20 (b) Is published, any person, other than the defendant, claiming an interest in the property must  
 21 file a claim with the forfeiture counsel within 21 days after the last publication date.

22 (3) An extension for the filing of a claim under subsection (2) of this section may not be granted.  
 23 The claim must be signed by the claimant under penalty of perjury and must set forth all of the  
 24 following:

25 (a) The true name of the claimant;

26 (b) The address at which the claimant will accept future mailings from the court or the forfei-  
 27 ture counsel; and

28 (c) A statement that the claimant has an interest in the seized property.

29 (4) If a seizing agency publishes notice of seizure for criminal forfeiture [*in a newspaper*] in the  
 30 manner provided by subsection (1) of this section, the agency may include [*in a single publication*]  
 31 as many notices of **seizure for** criminal forfeiture as the agency considers convenient. The publi-  
 32 cation may contain a single statement of matters from the notices of **seizure for** criminal forfeiture  
 33 that are common to all of the notices and that would otherwise result in needless repetition. The  
 34 publication must contain for each notice of **seizure for** criminal forfeiture a separate copy of the  
 35 inventory prepared pursuant to ORS 131.561, and a separate statement of the identity of the person  
 36 from whose custody the property was seized. The published inventory need not contain estimates  
 37 of value for the property seized.

38 **SECTION 5.** ORS 98.245 is amended to read:

39 98.245. (1) As used in this section:

40 (a) “Removing authority” means a sheriff’s office, a municipal police department, a state police  
 41 office, a law enforcement agency created by intergovernmental agreement or a port as defined in  
 42 ORS 777.005 or 778.005.

43 (b) “Unclaimed property” means personal property that was seized by a removing authority as  
 44 evidence, abandoned property, found property or stolen property, and that has remained in the  
 45 physical possession of that removing authority for a period of more than 60 days following conclu-

1 sion of all criminal actions related to the seizure of the evidence, abandoned property, found prop-  
 2 erty or stolen property, or conclusion of the investigation if no criminal action is filed.

3 (2) Notwithstanding ORS 98.302 to 98.436, and in addition to any other method provided by law,  
 4 a removing authority may dispose of unclaimed property as follows:

5 (a) **The removing authority shall prepare a notice of the intent to dispose of the un-**  
 6 **claimed property. The notice must include** an inventory describing the unclaimed property, [*shall*  
 7 *be prepared by the removing authority.*]

8 [*(b) The removing authority shall publish a notice of intent to dispose of the unclaimed property*  
 9 *described in the inventory prepared pursuant to paragraph (a) of this subsection. The notice shall be*  
 10 *posted in three public places in the jurisdiction of the removing authority, and shall also be published*  
 11 *in a newspaper of general circulation in the jurisdiction of the removing authority. The notice shall*  
 12 *include a description of the unclaimed property as provided in the inventory,*] the address and tele-  
 13 phone number of the removing authority and a statement in substantially the following form:

---

14  
 15  
 16 NOTICE

17 The (removing authority) has in its physical possession the unclaimed personal property de-  
 18 scribed below. If you have [*any*] **an** ownership interest in any of that unclaimed property, you must  
 19 file a claim with the (removing authority) within 30 days from (the date of publication of this  
 20 notice), or you will lose your interest in that property.

21  
 22  
 23 **(b) The removing authority shall:**

24 **(A) Publish the notice on the website maintained by the Oregon Criminal Justice Com-**  
 25 **mission under section 1 of this 2013 Act; or**

26 **(B)(i) Publish the notice in a newspaper of general circulation in the jurisdiction of the**  
 27 **removing authority; and**

28 **(ii) Post the notice in three public places in the jurisdiction of the removing authority.**

29 (c) **The removing authority shall send** a copy of the notice [*described in paragraph (b) of this*  
 30 *subsection shall also be sent*] to any person that the removing authority has reason to believe has  
 31 an ownership or security interest in any of the unclaimed property described in the notice. A notice  
 32 sent pursuant to this paragraph shall be sent by regular mail to the last known address of the per-  
 33 son.

34 (d) Prior to the expiration of the time period stated in [*a notice issued pursuant to this section*]  
 35 **the notice**, a person may file a claim that presents proof satisfactory to the removing authority is-  
 36 suing the notice that the person is the lawful owner or security interest holder of any property de-  
 37 scribed in that notice. The removing authority shall then return the property to that person.

38 (e) If a removing authority fails to return property to a person that has timely filed a claim  
 39 pursuant to paragraph (d) of this subsection, the person may file, within 30 days of the date of the  
 40 failure to return the property, a petition seeking return of the property to the person. The petition  
 41 shall be filed in the circuit court for the county in which the removing authority is located. If one  
 42 or more petitions are filed, the removing authority shall hold the property pending receipt of an  
 43 order of the court directing disposition of the property or dismissing the petition or petitions with  
 44 prejudice. If the court grants the petition, the removing authority shall turn the unclaimed property  
 45 over to the petitioner in accordance with the order.

1 (f) Unless the removing authority or court upholds the claim or petition under paragraph (d) or  
2 (e) of this subsection, title to all unclaimed property described in a notice issued pursuant to this  
3 section shall pass to the removing authority free of any interest or encumbrance thereon in favor  
4 of any person who has:

5 (A) A security interest in the property and to whom the removing authority mailed a copy of  
6 the notice described in paragraph [(b)] (a) of this subsection in accordance with paragraph (c) of this  
7 subsection; or

8 (B) Any ownership interest in the property.

9 (g) The removing authority may transfer good and sufficient title to any subsequent purchaser  
10 or transferee, and the title shall be recognized by all courts and governmental agencies. Any de-  
11 partment, agency or officer of the state or any political subdivision whose official functions include  
12 the issuance of certificates or other evidence of title shall be immune from civil or criminal liability  
13 when such issuance is pursuant to a bill of sale issued by the removing authority.

14 **SECTION 6. This 2013 Act being necessary for the immediate preservation of the public**  
15 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
16 **on its passage.**

17 \_\_\_\_\_

# House Bill 2662

Sponsored by Representative FREDERICK (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 **as introduced**.

Prohibits owner of foreclosed residential real property from neglecting foreclosed residential real property during period of vacancy. Permits local government to assess civil penalty for each day during which owner fails to remedy conditions of neglect.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to the neglect of foreclosed residential real property; and declaring an emergency.

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

4 **SECTION 1. (1) As used in this section:**

5 (a) **"Foreclosed residential real property"** means residential property, as defined in ORS  
6 **18.901, that an owner obtains as a result of:**

7 (A) **Foreclosing a trust deed on the residential property;**

8 (B) **Receiving a judgment that forecloses a lien on the residential property; or**

9 (C) **Purchasing the property at a trustee's sale or a sheriff's sale.**

10 (b) **"Neglect" means:**

11 (A) **To fail or a failure to maintain the buildings, grounds or appurtenances of foreclosed**  
12 **residential real property in such a way as to allow:**

13 (i) **Excessive growth of foliage that diminishes the value of adjacent property;**

14 (ii) **Trespassers or squatters to remain on the foreclosed residential real property or in**  
15 **a structure located on the foreclosed residential real property;**

16 (iii) **Mosquito larvae or pupae to grow in standing water on the foreclosed residential real**  
17 **property; or**

18 (iv) **Other conditions on the foreclosed residential real property that cause or contribute**  
19 **to causing a public nuisance.**

20 (B) **To fail or a failure to monitor the condition of foreclosed residential real property**  
21 **by inspecting the foreclosed residential real property at least once every 30 days with suffi-**  
22 **cient attention so as to prevent, or to identify and remedy, a condition described in subpar-**  
23 **agraph (A) of this paragraph.**

24 (c) **"Owner"** means a person, other than a local government, named in a trust deed or  
25 **other instrument as the legal owner of foreclosed residential real property.**

26 (2)(a) **An owner may not neglect the owner's foreclosed residential real property during**  
27 **any period in which the foreclosed residential real property is vacant.**

28 (b) **An owner shall provide the owner's name or the name of the owner's agent and a**  
29 **telephone number or other means for contacting the owner or agent to:**

30 (A) **The neighborhood association for the neighborhood in which the foreclosed residen-**

**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 tial real property is located; or

2 (B) An official that the local government designates to receive the information described  
3 in this paragraph.

4 (c) An owner shall post a durable notice in a conspicuous location on the foreclosed resi-  
5 dential real property that lists a telephone number for the owner or for the local govern-  
6 ment that a person may call to report a condition of neglect. The owner shall replace the  
7 notice if the notice is removed from the foreclosed residential real property during a period  
8 when the foreclosed residential real property is vacant.

9 (d) An owner or the agent of an owner shall identify the owner of the foreclosed resi-  
10 dential real property to the local government and shall provide to, and maintain with, the  
11 local government current contact information during a period when the foreclosed residen-  
12 tial real property is vacant.

13 (3) Subject to subsections (4) to (6) of this section, a local government may assess a civil  
14 penalty against an owner if the local government finds that the owner's foreclosed residential  
15 real property is located within the local government's jurisdiction and that the owner has  
16 violated subsection (2) of this section.

17 (4) A local government may assess a civil penalty under subsection (3) of this section only  
18 after the local government:

19 (a) Notifies the owner in writing that the local government has determined that the  
20 owner has violated a provision of subsection (2) of this section and, in the notice:

21 (A) Describes the conditions of neglect that formed the basis for the determination if the  
22 local government determines that the owner violated subsection (2)(a) of this section;

23 (B) States that the local government may assess a civil penalty against the owner in an  
24 amount that the local government specifies in the written notice; and

25 (C) For violations of subsection (2)(a) of this section, specifies the date by which the  
26 owner must begin to remedy the conditions of neglect that formed the basis for the deter-  
27 mination and the date by which the owner must complete the remediation; and

28 (b) Mails the notice to the address provided for the owner in the trust deed or other in-  
29 strument that is evidence of legal ownership of the foreclosed residential real property or,  
30 if the address is not current, posts the notice in a conspicuous location on the foreclosed  
31 residential real property.

32 (5)(a) Before assessing a civil penalty under this section, a local government shall:

33 (A) Allow an owner not less than 30 days to remedy a violation of subsection (2)(a) of this  
34 section, unless the local government makes a determination under paragraph (b) of this  
35 subsection; and

36 (B) Provide the owner with an opportunity to contest the assessment at a hearing. The  
37 owner must contest the assessment within 10 days after the date on which the local gov-  
38 ernment notifies the owner of the assessment.

39 (b) If the local government determines that a specific condition of the foreclosed resi-  
40 dential real property constitutes a threat to public health or safety, the local government  
41 may require an owner to remedy the specific condition in less than 30 days, provided that  
42 the local government specifies in the written notice the date by which the owner must  
43 remedy the specific condition.

44 (c) Subject to the provisions of this section, a local government may specify in the writ-  
45 ten notice a different date by which an owner must remedy separate conditions of neglect

1 on the foreclosed residential real property.

2 (6)(a) A local government may not assess a civil penalty under this section on or before  
3 the date specified in the written notice for the owner to complete the remediation. A civil  
4 penalty under this section may not exceed \$150 for each day during which the owner fails to  
5 remedy the conditions that formed the basis for the determination.

6 (b) In determining the amount of the civil penalty assessed under this section, a local  
7 government shall take into account an owner's timely and good faith efforts to remedy con-  
8 ditions that formed the basis of the determination.

9 (c) A local government may not assess a penalty under both the provisions of this section  
10 and the provisions of a local ordinance, resolution or regulation.

11 (7) A local government shall direct moneys the local government receives from civil  
12 penalties assessed under this section for the purpose of establishing or continuing a nuisance  
13 abatement program.

14 (8) Except as provided in subsection (6)(c) of this section, this section does not preempt  
15 a local government ordinance, resolution or regulation.

16 SECTION 2. This 2013 Act being necessary for the immediate preservation of the public  
17 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect  
18 on its passage.

19 \_\_\_\_\_

# House Bill 2639

Sponsored by Representative KOTEK (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 **as introduced**.

Redefines "source of income" for purposes of prohibiting discrimination in selling, renting or leasing real property. Creates exceptions.

Directs Housing and Community Services Department to develop Housing Choice Landlord Guarantee Program to mitigate damages to dwelling units of landlords caused by tenants receiving tenant-based assistance under federal Housing Choice Voucher Program.

Creates Housing Choice Landlord Guarantee Program Fund and continuously appropriates moneys in fund to department to carry out Housing Choice Landlord Guarantee Program.

Directs department to establish and administer Stable Rental Housing Program to make grants to qualifying organizations to provide rental and financial assistance to persons at risk of experiencing homelessness or persons requiring assistance to maintain housing stability.

Creates Stable Rental Housing Account and continuously appropriates moneys in account to department to carry out Stable Rental Housing Program.

Directs department and State Housing Council to cooperate with local housing authorities to obtain federal approval and waivers of requirements under certain federal rent subsidy assistance programs.

Becomes operative July 1, 2014.

## A BILL FOR AN ACT

1  
2 Relating to housing; creating new provisions; amending ORS 456.561 and 659A.421; and appropriating  
3 money.

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

5 **SECTION 1.** ORS 659A.421 is amended to read:

6 659A.421. (1) As used in this section:

7 (a) "Dwelling" means:

8 (A) A building or structure, or portion of a building or structure, that is occupied, or designed  
9 or intended for occupancy, as a residence by one or more families; or

10 (B) Vacant land offered for sale or lease for the construction or location of a building or  
11 structure, or portion of a building or structure, that is occupied, or designed or intended for occu-  
12 pancy, as a residence by one or more families.

13 (b) "Purchaser" includes an occupant, prospective occupant, renter, prospective renter, lessee,  
14 prospective lessee, buyer or prospective buyer.

15 (c) "Real property" includes a dwelling.

16 (d)(A) "Source of income" [*does not include*] **includes** federal rent subsidy payments under 42  
17 U.S.C. 1437f[,] **and any other local, state or federal housing assistance.**

18 **(B) "Source of income" does not include** income derived from a specific occupation or income  
19 derived in an illegal manner.

20 (2) A person may not, because of the race, color, religion, sex, sexual orientation, national ori-  
21 gin, marital status, familial status or source of income of any person:

22 (a) Refuse to sell, lease or rent any real property to a purchaser, **except that a person may**  
23 **refuse to lease or rent real property to a prospective renter or prospective lessee:**

**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) Based upon the past conduct of a prospective renter or prospective lessee as a former**  
2 **renter or former lessee that would make the prospective renter or prospective lessee an**  
3 **unsuitable renter or lessee; or**

4       **(B) When the amount of rent exceeds the income of the prospective renter or prospective**  
5 **lessee, taking into account the value of any local, state or federal housing assistance for**  
6 **which the prospective renter or prospective lessee is eligible.**

7       (b) Expel a purchaser from any real property.

8       (c) Make any distinction, discrimination or restriction against a purchaser in the price, terms,  
9 conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the  
10 furnishing of any facilities or services in connection therewith.

11       (d) Attempt to discourage the sale, rental or lease of any real property to a purchaser.

12       (e) Publish, circulate, issue or display, or cause to be published, circulated, issued or displayed,  
13 any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing  
14 of real property that indicates any preference, limitation, specification or unlawful discrimination  
15 based on race, color, religion, sex, sexual orientation, national origin, marital status, familial status  
16 or source of income.

17       (f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that  
18 violates this section.

19       (g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of,  
20 or on account of the person having exercised or enjoyed or having aided or encouraged any other  
21 person in the exercise or enjoyment of, any right granted or protected by this section.

22       (h) Deny access to, or membership or participation in, any multiple listing service, real estate  
23 brokers' organization or other service, organization or facility relating to the business of selling or  
24 renting dwellings, or discriminate against any person in the terms or conditions of the access,  
25 membership or participation.

26       (i) Represent to a person that a dwelling is not available for inspection, sale or rental when the  
27 dwelling in fact is available for inspection, sale or rental.

28       (j) Otherwise make unavailable or deny a dwelling to a person.

29       (3)(a) A person whose business includes engaging in residential real estate related transactions  
30 may not discriminate against any person in making a transaction available, or in the terms or con-  
31 ditions of the transaction, because of race, color, religion, sex, sexual orientation, national origin,  
32 marital status, familial status or source of income.

33       (b) As used in this subsection, "residential real estate related transaction" means any of the  
34 following:

35       (A) The making or purchasing of loans or providing other financial assistance:

36       (i) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

37       (ii) Secured by residential real estate; or

38       (B) The selling, brokering or appraising of residential real property.

39       (4) A real estate licensee may not accept or retain a listing of real property for sale, lease or  
40 rental with an understanding that a purchaser may be discriminated against with respect to the sale,  
41 rental or lease thereof because of race, color, religion, sex, sexual orientation, national origin,  
42 marital status, familial status or source of income.

43       (5) A person may not, for profit, induce or attempt to induce any other person to sell or rent  
44 any dwelling by representations regarding the entry or prospective entry into the neighborhood of  
45 a person or persons of a particular race, color, religion, sex, sexual orientation, national origin,

1 marital status, familial status or source of income.

2 (6) This section does not apply with respect to sex distinction, discrimination or restriction if  
 3 the real property involved is such that the application of this section would necessarily result in  
 4 common use of bath or bedroom facilities by unrelated persons of opposite sex.

5 (7)(a) This section does not apply to familial status distinction, discrimination or restriction with  
 6 respect to housing for older persons.

7 (b) As used in this subsection, "housing for older persons" means housing:

8 (A) Provided under any state or federal program that is specifically designed and operated to  
 9 assist elderly persons, as defined by the state or federal program;

10 (B) Intended for, and solely occupied by, persons 62 years of age or older; or

11 (C) Intended and operated for occupancy by at least one person 55 years of age or older per  
 12 unit. Housing qualifies as housing for older persons under this subparagraph if:

13 (i) At least 80 percent of the dwellings are occupied by at least one person 55 years of age or  
 14 older per unit; and

15 (ii) Policies and procedures that demonstrate an intent by the owner or manager to provide  
 16 housing for persons 55 years of age or older are published and adhered to.

17 (c) Housing does not fail to meet the requirements for housing for older persons if:

18 (A) Persons residing in the housing as of September 13, 1988, do not meet the requirements of  
 19 paragraph (b)(B) or (C) of this subsection. However, new occupants of the housing shall meet the  
 20 age requirements of paragraph (b)(B) or (C) of this subsection; or

21 (B) The housing includes unoccupied units that are reserved for occupancy by persons who meet  
 22 the age requirements of paragraph (b)(B) or (C) of this subsection.

23 (d) Nothing in this section limits the applicability of any reasonable local, state or federal re-  
 24 strictions regarding the maximum number of occupants permitted to occupy a dwelling.

25 (8) The provisions of subsection (2)(a) to (d) and (f) of this section that prohibit actions based  
 26 upon sex, sexual orientation or familial status do not apply to the renting of space within a single-  
 27 family residence if the owner actually maintains and occupies the residence as the owner's primary  
 28 residence and all occupants share some common space within the residence.

29 (9) Any violation of this section is an unlawful practice.

30 **SECTION 2. As used in sections 2 to 6 of this 2013 Act:**

31 (1) **"Housing Choice Voucher Program" means the federal tenant-based assistance pro-**  
 32 **gram established under 42 U.S.C. 1437f(o).**

33 (2) **"Landlord" means an owner of a dwelling unit that has entered into an agreement**  
 34 **with a local housing authority to receive tenant-based assistance payments under the Hous-**  
 35 **ing Choice Voucher Program and that has entered into a rental or lease agreement with a**  
 36 **tenant determined to be eligible to receive assistance under the Housing Choice Voucher**  
 37 **Program.**

38 (3) **"Local housing authority" means a housing authority as defined in ORS 456.005 that**  
 39 **has entered into a contract with the Secretary of Housing and Urban Development of the**  
 40 **United States pursuant to which the housing authority is authorized to make tenant-based**  
 41 **assistance payments to landlords within a designated county or area of operation under the**  
 42 **Housing Choice Voucher Program.**

43 (4) **"Tenant" means an individual or a family who is determined to be eligible to receive**  
 44 **tenant-based assistance payments under the Housing Choice Voucher Program and who has**  
 45 **entered into a rental or lease agreement with a landlord.**

1       **SECTION 3.** (1) The Housing and Community Services Department shall develop and im-  
 2       plement the Housing Choice Landlord Guarantee Program for the purpose of providing fi-  
 3       nancial assistance to landlords to mitigate damages caused by tenants as a result of  
 4       occupancy under the Housing Choice Voucher Program.

5       (2) Landlords that are eligible for assistance under the Housing Choice Landlord Guar-  
 6       antee Program must obtain a judgment against the tenant in the small claims department  
 7       of a circuit court for the county in which the property is located. Assistance is limited to  
 8       reimbursement for only those amounts in the judgment that are related to damages:

9       (a) Caused as a result of the tenant's occupancy under the Housing Choice Voucher  
 10      Program;

11      (b) That exceed normal wear and tear; and

12      (c) That are in excess of \$500 but not more than twice the monthly rent.

13      (3) The department may contract with a public or private provider for the administration  
 14      of the Housing Choice Landlord Guarantee Program. The department is not subject to the  
 15      provisions of ORS chapter 279A or 279B in awarding a contract under the provisions of this  
 16      subsection. The department shall establish by rule procedures for inviting proposals and  
 17      awarding contracts under this subsection.

18      (4) The department shall adopt rules to implement the provisions of this section, includ-  
 19      ing but not limited to prescribing additional qualifications and requirements that must be  
 20      met by landlords and the form of application that must be submitted to the department to  
 21      receive assistance under the program.

22      **SECTION 4.** (1) When a landlord is determined to be eligible to receive assistance under  
 23      sections 2 to 6 of this 2013 Act, the Housing and Community Services Department shall enter  
 24      into a repayment agreement with the responsible tenant that provides for repayment by the  
 25      tenant to the department of the full amount of the assistance paid to the landlord.

26      (2)(a) Consistent with the requirements of federal law, all local housing authorities that  
 27      participate in the Housing Choice Voucher Program shall, upon written notice from the de-  
 28      partment that a tenant has failed to repay the full amount required under subsection (1) of  
 29      this section, be prohibited from approving a dwelling unit for the responsible tenant, and  
 30      may not enter into a contract with a landlord that provides for occupancy of the landlord's  
 31      dwelling unit by that tenant at any future time, regardless of the area of operation of the  
 32      local housing authority wherein the dwelling unit that sustained the damages was located.

33      (b) Notwithstanding paragraph (a) of this subsection, this subsection does not apply when  
 34      the tenant has made or is making a good faith effort to comply with the repayment agree-  
 35      ment.

36      (3) The department shall, in accordance with ORS chapter 183, provide an opportunity for  
 37      the tenant to contest the department's determination that the tenant has failed to repay  
 38      amounts due under a repayment agreement or that the tenant has not made or is not mak-  
 39      ing a good faith effort to comply with the repayment agreement. The department shall serve  
 40      a notice of noncompliance upon the tenant in accordance with ORS 183.415 that states:

41      (a) The amount remaining unpaid by the tenant under the repayment agreement; and

42      (b) That the department may prohibit all local housing authorities, regardless of the area  
 43      of operation of the local housing authority wherein the dwelling unit that sustained the  
 44      damages was located, from approving a dwelling unit for the tenant in the future and from  
 45      entering into a contract with a landlord that provides for the tenant's occupancy of the

1 landlord's dwelling unit by that tenant at any future time.

2 (4) The department may waive the requirements of this section for good cause as set  
3 forth in rules adopted by the department.

4 **SECTION 5.** (1) There is created within the State Treasury, separate and distinct from  
5 the General Fund, the Housing Choice Landlord Guarantee Program Fund. Interest earned  
6 by the Housing Choice Landlord Guarantee Program Fund shall be credited to the fund.

7 (2) Moneys in the Housing Choice Landlord Guarantee Program Fund shall consist of:

8 (a) Amounts donated to the fund;

9 (b) Amounts appropriated or otherwise transferred to the fund by the Legislative As-  
10 sembly;

11 (c) Investment earnings received on moneys in the fund; and

12 (d) Other amounts deposited in the fund from any source.

13 (3) Moneys in the fund are continuously appropriated to the Housing and Community  
14 Services Department to carry out the provisions of sections 2 to 6 of this 2013 Act.

15 (4) The department may use moneys in the fund to pay the administrative costs associ-  
16 ated with the fund and with processing applications, making payments to landlords and ad-  
17 ministering repayment agreements under sections 2 to 6 of this 2013 Act.

18 **SECTION 6.** (1) Local housing authorities shall report annually to the Housing and  
19 Community Services Department regarding information required to be provided to the Sec-  
20 retary of Housing and Urban Development regarding each local housing authority's partic-  
21 ipation in the Housing Choice Voucher Program and any additional information, data or  
22 outcomes prescribed by the department by rule.

23 (2) Local housing authorities shall annually review internal procedures and processes,  
24 particularly with respect to the length of initial rental and lease terms so as to coordinate  
25 the length of the terms with market standards, for the purpose of achieving the maximum  
26 use and benefit in the best interests of tenants and landlords from tenant-based assistance  
27 payments under the Housing Choice Voucher Program.

28 (3) The department shall prepare and submit a report to the committees of the Legisla-  
29 tive Assembly that have authority over the subject area of housing on the date of the con-  
30 vening of each regular session of the Legislative Assembly regarding the reports submitted  
31 to the department by local housing authorities under subsection (1) of this section and how  
32 the department has integrated information from these reports into the comprehensive state  
33 plan required under ORS 456.572.

34 **SECTION 7.** (1) The Housing and Community Services Department shall establish and  
35 administer the Stable Rental Housing Program to provide rental assistance to persons re-  
36 quiring assistance to achieve or maintain housing stability.

37 (2) Subject to the approval of the State Housing Council, the department shall make  
38 grants from the Stable Rental Housing Account created in section 8 of this 2013 Act to or-  
39 ganizations as defined in ORS 458.610 for purposes of providing:

40 (a) Rental assistance to persons of low income and very low income, as those terms are  
41 defined in ORS 458.610, who are also identified as being at risk of experiencing homelessness  
42 or who require rental assistance to maintain housing stability.

43 (b) Financial assistance with expenses found to support housing stability, including but  
44 not limited to application fees, security deposits, move-in expenses, past-due rent, utility  
45 payments, transportation expenses, essential furnishings and any other expenses as pre-

1 scribed by the department by rule.

2 (c) Support services to assist persons of low income and very low income who are at risk  
 3 of experiencing homelessness or who require rental assistance to maintain housing stability,  
 4 and the administrative costs of providing the services, to access housing for the purpose of  
 5 achieving or maintaining housing stability.

6 (3) The department shall, in consultation with and subject to the approval of the State  
 7 Housing Council, adopt rules for determining the eligibility of organizations to receive grants  
 8 under this section that must, at a minimum, include the requirement that the organization  
 9 demonstrate it has the capacity to deliver the assistance and services proposed by the or-  
 10 ganization and to measure and report on outcomes related to homelessness and housing  
 11 stability.

12 (4) The department may contract with a public or private provider for the administration  
 13 of the Stable Rental Housing Program under this section. The department is not subject to  
 14 the provisions of ORS chapter 279A or 279B in awarding a contract under the provisions of  
 15 this subsection. The department shall establish by rule procedures for inviting proposals and  
 16 awarding contracts under this subsection.

17 (5) The department shall adopt rules to implement the provisions of this section.

18 **SECTION 8.** (1) There is created within the State Treasury, separate and distinct from  
 19 the General Fund, the Stable Rental Housing Account. Interest earned by the Stable Rental  
 20 Housing Account shall be credited to the account.

21 (2) Moneys in the Stable Rental Housing Account shall consist of:

22 (a) Amounts donated to the account;

23 (b) Amounts appropriated or otherwise transferred to the account by the Legislative  
 24 Assembly;

25 (c) Investment earnings received on moneys in the account; and

26 (d) Other amounts deposited in the account from any source.

27 (3) Moneys in the account are continuously appropriated to the Housing and Community  
 28 Services Department to develop and implement the Stable Rental Housing Program under  
 29 section 7 of this 2013 Act.

30 (4) The department may use moneys in the account to pay the administrative costs as-  
 31 sociated with the account and with making grants under section 7 of this 2013 Act.

32 **SECTION 9.** The Housing and Community Services Department shall prepare and submit  
 33 a report, after review and approval by the State Housing Council, regarding the status and  
 34 outcomes of the Stable Rental Housing Program established under section 7 of this 2013 Act  
 35 to the committees of the Legislative Assembly that have authority over the subject area of  
 36 housing on the date of the convening of the 2015 regular session of the Legislative Assembly.

37 **SECTION 10.** ORS 456.561 is amended to read:

38 456.561. (1) The Housing and Community Services Department may effect loans, grants and other  
 39 funding awards to accomplish department housing programs, subject to any requirement under this  
 40 section for review and approval by the State Housing Council of proposals for loans, grants or other  
 41 funding awards.

42 (2) The department shall submit a loan, grant or other funding award proposal arising under  
 43 ORS 456.515 to 456.725 [*programs*] and section 7 of this 2013 Act to the council for review if the  
 44 proposal is for:

45 (a) A housing loan on property that has a purchase price in excess of an applicable threshold

1 property purchase price established by rule under ORS 456.555 (9); [or]

2 (b) A housing grant or other housing funding award in excess of an applicable threshold amount  
 3 established by rule under ORS 456.555 (10); or

4 (c) **A grant made pursuant to the Stable Rental Housing Program established under**  
 5 **section 7 of this 2013 Act.**

6 (3) The council shall review each loan, grant or other funding award proposal submitted by the  
 7 department under this section and approve or disapprove the loan, grant or other funding award  
 8 proposal.

9 (4) Council review of loan, grant or other funding award proposals under this section shall be  
 10 held at a public hearing of the council. The council meeting notice required by ORS 192.640 shall  
 11 include notice of the loan, grant or other funding award proposal review, the names of the appli-  
 12 cants and the subject of the loan, grant or funding award proposal. The council shall provide notice  
 13 of a loan, grant or other funding award proposal review to the loan, grant or other funding award  
 14 applicant not less than five days before the review hearing.

15 **SECTION 11. The Housing and Community Services Department and State Housing**  
 16 **Council shall cooperate with and assist local housing authorities as defined in section 2 of**  
 17 **this 2013 Act to obtain federal approval, renewal of an existing waiver of federal require-**  
 18 **ments or a new waiver of federal requirements, as necessary to make the use and distrib-**  
 19 **ution of federal rent subsidy and assistance payments under 42 U.S.C. 1437f as efficient and**  
 20 **beneficial as possible to increase the supply of decent, safe, sanitary and affordable housing**  
 21 **for persons of low income and very low income in this state.**

22 **SECTION 12. In addition to and not in lieu of any other appropriation, there is appro-**  
 23 **priated to the Housing and Community Services Department, for the biennium beginning July**  
 24 **1, 2013, out of the General Fund, the amount of \$\_\_\_\_\_, which may be expended for pur-**  
 25 **poses of carrying out the provisions of sections 2 to 6 of this 2013 Act.**

26 **SECTION 13. In addition to and not in lieu of any other appropriation, there is appro-**  
 27 **priated to the Housing and Community Services Department, for the biennium beginning July**  
 28 **1, 2013, out of the General Fund, the amount of \$\_\_\_\_\_, which may be expended for pur-**  
 29 **poses of carrying out the provisions of sections 7 and 8 of this 2013 Act.**

30 **SECTION 14. Sections 2 to 9 and 11 of this 2013 Act and the amendments to ORS 456.561**  
 31 **and 659A.421 by sections 1 and 10 of this 2013 Act become operative on July 1, 2014.**

32

# House Bill 2629

Sponsored by Representative HICKS (Presession 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 **as introduced**.

Provides for automatic termination of revocable trust when settlor is divorced or settlor's marriage is annulled, if trust names settlor and settlor's former spouse as sole cotrustees and sole primary beneficiaries.

## A BILL FOR AN ACT

1  
2 Relating to termination of revocable trust upon change of marital status; creating new provisions;  
3 and amending ORS 130.535.

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

5 **SECTION 1.** ORS 130.535 is amended to read:

6 130.535. (1) Unless otherwise provided by the terms of the trust instrument, a settlor's divorce  
7 or the annulment of the settlor's marriage, after the trust instrument is executed:

8 (a) Revokes all provisions of the trust in favor of the former spouse of the settlor;

9 (b) Revokes all powers of appointment, general or nongeneral, in the trust that are exercisable  
10 by the former spouse; and

11 (c) Revokes any provision in the trust naming the former spouse as trustee.

12 (2) Unless otherwise provided by the terms of the trust instrument, a trust shall be construed  
13 as though the former spouse predeceased the settlor if, after the trust instrument is executed, the  
14 settlor divorces the spouse or the marriage of the settlor to the spouse is annulled.

15 **(3) Notwithstanding subsections (1) and (2) of this section and ORS 130.195 and 130.505,**  
16 **a revocable trust is terminated, unless otherwise provided by the terms of the trust instru-**  
17 **ment, upon the settlor's divorce or the annulment of the settlor's marriage after the trust**  
18 **instrument is executed, if the trust names the settlor and the former spouse of the settlor**  
19 **as sole cotrustees and sole primary beneficiaries of the trust.**

20 **SECTION 2.** The amendments to ORS 130.535 by section 1 of this 2013 Act apply to  
21 revocable trusts when the settlor is divorced or the settlor's marriage is annulled on or after  
22 the effective date of this 2013 Act.

23

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**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.

# House Bill 2608

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 Board of Governors on behalf of Oregon Law Foundation)

## 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, when parties utilize services of escrow agents, trust funds to be deposited in interest-bearing accounts. If trust funds are not expected to produce net positive return, requires funds to be deposited in pooled interest-bearing trust account. Requires interest, net of reasonable costs, to be distributed to public benefit corporations that are organized for purpose of supporting access to justice and that distribute funds to provide legal services to persons of lesser means.

Applies to interest accrued on funds deposited with escrow agents or after January 1, 2014.

## A BILL FOR AN ACT

1  
2 Relating to escrow accounts; creating new provisions; and amending ORS 696.578.

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

4 **SECTION 1.** ORS 696.578 is amended to read:

5 696.578. (1) All funds received by an escrow agent to be delivered upon the close of the escrow  
6 or upon any other contingency are trust funds that must be deposited and maintained in a bank  
7 authorized to do business within this state. The funds must be deposited in a federally insured ac-  
8 count designated as an escrow trust account and kept separate, distinct and apart from funds be-  
9 longing to the escrow agent. The designation of an account as an escrow trust account indicates  
10 that the funds are not the funds of the escrow agent.

11 (2) Trust funds received by an escrow agent [*may*] **must** be placed by the agent in a federally  
12 insured interest-bearing bank account, designated as an escrow trust account[, *but only with the*  
13 *prior written approval of all parties having an interest in the trust funds*]. The earnings of the  
14 interest-bearing account may inure to the benefit of the escrow agent if expressly approved in  
15 writing before deposit of the trust funds by all parties having an interest in the trust funds.

16 [(3) *With prior written notice to all parties who have an interest in the trust funds, an escrow agent*  
17 *may place trust funds received by the escrow agent in a federally insured interest-bearing bank account*  
18 *that is designated as an escrow trust account and the earnings of which inure to the benefit of a public*  
19 *benefit corporation, as defined in ORS 65.001, for distribution to organizations and individuals for*  
20 *first-time homebuying assistance and for development of affordable housing. The escrow agent shall*  
21 *select a qualified public benefit corporation to receive the interest earnings.*]

22 (3) **Notwithstanding subsection (2) of this section, if the funds are not expected to**  
23 **produce a positive net return, the funds must be placed in a pooled interest-bearing trust**  
24 **account that otherwise meets the requirements of subsection (1) of this section. The interest**  
25 **accruing on the pooled interest-bearing trust account, net of reasonable costs, must be paid**  
26 **to a public benefit corporation, as defined in ORS 65.001, that is organized for the purpose**  
27 **of supporting access to justice in this state and that distributes funds to provide legal ser-**  
28 **vices to persons of lesser means.**

**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 (4) For purposes of subsection (3) of this section:

2 (a) Whether trust funds produce a positive net return is determined by taking into ac-  
3 count only:

4 (A) The amount of interest the trust funds would earn if held as described in subsection  
5 (2) of this section;

6 (B) The expected period of deposit of the trust funds; and

7 (C) The cost of establishing and administering an account under subsection (2) of this  
8 section.

9 (b) The reasonable costs that may be withheld from distributions from a pooled  
10 interest-bearing trust account may consist only of deposit charges, monthly maintenance  
11 fees and per-item check or deposit charges.

12 (5) An escrow agent holding funds in a pooled interest-bearing trust account described  
13 in subsection (3) of this section shall direct the financial institution where the account is  
14 established to:

15 (a) Remit net interest on the average monthly balance in the account, or as otherwise  
16 determined under standard accounting practices used by the financial institution, to the  
17 public benefit corporation described in subsection (3) of this section; and

18 (b) Give a statement to the public benefit corporation and the escrow agent at the time  
19 the remittance is made that provides details about the account, including but not limited to  
20 the name of the escrow agent for whom the remittance is sent, the rate of interest applied,  
21 the balance used to compute the interest and the amount of the reasonable costs, if any, that  
22 were deducted.

23 (6) An escrow agent shall, upon establishing a pooled interest-bearing trust account de-  
24 scribed in subsection (3) of this section, submit a written report to the Director of the De-  
25 partment of Consumer and Business Services that provides the name of the escrow agent,  
26 the name and address of the financial institution at which the account is established and the  
27 account number of the account.

28 [(4)] (7) Any bank services, as defined by rule by the Real Estate Commissioner, provided to the  
29 escrow agent may not be considered to affect the impartiality or neutrality of the escrow agent.  
30 Such services are permitted with approval in the written closing instructions of the principals.

31 [(5)] (8) Trust funds, **other than those held in a pooled interest-bearing trust account de-**  
32 **scribed in subsection (3) of this section**, may be invested in secured obligations of the United  
33 States, if:

34 (a) The depositing principal gives prior written approval to the escrow agent for such invest-  
35 ment after receiving written disclosure as may be required by rule adopted by the commissioner;

36 (b) The depositing principal releases the escrow agent from any liability for loss of the trust  
37 funds;

38 (c) The depositing principal agrees that any loss of trust funds may not be a claim against the  
39 bond, deposit or personal guarantee of the agent under ORS 696.525 and 696.527; and

40 (d) The escrow agent does not have any interest in the investment or earnings from the invest-  
41 ment.

42 [(6)] (9) If the trust funds to be invested represent earnest money in a transaction, both princi-  
43 pals in the transaction must give prior written approval for the investment and are both considered  
44 depositing principals.

45 **SECTION 2. The amendments to ORS 696.578 by section 1 of this 2013 Act apply to in-**

1 **terest from trust funds described in ORS 696.578 that are deposited with escrow agents on**  
2 **or after January 1, 2014.**

3

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# House Bill 2579

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Judiciary)

## 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**.

Extends statute of limitations from 10 years to 12 years for action for recovery of real property or for recovery of possession of real property.

## A BILL FOR AN ACT

1  
2 Relating to statute of limitations; creating new provisions; and amending ORS 12.050.

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

4 **SECTION 1.** ORS 12.050 is amended to read:

5 12.050. An action for the recovery of real property, or for the recovery of the possession thereof,  
6 shall be commenced within [10] **12** years. [No] **An** action [*shall*] **may not** be maintained for such  
7 recovery unless it [*appear*] **appears** that the plaintiff, an ancestor, **a** predecessor[, ] or **a** grantor was  
8 seized or possessed of the premises in question within [10] **12** years before the commencement of the  
9 action.

10 **SECTION 2.** **The amendments to ORS 12.050 by section 1 of this 2013 Act apply to any**  
11 **action commenced as described in ORS 12.020 on or after the effective date of this 2013 Act.**  
12

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**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.

**A-Engrossed**  
**House Bill 2573**

Ordered by the House February 22  
Including House Amendments dated February 22

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 Board of Governors)

**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.

*[Provides that practicing law in this state without active Oregon State Bar membership is unlawful practice subject to enforcement under Unlawful Trade Practices Act.]*

**Provides that engaging in business of or acting in capacity of immigration consultant is unlawful practice subject to enforcement under Unlawful Trade Practices Act unless federal law authorizes person to act as immigration consultant or person is active member of Oregon State Bar.**

**A BILL FOR AN ACT**

1  
2 Relating to the unlawful practice of law as an unlawful trade practice; creating new provisions; and  
3 amending ORS 646.608.

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

5 **SECTION 1.** ORS 646.608, as amended by section 6, chapter 52, Oregon Laws 2012, is amended  
6 to read:

7 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-  
8 ness, vocation or occupation the person does any of the following:

9 (a) Passes off real estate, goods or services as those of another.

10 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-  
11 proval, or certification of real estate, goods or services.

12 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-  
13 ciation with, or certification by, another.

14 (d) Uses deceptive representations or designations of geographic origin in connection with real  
15 estate, goods or services.

16 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,  
17 ingredients, uses, benefits, quantities or qualities that *[they]* **the real estate, goods or services** do  
18 not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection  
19 that the person does not have.

20 (f) Represents that real estate or goods are original or new if *[they]* **the real estate or goods**  
21 are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

22 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,  
23 or that real estate or goods are of a particular style or model, if *[they]* **the real estate or goods**  
24 are of another **style or model**.

25 (h) Disparages the real estate, goods, services, property or business of a customer or another

**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 by false or misleading representations of fact.

2 (i) Advertises real estate, goods or services with intent not to provide [*them*] **the real estate,**  
3 **goods or services** as advertised, or with intent not to supply reasonably expectable public demand,  
4 unless the advertisement discloses a limitation of quantity.

5 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,  
6 or amounts of price reductions.

7 (k) Makes false or misleading representations concerning credit availability or the nature of the  
8 transaction or obligation incurred.

9 (L) Makes false or misleading representations relating to commissions or other compensation to  
10 be paid in exchange for permitting real estate, goods or services to be used for model or demon-  
11 stration purposes or in exchange for submitting names of potential customers.

12 (m) Performs service on or dismantles any goods or real estate when [*not authorized by*] the  
13 owner or apparent owner [*thereof*] **of the goods or real estate does not authorize the service**  
14 **or dismantling.**

15 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-  
16 vides the information required under ORS 646.611.

17 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give  
18 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of  
19 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or  
20 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,  
21 discount or other value is contingent upon [*occurrence of*] an event [*subsequent to*] **occurring after**  
22 the time the customer enters into the transaction.

23 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-  
24 cize a product, business or service.

25 (q) Promises to deliver real estate, goods or services within a certain period of time with intent  
26 not to deliver [*them*] **the real estate, goods or services** as promised.

27 (r) Organizes or induces or attempts to induce membership in a pyramid club.

28 (s) Makes false or misleading representations of fact concerning the offering price of, or the  
29 person's cost for real estate, goods or services.

30 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any  
31 known material defect or material nonconformity.

32 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

33 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under  
34 ORS 698.640, whether in a commercial or noncommercial situation.

35 (w) Manufactures mercury fever thermometers.

36 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal  
37 law, or is:

38 (A) Prescribed by a person licensed under ORS chapter 677; and

39 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and  
40 on the proper cleanup of mercury should breakage occur.

41 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to  
42 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be  
43 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the  
44 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-  
45 graph, "thermostat" means a device commonly used to sense and, through electrical communication

- 1 with heating, cooling or ventilation equipment, control room temperature.
- 2 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains  
3 mercury light switches.
- 4 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 5 (bb) Violates ORS 646A.070 (1).
- 6 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 7 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 8 (ee) Violates ORS 646.883 or 646.885.
- 9 (ff) Violates ORS 646.569.
- 10 (gg) Violates the provisions of ORS 646A.142.
- 11 (hh) Violates ORS 646A.360.
- 12 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 13 (jj) Violates ORS 646.563.
- 14 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 15 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant  
16 thereto.
- 17 (mm) Violates ORS 646A.210 or 646A.214.
- 18 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 19 (oo) Violates ORS 646A.095.
- 20 (pp) Violates ORS 822.046.
- 21 (qq) Violates ORS 128.001.
- 22 (rr) Violates ORS 646.649 (2) to (4).
- 23 (ss) Violates ORS 646A.090 (2) to (4).
- 24 (tt) Violates ORS 87.686.
- 25 (uu) Violates ORS 646.651.
- 26 (vv) Violates ORS 646A.362.
- 27 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 28 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 29 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 30 (zz) Violates ORS 87.007 (2) or (3).
- 31 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 32 (bbb) Engages in an unlawful practice under ORS 646.648.
- 33 (ccc) Violates ORS 646A.365.
- 34 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 35 (eee) Sells a gift card in violation of ORS 646A.276.
- 36 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 37 (ggg) Violates ORS 646A.430 to 646A.450.
- 38 (hhh) Violates a provision of ORS 744.318 to 744.384[, 744.991 and 744.992].
- 39 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 40 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-  
41 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the  
42 subject of the violation.
- 43 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 44 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50  
45 U.S.C. App. 501 et seq., as in effect on January 1, 2010.

- 1 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 2 (nnn) Violates ORS 646A.082.
- 3 (ooo) Violates ORS 646.647.
- 4 (ppp) Violates ORS 646A.115.
- 5 (qqq) Violates a provision of ORS 646A.405.
- 6 (rrr) Violates ORS 646A.092.
- 7 (sss) Violates a provision of ORS 646.644.
- 8 (ttt) Violates a provision of ORS 646A.295.
- 9 (uuu) Violates section 3, chapter 52, Oregon Laws 2012.

10 **(vvv) Engages in the business of, or acts in the capacity of, an immigration consultant,**  
11 **as defined in ORS 9.280, in this state and for compensation, unless federal law authorizes the**  
12 **person to do so or unless the person is an active member of the Oregon State Bar.**

13 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-  
14 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

15 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney  
16 need not prove competition between the parties or actual confusion or misunderstanding.

17 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-  
18 torney General has first established a rule in accordance with the provisions of ORS chapter 183  
19 declaring the conduct to be unfair or deceptive in trade or commerce.

20 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought  
21 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-  
22 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

23 **SECTION 2. The amendments to ORS 646.608 by section 1 of this 2013 Act apply to vio-**  
24 **lations that occur on or after the effective date of this 2013 Act.**

25

# House Bill 2569

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 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**.

Allows law practices to serve as trustees of trust deeds. Permits attorney who is shareholder, partner, member, proprietor or employee of law practice that is trustee to sign document that is permitted or required to be signed in connection with trust deed if attorney provides attorney's full name, Oregon State Bar number and relationship between attorney and trustee.

## A BILL FOR AN ACT

1  
2 Relating to conditions for certain trustee's signatures on trust deed documents; amending ORS  
3 86.705 and 86.790.

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

5 **SECTION 1.** ORS 86.705, as amended by section 5, chapter 112, Oregon Laws 2012, is amended  
6 to read:

7 86.705. As used in ORS 86.705 to 86.795:

8 (1) "Affordable housing covenant" has the meaning given that term in ORS 456.270.

9 (2) "Beneficiary" means a person named or otherwise designated in a trust deed as the person  
10 for whose benefit a trust deed is given, or the person's successor in interest, and who is not the  
11 trustee unless the beneficiary is qualified to be a trustee under ORS 86.790 (1)(d).

12 (3) "Eligible covenant holder" has the meaning given that term in ORS 456.270.

13 (4) "Grantor" means the person that conveys an interest in real property by a trust deed as  
14 security for the performance of an obligation.

15 (5) "**Law practice**" means a **professional corporation, partnership, limited liability part-**  
16 **nership, limited liability company or sole proprietorship that is authorized to do business in**  
17 **this state and the attorneys who are shareholders, partners, members, proprietors or em-**  
18 **ployees of the professional corporation, partnership, limited liability partnership, limited li-**  
19 **ability company or sole proprietorship.**

20 [(5)] (6) "Residential trust deed" means a trust deed on property upon which are situated four  
21 or fewer residential units, one of which the grantor, the grantor's spouse or the grantor's minor or  
22 dependent child occupies as a principal residence at the time a default that results in an action to  
23 foreclose the obligation secured by the trust deed first occurs.

24 [(6)] (7) "Residential unit" means an improvement designed for residential use.

25 [(7)] (8) "Trust deed" means a deed executed in conformity with ORS 86.705 to 86.795 that con-  
26 veys an interest in real property to a trustee in trust to secure the performance of an obligation the  
27 grantor or other person named in the deed owes to a beneficiary.

28 [(8)] (9) "Trustee" means a person, other than the beneficiary, to whom a trust deed conveys  
29 an interest in real property, or the person's successor in interest, or an employee of the beneficiary,  
30 if the employee is qualified to be a trustee under ORS 86.790.

**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 2.** ORS 86.790 is amended to read:

2        86.790. (1) The trustee of a trust deed under ORS 86.705 to 86.795 [*shall not be*] **is not** required  
 3 to comply with the provisions of ORS chapters 707 and 709 and [*shall*] **must** be:

4        (a) [*Any*] **A law practice or an** attorney who is an active member of the Oregon State Bar;

5        (b) A financial institution or trust company, as defined in ORS 706.008, that is authorized to do  
 6 business under the laws of Oregon or the United States;

7        (c) A title insurance company authorized to insure title to real property in this state[*, its*] **and**  
 8 **the** subsidiaries, affiliates, insurance producers or branches **of the title insurance company**;

9        (d) The United States or any agency [*thereof*] **of the United States**; or

10       (e) Escrow agents licensed under ORS 696.505 to 696.590.

11       (2) **A law practice that, or** an attorney who, is a trustee under subsection (1)(a) of this section  
 12 may represent the beneficiary in addition to performing the duties of trustee.

13       (3) At any time after [*the*] **a** trust deed is executed, the beneficiary may appoint in writing an-  
 14 other qualified trustee. If the appointment of the successor trustee is recorded in the mortgage re-  
 15 cords of the county or counties in which the trust deed is recorded, the successor trustee [*shall*  
 16 *be*] **is** vested with all the powers of the original trustee.

17       (4) A trustee or successor trustee is a necessary and proper party to any proceeding to deter-  
 18 mine the validity of **a trust deed**, or **to** enjoin any private or judicial proceeding to foreclose a trust  
 19 deed, but a trustee or successor trustee is [*neither*] **not** a necessary [*nor a*] **or** proper party to any  
 20 proceeding to determine title to the property subject to the trust deed, or to any proceeding to im-  
 21 pose, enforce or foreclose any other lien on the subject property.

22       (5) Nothing in ORS 86.705 to 86.795 imposes a duty on the trustee or successor trustee to notify  
 23 any person of any proceeding with respect to [*such*] **the** person, except a proceeding [*initiated by*]  
 24 **that** the trustee or successor trustee **initiates**.

25       (6) A trustee or the attorney for the trustee or any agent [*designated by*] the trustee or the at-  
 26 torney **designates** may announce and accept a bid from the beneficiary whether or not the benefi-  
 27 ciary is present at the sale.

28       (7) The trustee or successor trustee [*shall have*] **has** no fiduciary duty or fiduciary obligation  
 29 to the grantor or other persons [*having*] **that have** an interest in the property subject to the trust  
 30 deed. The trustee or successor trustee [*shall*] **may** not be relieved of the duty to reconvey the  
 31 property **that is** subject to the trust deed to the grantor upon **the beneficiary's** request for  
 32 reconveyance [*by the beneficiary*].

33       (8) **An attorney who is a shareholder, partner, member, proprietor or employee of a law**  
 34 **practice that is a trustee, as provided in subsection (1)(a) of this section, or an attorney who**  
 35 **is a shareholder, partner, member, proprietor or employee of a law practice in which an in-**  
 36 **dividual attorney who is the trustee also practices, may sign any document that is permitted**  
 37 **or required to be signed under ORS 86.705 to 86.795 if the attorney makes evident in the**  
 38 **document the attorney's full name, Oregon State Bar number and the relationship between**  
 39 **the attorney and the trustee.**

40

# House Bill 2568

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 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 that in amended notice of sale following release from stay on foreclosure proceedings, trustee must describe only defaults that existed on date stay was terminated if portion of defaults specified in original notice of sale was cured during stay or if additional defaults have occurred during stay.

## A BILL FOR AN ACT

1  
2 Relating to requirements for amended notice of sale following stay of foreclosure; creating new  
3 provisions; and amending ORS 86.755.

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

5 **SECTION 1.** ORS 86.755, as amended by section 9, chapter 112, Oregon Laws 2012, is amended  
6 to read:

7 86.755. (1)(a) A trustee shall hold a trustee's sale on the date and at the time and place desig-  
8 nated in the notice of sale given under ORS 86.740. The designated time of the trustee's sale must  
9 be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the  
10 designated place of the trustee's sale must be in the county or one of the counties in which the  
11 property is situated. Except as provided in paragraph (b) of this subsection, the trustee may sell the  
12 property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the  
13 highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding  
14 the trustee, may bid at the trustee's sale. An attorney for the trustee, or an agent that the trustee  
15 or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

16 (b) If the trustee sells property upon which a single residential unit that is subject to an af-  
17 fordable housing covenant is situated, the eligible covenant holder may purchase the property from  
18 the trustee at the trustee's sale for cash or cash equivalent in an amount that is the lesser of:

19 (A) The sum of the amounts payable under ORS 86.765 (1) and (2); or

20 (B) The highest bid received for the property other than a bid from the eligible covenant holder.

21 (c)(A) Except as provided in subparagraph (B) of this paragraph, if an eligible covenant holder  
22 purchases the property in accordance with paragraph (b) of this subsection, the sale forecloses and  
23 terminates all other interests in the property as provided in ORS 86.770 (1).

24 (B) If an interest in the property exists that is prior to the eligible covenant holder's interest,  
25 other than the interest set forth in the trust deed that was the subject of the foreclosure proceeding  
26 under ORS 86.735, notwithstanding the provisions of ORS 86.770 (1) the sale does not foreclose and  
27 terminate the prior interest and the eligible covenant holder's title to the property is subject to the  
28 prior interest.

29 (2)(a) The trustee or the attorney for the trustee, or an agent that the trustee or the attorney  
30 [*conducting the sale*] designates, may postpone the sale for one or more periods that total not more

**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 than 180 days from the original sale date, giving notice of each postponement by public proclamation  
 2 made at the time and place set for sale. The trustee, the attorney or an agent that the trustee or  
 3 the attorney designates may make the proclamation.

4 (b) If a person postpones the sale date as provided in paragraph (a) of this subsection, the  
 5 trustee, in the manner provided for [*service of*] the notice of sale under ORS 86.740 (1), shall  
 6 [*cause*] **provide** written notice of the new time, date and place for the sale to [*be served on*] the  
 7 grantor and [*on*] **to** any person to whom notice of the sale was given under ORS 86.745. The notice  
 8 must be given at least 15 days before the new sale date. The person may postpone the sale once,  
 9 for not more than two calendar days, without giving notice as provided in this paragraph. The per-  
 10 son may not postpone the sale for more than two calendar days or more than once without giving  
 11 notice as provided in this paragraph.

12 (3) The purchaser shall pay at the time of sale the price bid or the price determined in accord-  
 13 ance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee shall  
 14 execute and deliver the trustee’s deed to the purchaser.

15 (4) The trustee’s deed shall convey to the purchaser the interest in the property that the grantor  
 16 had, or had the power to convey, at the time the grantor executed the trust deed, together with any  
 17 interest the grantor or the grantor’s successors in interest acquire after the execution of the trust  
 18 deed.

19 (5)(a) If property purchased at the trustee’s sale includes one or more dwelling units that are  
 20 subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the  
 21 occupants of each unit within 30 days after the date of sale and before or concurrently with service  
 22 of a written termination notice authorized by subsection (6)(c)(B) of this section.

23 (b) The notice required by this subsection must:

24 (A) Explain that the dwelling unit has been sold at a foreclosure sale and that the purchaser  
 25 at that sale is the new owner.

26 (B) Include the date on which the foreclosure sale took place.

27 (C) Include the name, contact address and contact telephone number of the purchaser or the  
 28 purchaser’s representative.

29 (D) Provide information about the rights of bona fide residential tenants as provided in sub-  
 30 sections (6)(c) and (e) and (9)(a) of this section.

31 (E) Include contact information for the Oregon State Bar and a person or organization that  
 32 provides legal help to individuals at no charge to the individual.

33 (c) The notice must be served by one or more of the following methods:

34 (A) Personal delivery to the tenant.

35 (B) First class mail to the tenant at the dwelling unit.

36 (C) First class mail to the tenant at the dwelling unit and attachment of a second notice copy.  
 37 The second notice copy must be attached in a secure manner to the main entrance to the portion  
 38 of the premises in the possession of the tenant.

39 (D) If the **purchaser does not know the** names of the tenants [*are not known to the*  
 40 *purchaser*], the notice may be addressed to “occupants.”

41 (d) A notice that contains the information required under paragraph (b)(B) and (C) of this sub-  
 42 section meets the requirements of paragraph (b) of this subsection if the notice is in substantially  
 43 the following form:  
 44 \_\_\_\_\_  
 45

NOTICE TO RESIDENTIAL TENANTS OF  
CHANGE IN OWNERSHIP

The property in which you are living has gone through foreclosure and was sold to a new owner on \_\_\_\_\_ (date). The contact information for the new owner or the owner's representative is \_\_\_\_\_ (name, address, telephone number).

IF YOU ARE A BONA FIDE TENANT RENTING THIS PROPERTY AS A RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE FORECLOSURE SALE FOR:

- THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED TERM LEASE; OR
- AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE.

If the new owner wants to move in and use this property as a primary residence, the new owner can give you written notice and require you to move out after 90 days, even though you have a fixed term lease with more than 90 days left.

You must be provided with at least 90 days' written notice after the foreclosure sale before you can be required to move.

A bona fide tenant is a residential tenant who is not the borrower (property owner), or a child, spouse or parent of the borrower, and whose rental agreement:

- Is the result of an arm's-length transaction;
- Requires the payment of rent that is not substantially less than fair market rent for the property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
- Was entered into prior to the date of the foreclosure sale.

IMPORTANT:

YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S REPRESENTATIVE AT THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 90 DAYS LEFT. Written evidence of your rental agreement can be a copy of your lease or rental agreement, or other documentation of the existence of your rental agreement. Keep your original documents and a record of any information you give to the new owner.

YOUR TENANCY  
BETWEEN NOW  
AND THE MOVE-OUT DATE

The new owner may be willing to allow you to stay as a tenant instead of requiring you to move out after 90 days or at the end of your fixed term lease. You should contact the new owner if you would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement with you or does not notify you in writing within 30 days after the date of the foreclosure sale that you must move out, the new owner becomes your new landlord and must maintain the property. Otherwise:

- You do not owe rent;
- The new owner is not your landlord and is not responsible for maintaining the property; and
- You must move out by the date the new owner specifies in a notice to you.

1 The new owner may offer to pay your moving expenses and any other costs or amounts you and  
 2 the new owner agree on in exchange for your agreement to leave the premises in less than 90 days  
 3 or before your fixed term lease expires. You should speak with a lawyer to fully understand your  
 4 rights before making any decisions regarding your tenancy.

5 IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR  
 6 DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT  
 7 TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT  
 8 A LAWYER. If you believe you need legal assistance, contact the Oregon State Bar and ask for the  
 9 lawyer referral service. Contact information for the Oregon State Bar is included with this notice.  
 10 If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to  
 11 receive legal assistance for free. Information about whom to contact for free legal assistance is in-  
 12 cluded with this notice.

---

14  
 15 (6)(a) Except as provided in paragraph (b) or (c) of this subsection, the purchaser at the trustee's  
 16 sale is entitled to possession of the property on the 10th day after the sale. A person that remains  
 17 in possession after the 10th day under any interest, except an interest prior to the trust deed, or  
 18 an interest the grantor or a successor of the grantor created voluntarily, is a tenant at sufferance.  
 19 The purchaser may obtain possession of the property from a tenant at sufferance by following the  
 20 procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

21 (b) Except as provided in paragraph (c) of this subsection, at any time after the trustee's sale  
 22 the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable  
 23 judicial procedure to obtain possession of the property from a person that holds possession under  
 24 an interest that the grantor or a successor of the grantor created voluntarily if, not earlier than 30  
 25 days before the date first set for the sale, the person was served with not less than 30 days' written  
 26 notice of the requirement to surrender or deliver possession of the property.

27 (c) If the property purchased at the trustee's sale includes a dwelling unit that is subject to ORS  
 28 chapter 90 and an individual occupies the unit under a bona fide tenancy, the purchaser may obtain  
 29 possession by following the procedures set forth in ORS 105.105 to 105.168 and by using the com-  
 30 plaint form provided in ORS 105.124 or 105.126:

31 (A) Upon expiration of the fixed term of the tenancy, if the bona fide tenancy is a fixed term  
 32 tenancy as defined in ORS 90.100; or

33 (B) At least 90 days after service of a written termination notice if the bona fide tenancy is:

34 (i) A fixed term tenancy and the purchaser intends to occupy, as the purchaser's primary resi-  
 35 dence, the dwelling unit that is subject to the fixed term tenancy; or

36 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS  
 37 90.100.

38 (d) If a purchaser gives a 90-day written termination notice pursuant to paragraph (c) of this  
 39 subsection, the purchaser may include in the notice a request that a tenant with a fixed term  
 40 tenancy provide written evidence of the existence of the tenancy to the purchaser at an address  
 41 described in the notice. Written evidence includes a copy of the rental agreement or another docu-  
 42 ment that shows the existence of the fixed term tenancy. Failure of the tenant to provide the re-  
 43 quested written evidence before the purchaser files an action for possession based on a 90-day  
 44 notice:

45 (A) Does not prevent the tenant from asserting the existence of the fixed term tenancy as a

1 defense to the action.

2 (B) Prevents the tenant from recovering prevailing party attorney fees or costs and disburse-  
 3 ments pursuant to subsection (11)(b) of this section. The 90-day notice must describe the provisions  
 4 of this paragraph.

5 (e) A purchaser may not commence a proceeding under ORS 105.105 to 105.168 that is authorized  
 6 under this subsection before the later of:

7 (A) The 10th day after the trustee’s sale;

8 (B) The date specified in a written notice of the requirement to surrender or deliver possession  
 9 of the property if the notice is required by and is given to the person in accordance with paragraph  
 10 (b) of this subsection;

11 (C) The date specified in a written notice of the purchaser’s intent to terminate a tenancy if the  
 12 notice is required by and is given to the person in accordance with paragraph (c) of this subsection;  
 13 or

14 (D) The date on which the term of a fixed term tenancy ends, if the property is a dwelling unit  
 15 and the purchaser has not terminated the tenancy in accordance with paragraph (c) of this sub-  
 16 section.

17 (f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to 105.168 must attach  
 18 proof of service of a written termination notice required by paragraph (c) of this subsection to the  
 19 pleadings.

20 (g) In an action to obtain possession, violation of the procedures required by subsection (5) of  
 21 this section or paragraph (c) of this subsection is a defense for a bona fide tenant seeking to retain  
 22 possession.

23 (h) As used in this subsection, “bona fide tenancy” means tenancy of a dwelling unit that is  
 24 subject to ORS chapter 90 that results from an arm’s-length transaction that occurred before the  
 25 date of a foreclosure sale in which:

26 (A) The mortgagor or the child, spouse or parent of the mortgagor under the contract is not the  
 27 tenant; and

28 (B) The rent required is not substantially less than fair market rent for the dwelling unit, unless  
 29 the rent is reduced or subsidized due to a federal, state or local subsidy.

30 (7) A purchaser shall serve a notice under subsection (6) of this section by one or more of the  
 31 following methods:

32 (a) Personal delivery to the tenant.

33 (b) First class mail to the tenant at the dwelling unit.

34 (c) First class mail to the tenant at the dwelling unit and attachment of a second notice copy.  
 35 The second notice copy must be attached in a secure manner to the main entrance to the portion  
 36 of the premises in the possession of the tenant.

37 (8) If the notice under subsection (6) of this section is served by mail pursuant to subsection  
 38 (7)(b) of this section, the minimum period for compliance must be extended by three days and the  
 39 notice must include the extension in the period stated in the notice.

40 (9)(a) Notwithstanding the provisions of subsection (6)(c) of this section and except as provided  
 41 in paragraph (b) of this subsection, the purchaser is not a landlord subject to the provisions of ORS  
 42 chapter 90 unless the purchaser:

43 (A) Accepts rent from the individual who possesses the property under a tenancy described in  
 44 subsection (6)(c) of this section;

45 (B) Enters into a new rental agreement with the individual who possesses the property under

1 a tenancy described in subsection (6)(c) of this section; or

2 (C) Fails to terminate the tenancy as provided in subsection (6)(c) of this section within 30 days  
3 after the date of the sale.

4 (b) The purchaser may act as a landlord for purposes of terminating a tenancy in accordance  
5 with the provisions of ORS 90.396.

6 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and  
7 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not  
8 impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to  
9 this paragraph, “rent” refers to the amount paid by the tenant to the landlord for the right to oc-  
10 cupy the unit before the foreclosure.

11 (10)(a) Except as provided in paragraph (b) of this subsection, the purchaser is not liable to the  
12 individual who possesses the property under a tenancy described in subsection (6)(c) of this section  
13 for:

14 (A) Damage to the property or diminution in rental value; or

15 (B) Returning a security deposit.

16 (b) A purchaser that is a landlord under the provisions of subsection (9)(a) of this section is li-  
17 able to the individual who possesses the property under a tenancy described in subsection (6)(c) of  
18 this section for:

19 (A) Damage to the property or diminution in rental value that occurs after the date of the  
20 trustee’s sale; or

21 (B) Returning a security deposit the individual pays after the date of the trustee’s sale.

22 (11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement  
23 to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or  
24 (9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the pre-  
25 vailing party together with costs and disbursements.

26 (b) If a tenant asserts a successful defense to an action for possession pursuant to subsection  
27 (6)(c), (d), (f) or (g) of this section, the tenant is not entitled to prevailing party fees, attorney fees  
28 or costs and disbursements if the purchaser:

29 (A) Did not know, and did not have reasonable cause to know, of the existence of a fixed term  
30 tenancy when commencing the action for possession; and

31 (B) Promptly dismissed the action upon becoming aware of the existence of a fixed term tenancy.

32 (c) As used in this subsection, “prevailing party” means the party in whose favor final judgment  
33 is rendered.

34 (12)(a) Notwithstanding subsection (2)(a) of this section, except when a beneficiary has partic-  
35 ipated in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by pro-  
36 ceedings in bankruptcy or for any other lawful reason shall, after release from the stay, continue  
37 as if uninterrupted, if within 30 days after release the trustee sends amended notice of sale by reg-  
38 istered or certified mail to the last-known address of the persons listed in ORS 86.740 and 86.750 (1).

39 (b) In addition to the notice required under paragraph (a) of this subsection, the trustee shall  
40 send amended notice of sale:

41 (A) By registered or certified mail to:

42 (i) The address provided by each person who was present at the time and place set for the sale  
43 that was stayed; and

44 (ii) The address provided by each member of the Oregon State Bar who by registered or certified  
45 mail requests the amended notice of sale and includes with the request the notice of default or an

1 identification number for the trustee's sale that would assist the trustee in identifying the property  
 2 subject to the trustee's sale and a self-addressed, stamped envelope measuring at least 8.5 by 11  
 3 inches in size; or

4 (B) By posting a true copy or a link to a true copy of the amended notice of sale on the trustee's  
 5 Internet website.

6 [(13)] (c) The amended notice of sale must:

7 [(a)] (A) Be given at least [20] 15 days before the amended date of sale;

8 [(b)] (B) Set an amended date of sale that may be the same as the original sale date, or date to  
 9 which the sale was postponed, provided the requirements of this [subsection] **paragraph** and ORS  
 10 86.740 and 86.750 are satisfied;

11 [(c)] (C) Specify the time and place for sale;

12 [(d)] (D) Conform to the requirements of ORS 86.745; and

13 [(e)] (E) State that the original sale proceedings were stayed and the date the stay terminated.

14 [(14)] (d) If the publication of the notice of sale was not completed before the date the foreclo-  
 15 sure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other  
 16 lawful reason, after release from the stay, in addition to complying with the provisions of [sub-  
 17 sections (12) and (13) of this section] **paragraphs (b) and (c) of this subsection**, the trustee shall  
 18 complete the publication by publishing an amended notice of sale that states that the notice has  
 19 been amended following release from the stay and that contains the amended date of sale. The  
 20 amended notice must be published in a newspaper of general circulation in each of the counties in  
 21 which the property is situated once a week for four successive weeks, except that the required  
 22 number of publications must be reduced by the number of publications that were completed before  
 23 the effective date of the stay. The last publication must be made more than 20 days before the date  
 24 the trustee conducts the sale.

25 **(e) If a portion of the defaults specified in the original notice of default or in the original**  
 26 **notice of sale was cured during the time the foreclosure proceedings were stayed, or if ad-**  
 27 **ditional defaults have occurred during that time, the trustee shall describe in the amended**  
 28 **notice of sale only those defaults that existed on the date on which the stay was terminated.**

29 **(f) After a release from a stay of proceedings, the trustee or the attorney for the trustee,**  
 30 **or an agent that the trustee or the attorney designates, may postpone a sale for one or more**  
 31 **periods that total not more than the greater of 60 days or the portion of the 180-day period**  
 32 **allowed for postponement under subsection (2)(a) of this section that remained on the day**  
 33 **before the stay began. A postponement under this paragraph must comply with the proce-**  
 34 **dural and notice requirements specified in subsection (2) of this section.**

35 **SECTION 2.** ORS 86.755, as amended by section 7, chapter 510, Oregon Laws 2011, and section  
 36 10, chapter 112, Oregon Laws 2012, is amended to read:

37 86.755. (1)(a) A trustee shall hold a trustee's sale on the date and at the time and place desig-  
 38 nated in the notice of sale given under ORS 86.740. The designated time of the trustee's sale must  
 39 be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the  
 40 designated place of the trustee's sale must be in the county or one of the counties in which the  
 41 property is situated. Except as provided in paragraph (b) of this subsection, the trustee may sell the  
 42 property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the  
 43 highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding  
 44 the trustee, may bid at the trustee's sale. An attorney for the trustee, or an agent that the trustee  
 45 or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

1 (b) If the trustee sells property upon which a single residential unit that is subject to an af-  
 2 fordable housing covenant is situated, the eligible covenant holder may purchase the property from  
 3 the trustee at the trustee's sale for cash or cash equivalent in an amount that is the lesser of:

4 (A) The sum of the amounts payable under ORS 86.765 (1) and (2); or

5 (B) The highest bid received for the property other than a bid from the eligible covenant holder.

6 (c)(A) Except as provided in subparagraph (B) of this paragraph, if an eligible covenant holder  
 7 purchases the property in accordance with paragraph (b) of this subsection, the sale forecloses and  
 8 terminates all other interests in the property as provided in ORS 86.770 (1).

9 (B) If an interest in the property exists that is prior to the eligible covenant holder's interest,  
 10 other than the interest set forth in the trust deed that was the subject of the foreclosure proceeding  
 11 under ORS 86.735, notwithstanding the provisions of ORS 86.770 (1) the sale does not foreclose and  
 12 terminate the prior interest and the eligible covenant holder's title to the property is subject to the  
 13 prior interest.

14 (2)(a) The trustee or the attorney for the trustee, or an agent that the trustee or the attorney  
 15 [conducting the sale] designates, may postpone the sale for one or more periods that total not more  
 16 than 180 days from the original sale date, giving notice of each postponement by public proclamation  
 17 made at the time and place set for sale. The trustee, the attorney or an agent that the trustee or  
 18 the attorney designates may make the proclamation.

19 (b) If a person postpones the sale date as provided in paragraph (a) of this subsection, the  
 20 trustee, in the manner provided for [service of] the notice of sale under ORS 86.740 (1), shall  
 21 [cause] **provide** written notice of the new time, date and place for the sale to [be served on] the  
 22 grantor and [on] **to** any person to whom notice of the sale was given under ORS 86.745. The notice  
 23 must be given at least 15 days before the new sale date. The person may postpone the sale once,  
 24 for not more than two calendar days, without giving notice as provided in this paragraph. The per-  
 25 son may not postpone the sale for more than two calendar days or more than once without giving  
 26 notice as provided in this paragraph.

27 (3) The purchaser shall pay at the time of sale the price bid or the price determined in accord-  
 28 ance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee shall  
 29 execute and deliver the trustee's deed to the purchaser.

30 (4) The trustee's deed shall convey to the purchaser the interest in the property that the grantor  
 31 had, or had the power to convey, at the time the grantor executed the trust deed, together with any  
 32 interest the grantor or the grantor's successors in interest acquire after the execution of the trust  
 33 deed.

34 (5)(a) If property purchased at the trustee's sale includes one or more dwelling units that are  
 35 subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the  
 36 occupants of each unit within 30 days after the date of sale and before or concurrently with service  
 37 of a written termination notice authorized by subsection (6)(c)(B) of this section.

38 (b) The notice required by this subsection must:

39 (A) Explain that the dwelling unit has been sold at a foreclosure sale and that the purchaser  
 40 at that sale is the new owner.

41 (B) Include the date on which the foreclosure sale took place.

42 (C) Include the name, contact address and contact telephone number of the purchaser or the  
 43 purchaser's representative.

44 (D) Provide information about the rights of bona fide residential tenants as provided in sub-  
 45 sections (6)(c) and (e) and (9)(a) of this section.

1 (E) Include contact information for the Oregon State Bar and a person or organization that  
2 provides legal help to individuals at no charge to the individual.

3 (c) The notice must be served by one or more of the following methods:

4 (A) Personal delivery to the tenant.

5 (B) First class mail to the tenant at the dwelling unit.

6 (C) First class mail to the tenant at the dwelling unit and attachment of a second notice copy.  
7 The second notice copy must be attached in a secure manner to the main entrance to the portion  
8 of the premises in the possession of the tenant.

9 (D) If the **purchaser does not know the** names of the tenants [*are not known to the*  
10 *purchaser*], the notice may be addressed to “occupants.”

11 (d) A notice that contains the information required under paragraph (b)(B) and (C) of this sub-  
12 section meets the requirements of paragraph (b) of this subsection if the notice is in substantially  
13 the following form:

14 \_\_\_\_\_  
15  
16 NOTICE TO RESIDENTIAL TENANTS OF  
17 CHANGE IN OWNERSHIP

18 The property in which you are living has gone through foreclosure and was sold to a new owner  
19 on \_\_\_\_\_ (date). The contact information for the new owner or the owner’s representative is  
20 \_\_\_\_\_ (name, address, telephone number).

21  
22 IF YOU ARE A BONA FIDE TENANT RENTING THIS PROPERTY AS A RESIDENTIAL  
23 DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE  
24 FORECLOSURE SALE FOR:

- 25 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF  
26 YOU HAVE A FIXED TERM LEASE; OR
- 27 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION  
28 NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO-WEEK RENTAL AGREEMENT.

29 If the new owner wants to move in and use this property as a primary residence, the new owner  
30 can give you written notice and require you to move out after 30 days, even though you have a fixed  
31 term lease with more than 30 days left.

32 You must be provided with at least 30 days’ written notice after the foreclosure sale before you  
33 can be required to move.

34 A bona fide tenant is a residential tenant who is not the borrower (property owner), or a child,  
35 spouse or parent of the borrower, and whose rental agreement:

- 36 • Is the result of an arm’s-length transaction;
- 37 • Requires the payment of rent that is not substantially less than fair market rent for the  
38 property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
- 39 • Was entered into prior to the date of the foreclosure sale.

40 IMPORTANT:

41 YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER’S REPRESENTATIVE AT  
42 THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER  
43 KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE  
44 OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED  
45 TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 30 DAYS LEFT. Written evidence

1 of your rental agreement can be a copy of your lease or rental agreement, or other documentation  
 2 of the existence of your rental agreement. Keep your original documents and a record of any infor-  
 3 mation you give to the new owner.

4 YOUR TENANCY  
 5 BETWEEN NOW  
 6 AND THE MOVE-OUT DATE

7 The new owner may be willing to allow you to stay as a tenant instead of requiring you to move  
 8 out after 30 or 60 days. You should contact the new owner if you would like to stay. If the new  
 9 owner accepts rent from you, signs a new residential rental agreement with you or does not notify  
 10 you in writing within 30 days after the date of the foreclosure sale that you must move out, the new  
 11 owner becomes your new landlord and must maintain the property. Otherwise:

- 12 • You do not owe rent;
- 13 • The new owner is not your landlord and is not responsible for maintaining the property; and
- 14 • You must move out by the date the new owner specifies in a notice to you.

15 The new owner may offer to pay your moving expenses and any other costs or amounts you and  
 16 the new owner agree on in exchange for your agreement to leave the premises in less than 30 or  
 17 60 days. You should speak with a lawyer to fully understand your rights before making any decisions  
 18 regarding your tenancy.

19 IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR  
 20 DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT  
 21 TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT  
 22 A LAWYER. If you believe you need legal assistance, contact the Oregon State Bar and ask for the  
 23 lawyer referral service. Contact information for the Oregon State Bar is included with this notice.  
 24 If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to  
 25 receive legal assistance for free. Information about whom to contact for free legal assistance is in-  
 26 cluded with this notice.

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27  
 28  
 29 (6)(a) Except as provided in paragraph (b) or (c) of this subsection, the purchaser at the trustee's  
 30 sale is entitled to possession of the property on the 10th day after the sale. A person that remains  
 31 in possession after the 10th day under any interest, except an interest prior to the trust deed, or  
 32 an interest the grantor or a successor of the grantor created voluntarily, is a tenant at sufferance.  
 33 The purchaser may obtain possession of the property from a tenant at sufferance by following the  
 34 procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

35 (b) Except as provided in paragraph (c) of this subsection, at any time after the trustee's sale  
 36 the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable  
 37 judicial procedure to obtain possession of the property from a person that holds possession under  
 38 an interest that the grantor or a successor of the grantor created voluntarily if, not earlier than 30  
 39 days before the date first set for the sale, the person was served with not less than 30 days' written  
 40 notice of the requirement to surrender or deliver possession of the property.

41 (c) If the property purchased at the trustee's sale includes a dwelling unit that is subject to ORS  
 42 chapter 90 and an individual occupies the unit under a bona fide tenancy, the purchaser may obtain  
 43 possession by following the procedures set forth in ORS 105.105 to 105.168 and by using the com-  
 44 plaint form provided in ORS 105.124 or 105.126:

- 45 (A) At least 60 days after service of a written termination notice, if the bona fide tenancy is a

1 fixed term tenancy as defined in ORS 90.100; or

2 (B) At least 30 days after service of a written termination notice if the bona fide tenancy is:

3 (i) A fixed term tenancy and the purchaser intends to occupy, as the purchaser's primary resi-  
4 dence, the dwelling unit that is subject to the fixed term tenancy; or

5 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS  
6 90.100.

7 (d) If a purchaser gives a 30-day written termination notice pursuant to paragraph (c) of this  
8 subsection, the purchaser may include in the notice a request that a tenant with a fixed term  
9 tenancy provide written evidence of the existence of the tenancy to the purchaser at an address  
10 described in the notice. Written evidence includes a copy of the rental agreement or another docu-  
11 ment that shows the existence of the fixed term tenancy. Failure of the tenant to provide the re-  
12 quested written evidence before the purchaser files an action for possession based on a 30-day  
13 notice:

14 (A) Does not prevent the tenant from asserting the existence of the fixed term tenancy as a  
15 defense to the action.

16 (B) Prevents the tenant from recovering prevailing party attorney fees or costs and disburse-  
17 ments pursuant to subsection (11)(b) of this section. The 30-day notice must describe the provisions  
18 of this paragraph.

19 (e) A purchaser may not commence a proceeding under ORS 105.105 to 105.168 that is authorized  
20 under this subsection before the later of:

21 (A) The 10th day after the trustee's sale;

22 (B) The date specified in a written notice of the requirement to surrender or deliver possession  
23 of the property if the notice is required by and is given to the person in accordance with paragraph  
24 (b) of this subsection;

25 (C) The date specified in a written notice of the purchaser's intent to terminate a tenancy if the  
26 notice is required by and is given to the person in accordance with paragraph (c) of this subsection;  
27 or

28 (D) The date on which the term of a fixed term tenancy ends, if the property is a dwelling unit  
29 and the purchaser has not terminated the tenancy in accordance with paragraph (c) of this sub-  
30 section.

31 (f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to 105.168 must attach  
32 proof of service of a written termination notice required by paragraph (c) of this subsection to the  
33 pleadings.

34 (g) In an action to obtain possession, violation of the procedures required by subsection (5) of  
35 this section or paragraph (c) of this subsection is a defense for a bona fide tenant seeking to retain  
36 possession.

37 (h) As used in this subsection, "bona fide tenancy" means tenancy of a dwelling unit that is  
38 subject to ORS chapter 90 that results from an arm's-length transaction that occurred before the  
39 date of a foreclosure sale in which:

40 (A) The mortgagor or the child, spouse or parent of the mortgagor under the contract is not the  
41 tenant; and

42 (B) The rent required is not substantially less than fair market rent for the dwelling unit, unless  
43 the rent is reduced or subsidized due to a federal, state or local subsidy.

44 (7) A purchaser shall serve a notice under subsection (6) of this section by one or more of the  
45 following methods:

1 (a) Personal delivery to the tenant.

2 (b) First class mail to the tenant at the dwelling unit.

3 (c) First class mail to the tenant at the dwelling unit and attachment of a second notice copy.  
4 The second notice copy must be attached in a secure manner to the main entrance to the portion  
5 of the premises in the possession of the tenant.

6 (8) If the notice under subsection (6) of this section is served by mail pursuant to subsection  
7 (7)(b) of this section, the minimum period for compliance must be extended by three days and the  
8 notice must include the extension in the period stated in the notice.

9 (9)(a) Notwithstanding the provisions of subsection (6)(c) of this section and except as provided  
10 in paragraph (b) of this subsection, the purchaser is not a landlord subject to the provisions of ORS  
11 chapter 90 unless the purchaser:

12 (A) Accepts rent from the individual who possesses the property under a tenancy described in  
13 subsection (6)(c) of this section;

14 (B) Enters into a new rental agreement with the individual who possesses the property under  
15 a tenancy described in subsection (6)(c) of this section; or

16 (C) Fails to terminate the tenancy as provided in subsection (6)(c) of this section within 30 days  
17 after the date of the sale.

18 (b) The purchaser may act as a landlord for purposes of terminating a tenancy in accordance  
19 with the provisions of ORS 90.396.

20 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and  
21 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not  
22 impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to  
23 this paragraph, "rent" refers to the amount paid by the tenant to the landlord for the right to oc-  
24 cupy the unit before the foreclosure.

25 (10)(a) Except as provided in paragraph (b) of this subsection, the purchaser is not liable to the  
26 individual who possesses the property under a tenancy described in subsection (6)(c) of this section  
27 for:

28 (A) Damage to the property or diminution in rental value; or

29 (B) Returning a security deposit.

30 (b) A purchaser that is a landlord under the provisions of subsection (9)(a) of this section is li-  
31 able to the individual who possesses the property under a tenancy described in subsection (6)(c) of  
32 this section for:

33 (A) Damage to the property or diminution in rental value that occurs after the date of the  
34 trustee's sale; or

35 (B) Returning a security deposit the individual pays after the date of the trustee's sale.

36 (11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement  
37 to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or  
38 (9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the pre-  
39 vailing party together with costs and disbursements.

40 (b) If a tenant asserts a successful defense to an action for possession pursuant to subsection  
41 (6)(c), (d), (f) or (g) of this section, the tenant is not entitled to prevailing party fees, attorney fees  
42 or costs and disbursements if the purchaser:

43 (A) Did not know, and did not have reasonable cause to know, of the existence of a fixed term  
44 tenancy when commencing the action for possession; and

45 (B) Promptly dismissed the action upon becoming aware of the existence of a fixed term tenancy.

1 (c) As used in this subsection, “prevailing party” means the party in whose favor final judgment  
 2 is rendered.

3 (12)(a) Notwithstanding subsection (2)(a) of this section, except when a beneficiary has partic-  
 4 ipated in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by pro-  
 5 ceedings in bankruptcy or for any other lawful reason shall, after release from the stay, continue  
 6 as if uninterrupted, if within 30 days after release the trustee sends amended notice of sale by reg-  
 7 istered or certified mail to the last-known address of the persons listed in ORS 86.740 and 86.750 (1).

8 (b) In addition to the notice required under paragraph (a) of this subsection, the trustee shall  
 9 send amended notice of sale:

10 (A) By registered or certified mail to:

11 (i) The address provided by each person who was present at the time and place set for the sale  
 12 that was stayed; and

13 (ii) The address provided by each member of the Oregon State Bar who by registered or certified  
 14 mail requests the amended notice of sale and includes with the request the notice of default or an  
 15 identification number for the trustee’s sale that would assist the trustee in identifying the property  
 16 subject to the trustee’s sale and a self-addressed, stamped envelope measuring at least 8.5 by 11  
 17 inches in size; or

18 (B) By posting a true copy or a link to a true copy of the amended notice of sale on the trustee’s  
 19 Internet website.

20 [(13)] (c) The amended notice of sale must:

21 [(a)] (A) Be given at least [20] **15** days before the amended date of sale;

22 [(b)] (B) Set an amended date of sale that may be the same as the original sale date, or date to  
 23 which the sale was postponed, provided the requirements of this [subsection] **paragraph** and ORS  
 24 86.740 and 86.750 are satisfied;

25 [(c)] (C) Specify the time and place for sale;

26 [(d)] (D) Conform to the requirements of ORS 86.745; and

27 [(e)] (E) State that the original sale proceedings were stayed and the date the stay terminated.

28 [(14)] (d) If the publication of the notice of sale was not completed before the date the foreclo-  
 29 sure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other  
 30 lawful reason, after release from the stay, in addition to complying with the provisions of [sub-  
 31 sections (12) and (13) of this section] **paragraphs (b) and (c) of this subsection**, the trustee shall  
 32 complete the publication by publishing an amended notice of sale that states that the notice has  
 33 been amended following release from the stay and that contains the amended date of sale. The  
 34 amended notice must be published in a newspaper of general circulation in each of the counties in  
 35 which the property is situated once a week for four successive weeks, except that the required  
 36 number of publications must be reduced by the number of publications that were completed before  
 37 the effective date of the stay. The last publication must be made more than 20 days before the date  
 38 the trustee conducts the sale.

39 (e) **If a portion of the defaults specified in the original notice of default or in the original**  
 40 **notice of sale was cured during the time the foreclosure proceedings were stayed, or if ad-**  
 41 **ditional defaults have occurred during that time, the trustee shall describe in the amended**  
 42 **notice of sale only those defaults that existed on the date on which the stay was terminated.**

43 (f) **After a release from a stay of proceedings, the trustee or the attorney for the trustee,**  
 44 **or an agent that the trustee or the attorney designates, may postpone a sale for one or more**  
 45 **periods that total not more than the greater of 60 days or the portion of the 180-day period**

1 allowed for postponement under subsection (2)(a) of this section that remained on the day  
2 before the stay began. A postponement under this paragraph must comply with the proce-  
3 dural and notice requirements specified in subsection (2) of this section.

4 SECTION 3. The amendments to ORS 86.755 by sections 1 and 2 of this 2013 Act apply to  
5 amended notices of sale and to notices of postponed trustee's sales that are given on or after  
6 the effective date of this 2013 Act.

7

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1 members suspended [*from membership for nonpayment of fees or contributions shall be certified by the*  
 2 *executive director*] **under this section** to the State Court Administrator and to each of the judges  
 3 of the Court of Appeals, circuit and tax courts of the state.

4 (2) An active member delinquent in the payment of [*such*] fees or contributions [*shall not be*] **is**  
 5 **not** entitled to vote.

6 (3) A member suspended for delinquency [*in payment of such fees or contributions shall*] **under**  
 7 **this section may** be reinstated only on compliance with the rules of the Supreme Court and the  
 8 rules of procedure and payment of all required fees or contributions.

9 **SECTION 3.** ORS 9.675 is amended to read:

10 9.675. (1) An active member of the Oregon State Bar shall certify annually to the bar whether  
 11 the member maintains any lawyer trust accounts in Oregon. If a member maintains one or more  
 12 lawyer trust accounts, the member must disclose the financial institution in which each account is  
 13 held and the account number for each account. The executive director of the Oregon State Bar shall  
 14 prescribe a form and due date for the certification and disclosures required by this section.

15 (2) If a member does not file the certificate and disclosures required by this section [*by*] **within**  
 16 **30 days after** the due date prescribed under subsection (1) of this section, the executive director  
 17 shall send written notice of the default to the member **at the member's electronic mail address**  
 18 **on file with the bar on the date of the notice. The executive director shall send the notice**  
 19 **by mail to any member who is not required to have an electronic mail address on file with**  
 20 **the bar under the rules of procedure.** [*The notice shall be sent by registered or certified mail to*  
 21 *the last-known post-office address of the member.*] If a member does not file the certificate and dis-  
 22 closures required by this section within 60 days after the date **of** the notice [*is mailed*], the person's  
 23 membership in the bar is automatically suspended. The executive director shall provide the names  
 24 of all persons suspended under this section to the judges of the circuit courts, the Court of Appeals  
 25 and the Oregon Tax Court.

26 (3) A person suspended under this section may be reinstated to membership in the bar only if  
 27 the person pays all required fees and contributions and complies with all rules of procedure and  
 28 rules of the Supreme Court relating to reinstatement.

29 **SECTION 4.** **The amendments to ORS 9.735 by section 1 of this 2013 Act apply to judg-**  
 30 **ments awarding compensation and expenses to an attorney who acts as custodian that are**  
 31 **entered on or after the effective date of this 2013 Act.**

32 **SECTION 5.** **The amendments to ORS 9.200 and 9.675 by sections 2 and 3 of this 2013 Act**  
 33 **apply to notices sent by the executive director of the Oregon State Bar on or after the ef-**  
 34 **fective date of this 2013 Act.**

35 **SECTION 6.** **This 2013 Act being necessary for the immediate preservation of the public**  
 36 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
 37 **on its passage.**

38 \_\_\_\_\_

# House Bill 2556

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

## 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 that rate of interest on judgments that exceed \$1 million is lesser of five percent per annum or three percentage points more than discount rate in effect at Federal Reserve Bank in Federal Reserve district that includes Oregon.

## A BILL FOR AN ACT

1  
2 Relating to a legal rate of interest; creating new provisions; and amending ORS 82.010.

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

4 **SECTION 1.** ORS 82.010 is amended to read:

5 82.010. (1) *[The rate of interest for the following transactions,]* If *[the]* parties **to a transaction**  
6 have not otherwise agreed to a rate of interest, *[is]* **a rate of** nine percent per annum **applies to**  
7 and is payable on:

8 (a) All *[moneys after they become due;]* **money after the money becomes due**, but open ac-  
9 counts bear interest from the date of the last item *[thereof]* **listed in the open account**.

10 (b) Money *[received to the use of another and retained]* **that a person receives for the person's**  
11 **own use and retains** beyond a reasonable time without the owner's express or implied consent.

12 (c) Money *[due or to]* **that is or will** become due *[where there is]* **under** a contract to pay in-  
13 terest *[and no rate specified]* **that does not specify a rate**.

14 (2) Except as provided in this subsection, the rate of interest on judgments for the payment of  
15 money is nine percent per annum. The following apply as described:

16 (a) Interest on a judgment under this subsection accrues from the date *[of the entry of]* **on which**  
17 the judgment **is entered**, unless the judgment specifies another date.

18 (b) Interest on a judgment under this subsection is simple interest, unless *[otherwise provided*  
19 *by]* **a contract provides otherwise**.

20 (c) Interest *[accruing]* **that accrues** from the date *[of the entry of]* **on which** a judgment *[shall*  
21 *also accrue]* **is entered also accrues** on interest that accrued before the date *[of entry of a]* **on**  
22 **which the judgment is entered**.

23 (d) Interest under this subsection *[shall also accrue]* **also accrues** on attorney fees and costs  
24 entered as part of the judgment.

25 (e) A judgment on a contract bearing more than nine percent interest shall bear interest at the  
26 same rate provided in the contract as of the date *[of entry of]* **on which** the judgment **is entered**.

27 (f) The rate of interest on a judgment rendered in favor of a plaintiff in a civil action to recover  
28 damages for injuries resulting from the professional negligence of a person *[licensed by]* the Oregon  
29 Medical Board **licenses** under ORS chapter 677 or the Oregon State Board of Nursing **licenses**  
30 under ORS 678.010 to 678.410 is the lesser of five percent per annum or three *[percent in excess of]*

**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 **percentage points more than** the discount rate in effect at the Federal Reserve Bank in the Fed-  
 2 eral Reserve district where the injuries occurred.

3 **(g) Unless the judgment is otherwise subject to this section, the rate of interest on a**  
 4 **judgment of more than \$1 million rendered in favor of a plaintiff in a civil action is the lesser**  
 5 **of five percent per annum or three percentage points more than the discount rate in effect**  
 6 **at the Federal Reserve Bank in the Federal Reserve district that includes Oregon.**

7 (3) Except as provided in ORS 82.025, *[no]* a person *[shall]* **may not:**

8 (a) Make a business or agricultural loan of \$50,000 or less at an annual rate of interest *[ex-*  
 9 *ceeding]* **that exceeds** the greater of 12 percent, or five *[percent in excess of]* **percentage points**  
 10 **more than** the discount rate, including any surcharge on the discount rate, on 90-day commercial  
 11 paper in effect at the Federal Reserve Bank in the Federal Reserve district where the person  
 12 *[making]* **that makes** the loan is located, on the date the **person makes the** loan or the initial  
 13 advance of funds under the loan *[is made]*; or

14 (b) Make a loan of \$50,000 or less, except a loan made under paragraph (a) of this subsection,  
 15 at an annual rate of interest *[exceeding]* **that exceeds** the greater of 12 percent, or five *[percent in*  
 16 *excess of]* **percentage points more than** the discount rate on 90-day commercial paper in effect at  
 17 the Federal Reserve Bank in the Federal Reserve district where the person *[making]* **that makes**  
 18 the loan is located, on the date the **person makes the** loan or the initial advance of funds under  
 19 the loan *[is made]*.

20 (4) *[Any person who]* **A person that** violates subsection (3) of this section *[shall forfeit]* **forfeits**  
 21 the right to collect or receive *[any]* interest upon *[any]* a loan for which **the person charges,**  
 22 **contracts for or receives** a greater rate of interest or consideration than is permitted by sub-  
 23 section (3) of this section *[has been charged, contracted for or received]*. The borrower upon *[such]*  
 24 **the** loan *[shall be]* **is** required to repay only the principal amount borrowed.

25 **SECTION 2. The amendments to ORS 82.010 by section 1 of this 2013 Act apply to judg-**  
 26 **ments rendered on or after the effective date of this 2013 Act.**

27

# House Bill 2528

Sponsored by Representative HOLVEY (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 **as introduced**.

Removes cap on amount in real estate loan agreement that is subject to requirement to pay interest to borrower on funds that lender collects for lender's security protection provision.

## A BILL FOR AN ACT

1  
2 Relating to paying interest on amounts collected in lender's security protection provision; amending  
3 ORS 86.205.

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

5 **SECTION 1.** ORS 86.205 is amended to read:

6 86.205. As used in ORS 86.205 to 86.275:

7 (1) "Borrower" means any person who becomes obligated on a real estate loan agreement, either  
8 directly or indirectly, and includes, but is not limited to, mortgagors, grantors under trust deeds,  
9 vendees under conditional land sales contracts, and persons who purchase real property [*securing*]  
10 **that secures** a real estate loan agreement, whether the persons assume the loan or purchase the  
11 property subject to the loan.

12 (2) "Direct reduction provision" or "capitalization provision" means any provision [*which*] **that**  
13 is part of a real estate loan agreement, whether incorporated into the agreement or as part of a  
14 separately executed document, [*whereby*] **under the terms of which** the borrower makes periodic  
15 prepayment of property taxes, insurance premiums and similar charges to the lender or the designee  
16 of the lender, who applies [*such*] **the** prepayments first to accrued interest and then to the principal  
17 amount of the loan, and upon [*payment of such*] **paying the** charges, adds the amount of [*such*] **the**  
18 payment to the principal amount of the loan.

19 (3) "Escrow account" means any account [*which*] **that** is a part of a real estate loan agreement,  
20 whether incorporated into the agreement or as part of a separately executed document, [*whereby*]  
21 **into which** the borrower makes periodic prepayment to the lender or the designee of the lender of  
22 taxes, insurance premiums, and similar charges, and **out of which** the lender or the designee of the  
23 lender pays the charges [*out of the account*] at the due dates.

24 (4) "Lender" means any person who makes, extends, or holds a real estate loan agreement and  
25 includes, but is not limited to, mortgagees, beneficiaries under trust deeds, and vendors under con-  
26 ditional land sales contracts.

27 (5) "Lender's security protection provision" means any provision [*which*] **that** is a part of a real  
28 estate loan agreement, whether incorporated into the agreement or as part of a separately executed  
29 document, [*whereby*] **under the terms of which** the borrower prepays, pledges or otherwise com-  
30 mits cash or other assets [*owned by*] the borrower **owns** in advance of due dates for payments of  
31 property taxes, insurance premiums and similar charges relating to the property securing the loan

**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 in order to *[assure]* **ensure** timely payment of the charges and protect the lender’s security interest  
 2 in the property, and includes, but is not limited to, escrow accounts, direct reduction provisions,  
 3 capitalization provisions, and pledges of savings accounts.

4 (6) “Person” means *[individuals, corporations, associations and partnerships,]* **an individual, a**  
 5 **corporation, an association or a partnership** and includes, but is not limited to, **a** financial *[in-*  
 6 *stitutions]* **institution** as defined in ORS 706.008, **an** investment *[companies]* **company, an** insurance  
 7 *[companies]* **company, a** pension *[funds]* **fund, [and] or a** mortgage *[companies]* **company.**

8 (7) “Real estate loan agreement” or “real estate loan” means any agreement *[providing]* **that**  
 9 **provides** for a loan on residential property, including multifamily **property, [occupied by] that** the  
 10 borrower **occupies** *[in the amount of \$100,000 or less,]* **and that is** secured in whole or in part by  
 11 real property, or any interest *[therein]* **in real property, that is** located in this state, and includes,  
 12 but is not limited to, *[mortgages, trust deeds and conditional land sales contracts]* **a mortgage, a**  
 13 **trust deed or a conditional land sale contract.**

14

# House Bill 2527

Sponsored by Representative HOLVEY (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 **as introduced**.

Modifies definition of "consideration" for purposes of conveyance of fee title. Requires disclosure of monetary value and description of other property or value offered as concession by seller.

## A BILL FOR AN ACT

1  
2 Relating to consideration for conveyance of real property; creating new provisions; and amending  
3 ORS 93.030.

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

5 **SECTION 1.** ORS 93.030 is amended to read:

6 93.030. (1) As used in this section, "consideration" includes the amount of cash *[and]* **plus** the  
7 amount of any lien, mortgage, contract, indebtedness or other encumbrance existing against the  
8 property to which the property remains subject or which the purchaser agrees to pay or assume,  
9 **minus the amount or value of any concessions made by the seller.**

10 *[(2) All instruments conveying or contracting to convey fee title to any real estate, and all memo-*  
11 *randa of such instruments, shall state on the face of the instruments the true and actual consideration*  
12 *paid for the transfer, stated in terms of dollars. However, if the actual consideration consists of or*  
13 *includes other property or other value given or promised, neither the monetary value nor a description*  
14 *of the other property or value need be stated so long as it is noted on the face of the instrument that*  
15 *other property or value was either part or the whole consideration.]*

16 *[(3) The statement of consideration as required by subsection (2) of this section shall be made by*  
17 *a grantor or a grantee. Failure to make such statement does not invalidate the conveyance.]*

18 *[(4) If the statement of consideration is in the body of the instrument preceding the signatures, ex-*  
19 *ecution of the instrument shall constitute a certification of the truth of the statement. If there is a sep-*  
20 *arate statement of consideration on the face of the instrument, it shall be signed separately from the*  
21 *instrument, and such execution shall constitute a certification of the truth of the statement by the person*  
22 *signing. A particular form is not required for the statement so long as the requirements of this section*  
23 *are reasonably met.]*

24 *[(5) An instrument conveying or contracting to convey fee title to any real estate or a memorandum*  
25 *of the instrument may not be accepted for recording by any county clerk or recording officer in this*  
26 *state unless the statement of consideration required by this section is included on the face of the in-*  
27 *strument.]*

28 **(2) An instrument conveying, or contracting to convey, fee title to real estate and a**  
29 **memorandum of the instrument must state the true and actual consideration paid for the**  
30 **conveyance, stated in terms of dollars, on the face of the instrument and memorandum. If**  
31 **the true and actual consideration consists of or includes other property or other value given**

**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 or promised, the monetary value and a description of the other property or value must also  
2 be stated.

3 (3) A grantor or grantee shall make the statement of consideration required by sub-  
4 section (2) of this section. Failure to make the statement does not invalidate the conveyance.

5 (4) If the statement of consideration is in the body of the instrument or memorandum  
6 preceding the signatures, execution of the instrument or memorandum constitutes certif-  
7 ication of the truth of the statement. If there is a separate statement of consideration on  
8 the face of the instrument or memorandum, the grantor and grantee shall sign the state-  
9 ment specifically and the execution constitutes certification of the truth of the statement  
10 by the person signing. A particular form is not required for the statement to meet the re-  
11 quirements of this section.

12 (5) A county clerk may not accept for recording an instrument conveying, or contracting  
13 to convey, fee title to real estate or a memorandum of the instrument unless the statement  
14 of consideration required by this section is included on the face of the instrument or mem-  
15 orandum.

16 (6) A transfer of death deed and an instrument revoking a transfer of death deed are not in-  
17 struments subject to this section.

18 **SECTION 2. The amendments to ORS 93.030 by section 1 of this 2013 Act apply to in-**  
19 **struments conveying, or contracting to convey, fee title to real property and memoranda of**  
20 **the instruments executed by grantors and grantees on or after the effective date of this 2013**  
21 **Act.**

22 \_\_\_\_\_

# House Bill 2524

Sponsored by Representative HOLVEY (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 **as introduced**.

Limits exemption from construction contractor licensing requirement for financial institutions, real estate personnel and suppliers of workers.

## A BILL FOR AN ACT

1  
2 Relating to construction contractor licensing exemptions; creating new provisions; and amending  
3 ORS 701.010.

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

5 **SECTION 1.** ORS 701.010 is amended to read:

6 701.010. The Construction Contractors Board may adopt rules to make licensure optional for  
7 persons who offer, bid or undertake to perform work peripheral to construction, as defined by ad-  
8 ministrative rule of the board. The following persons are exempt from licensure under this chapter:

9 (1) A person who is constructing, altering, improving or repairing personal property.

10 (2) A person who is constructing, altering, improving or repairing a structure located within the  
11 boundaries of any site or reservation under the jurisdiction of the federal government.

12 (3) A person who furnishes materials, supplies, equipment or finished product and does not fab-  
13 ricate them into, or consume them, in the performance of the work of a contractor.

14 (4) A person working on one structure or project, under one or more contracts, when the ag-  
15 gregate price of all of that person's contracts for labor, materials and all other items is less than  
16 \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply  
17 to a person who advertises or puts out any sign or card or other device that might indicate to the  
18 public that the person is a contractor.

19 (5) An owner who contracts for work to be performed by a licensed contractor. This subsection  
20 does not apply to a person who, in the pursuit of an independent business, constructs, remodels,  
21 repairs or for compensation and with the intent to sell the structure, arranges to have constructed,  
22 remodeled or repaired a structure with the intent of offering the structure for sale before, upon or  
23 after completion. It is prima facie evidence that there was an intent of offering the structure for sale  
24 if the person who constructed, remodeled or repaired the structure or arranged to have the struc-  
25 ture constructed, remodeled or repaired does not occupy the structure after its completion.

26 (6) An owner who contracts for one or more licensed contractors to perform work wholly or  
27 partially within the same calendar year on not more than three existing residential structures of the  
28 owner. This subsection does not apply to an owner contracting for work that requires a building  
29 permit unless the work that requires a permit is performed by, or under the direction of, a residen-  
30 tial general contractor.

31 (7) A person performing work on a property that person owns or performing work as the owner's

**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 employee, whether the property is occupied by the owner or not, or a person performing work on  
 2 that person's residence, whether or not that person owns the residence. This subsection does not  
 3 apply to a person performing work on a structure owned by that person or the owner's employee,  
 4 if the work is performed in the pursuit of an independent business with the intent of offering the  
 5 structure for sale before, upon or after completion.

6 (8) A person licensed **or registered** in one of the following trades or professions when operating  
 7 within the scope of that license **or registration**:

8 (a) An architect [*licensed*] **registered** by the State Board of Architect Examiners.

9 (b) A professional engineer registered by the State Board of Examiners for Engineering and  
 10 Land Surveying.

11 (c) A water well contractor licensed by the Water Resources Department.

12 (d) A sewage disposal system installer licensed by the Department of Environmental Quality.

13 (e) A landscape contracting business licensed under ORS 671.510 to 671.760.

14 (f) A pesticide operator licensed under ORS 634.116 who does not conduct inspections for wood  
 15 destroying organisms for the transfer of real estate.

16 (g) An appraiser certified or licensed under ORS chapter 674 or an appraiser assistant registered  
 17 under ORS chapter 674 by the Appraiser Certification and Licensure Board.

18 (9) A landscape contracting business operating within the scope of a license issued under ORS  
 19 671.510 to 671.760 that:

20 (a) Constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining  
 21 walls and meets the applicable bonding requirements under ORS 671.690; or

22 (b) Subcontracts to a licensed plumbing contractor, or otherwise arranges for a licensed plumb-  
 23 ing contractor to perform, the installation of an irrigation system described in ORS 671.540 (1)(m)  
 24 or the repair or maintenance of an irrigation system.

25 (10) A person who performs work subject to this chapter as an employee of a contractor.

26 (11) A manufacturer of a manufactured home constructed under standards established by the  
 27 federal government.

28 (12) A person involved in the movement of:

29 (a) Modular buildings or structures other than manufactured structures not in excess of 14 feet  
 30 in width.

31 (b) Structures not in excess of 16 feet in width when the structures are being moved by their  
 32 owner if the owner is not a contractor required to be licensed under this chapter.

33 (13) A commercial lending institution or surety company that arranges for [*the*] completion, re-  
 34 pair or remodeling **by one or more licensed contractors** of a structure **in which the institution**  
 35 **or company holds a legal or security interest**. As used in this subsection, "commercial lending  
 36 institution" means any bank, mortgage banking company, trust company, savings bank, savings and  
 37 loan association, credit union, national banking association, federal savings and loan association,  
 38 insurance company or federal credit union maintaining an office in this state.

39 (14) A real estate licensee as defined in ORS 696.010 or the employee of that licensee when  
 40 [*performing*] **arranging for one or more licensed contractors to perform** work on a structure  
 41 that the real estate licensee manages under a contract.

42 (15) Units of government other than those specified in ORS 701.005 (5)(c) and (d).

43 (16) A qualified intermediary in a property exchange that qualifies under section 1031 of the  
 44 Internal Revenue Code as amended and in effect on January 1, 2004, if the qualified intermediary  
 45 is not performing construction activities.

1 (17) A [*business*] **worker leasing company or temporary service provider, both as defined**  
2 **in ORS 656.850**, that supplies personnel to a licensed contractor for the performance of work under  
3 the direction and supervision of the contractor.

4 (18) City or county inspectors acting under ORS 701.225 or inspectors described in ORS 455.715.

5 (19) A person performing work for purposes of agricultural drainage, agricultural trenching or  
6 agricultural irrigation or involving the construction of agricultural fences to control livestock.

7 (20) A person performing work that is subject to ORS 527.610 to 527.770 on forestlands for which  
8 notice of operation has been filed under ORS 527.670.

9 **SECTION 2. The amendments to ORS 701.010 by section 1 of this 2013 Act apply to con-**  
10 **struction work that is arranged for on or after the effective date of this 2013 Act and to work**  
11 **performed by personnel supplied to contractors on or after the effective date of this 2013 Act.**  
12

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# House Bill 2513

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

## 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**.

Freezes assessed value of homestead of certain seniors and disabled individuals at assessed value on date claim filed.

Applies to property tax years beginning on or after July 1, 2014.

Takes effect only if constitutional revision proposed by \_\_\_\_\_ Joint Resolution \_\_\_\_\_ (2013) (LC 2696) is approved by people at next primary election. Takes effect on effective date of constitutional revision proposed by \_\_\_\_\_ Joint Resolution \_\_\_\_\_ (2013) (LC 2696).

## A BILL FOR AN ACT

1  
2 Relating to the assessed value of property; and prescribing an effective date.

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

4 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 311.666 to**  
5 **311.701.**

6 **SECTION 2. (1) Individuals eligible under ORS 311.668 to claim deferral with respect to**  
7 **a homestead that is eligible under ORS 311.670 for deferral under ORS 311.666 to 311.701 may**  
8 **file a claim in the manner prescribed under ORS 311.672 to have the assessed value of the**  
9 **homestead determined under this section.**

10 **(2) Notwithstanding ORS 308.146, pursuant to a claim approved under this section, the**  
11 **county assessor shall list on the assessment and tax roll an assessed value that equals the**  
12 **assessed value of the homestead on the date the claim was filed.**

13 **(3) The assessed value of a homestead may be determined under this section regardless**  
14 **of whether a claim for deferral under ORS 311.666 to 311.701 is made or granted.**

15 **SECTION 3. Section 2 of this 2013 Act applies to property tax years beginning on or after**  
16 **July 1, 2014.**

17 **SECTION 4. This 2013 Act does not become effective unless the revision of the Oregon**  
18 **Constitution proposed by \_\_\_\_\_ Joint Resolution \_\_\_\_\_ (2013) (LC 2696) is approved by the**  
19 **people at the primary election held in May 2014. This 2013 Act becomes effective on the ef-**  
20 **fective date of that revision.**

21 \_\_\_\_\_

**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.

# House Bill 2510

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

## 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**.

Eliminates requirement for homestead property tax deferral program that claimant live in homestead for at least five years and prohibition against homestead being pledged as security for reverse mortgage. Allows month after claim due date for individual to present proof of insurance on homestead.

Requires Department of Revenue to make determination of whether equity in homestead is sufficient to repay deferred taxes and if not authorizes department to offer partial deferral. Changes annual rate on deferred amounts to six percent simple interest.

Requires department to contact individuals whose homesteads were deactivated from program for certain reasons related to recent changes in law and to complete recertification claims for individuals. Requires deferral of amounts owing by individuals due to deactivation.

Requires department to transfer responsibility for all aspects of program involving contact with individuals served by program to Housing and Community Services Department.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to the homestead property tax deferral program; creating new provisions; amending ORS  
3 311.668, 311.670, 311.672, 311.674 and 311.700; and prescribing an effective date.

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

5 **SECTION 1.** ORS 311.668 is amended to read:

6 311.668. (1)(a) A claim to defer the property taxes on a homestead that is eligible for deferral  
7 under ORS 311.670 may be filed with the county assessor in the manner prescribed under ORS  
8 311.672 by:

9 (A) An individual who is, or two or more individuals filing a claim jointly each of whom is, 62  
10 years of age or older on or before April 15 of the year for which deferral is claimed; or

11 (B) An individual who is a person with a disability as of April 15 of the year for which deferral  
12 is claimed, regardless of the age or disability of other individuals occupying the homestead.

13 (b) If a guardian or conservator has been appointed for an individual otherwise eligible to claim  
14 deferral of taxes under this section, the guardian or conservator may act for the individual in com-  
15 plying with the provisions of ORS 311.666 to 311.701.

16 (c) If a trustee of an inter vivos trust that was created by and is revocable by an individual,  
17 who is both the trustor and a beneficiary of the trust and who is otherwise eligible to claim deferral  
18 of taxes under this section, owns the fee simple estate under a recorded instrument of sale, the  
19 trustee may act for the individual in complying with the provisions of ORS 311.666 to 311.701.

20 (d) This section may not be construed to require the spouse of an individual to file a claim  
21 jointly with the individual even though the spouse may be eligible to claim the deferral jointly with  
22 the individual.

23 (2)(a) Notwithstanding subsection (1) of this section, deferral may not be granted under ORS  
24 311.666 to 311.701 with respect to a claim filed by individuals who together have, for the calendar

**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 year immediately preceding the calendar year in which the claim for deferral is filed:

2 (A) Household income of [\$32,000] \$\_\_\_\_\_ or more; or

3 (B) Net worth of \$500,000 or more.

4 (b) For each tax year beginning on or after July 1, 2002, the Department of Revenue shall re-  
5 compute the maximum household income under this subsection as follows:

6 (A) Divide the average U.S. City Average Consumer Price Index for the first six months of the  
7 current calendar year by the average U.S. City Average Consumer Price Index for the first six  
8 months of 2001.

9 (B) Recompute the maximum household income by multiplying [\$32,000] \$\_\_\_\_\_ by the appro-  
10 priate indexing factor determined under subparagraph (A) of this paragraph.

11 (c) Any change in the maximum household income determined under paragraph (b) of this sub-  
12 section shall be rounded to the nearest multiple of \$500.

13 (3) Notwithstanding subsection (1) of this section, deferral may not be granted under ORS  
14 311.666 to 311.701 with respect to a claim if, at the time the claim is filed, property taxes imposed  
15 on the homestead of any individual filing the claim have been deferred and are delinquent or have  
16 been canceled.

17 **SECTION 2. The amendments to ORS 311.668 by section 1 of this 2013 Act apply to**  
18 **property tax years beginning on or after July 1, 2013.**

19 **SECTION 3.** ORS 311.670 is amended to read:

20 311.670. (1) Property is not eligible for tax deferral under ORS 311.666 to 311.701 unless, at the  
21 time a claim is filed and during the period for which deferral is claimed:

22 (a) The property [*has been*] is the homestead of the individual or individuals who file the claim  
23 for deferral [*for at least five years preceding April 15 of the year in which the claim is filed*], except  
24 for an individual required to be absent from the homestead by reason of health.

25 (b) The individual claiming the deferral, individually or jointly, owns the fee simple estate under  
26 a recorded instrument of sale, or two or more individuals together own the fee simple estate with  
27 rights of survivorship under a recorded instrument of sale if all owners live in the property and if  
28 all owners apply for the deferral jointly.

29 (c) The homestead is insured for fire and other casualty.

30 (d) There is no prohibition to the deferral of property taxes contained in any provision of federal  
31 law, rule or regulation applicable to a mortgage, trust deed, land sale contract or conditional sale  
32 contract for which the homestead is security.

33 (2) Notwithstanding subsection (1) of this section, a homestead is not eligible for deferral under  
34 ORS 311.666 to 311.701 if the real market value of the homestead entered on the last certified as-  
35 sessment and tax roll is equal to or greater than:

36 (a) 100 percent of county median RMV if, as of April 15 of the year in which a claim is filed,  
37 the taxpayers have continuously owned and lived in the homestead [*at least five years but*] less than  
38 seven years.

39 (b) 110 percent of county median RMV if, as of April 15 of the year in which a claim is filed,  
40 the taxpayers have continuously owned and lived in the homestead at least seven years but less than  
41 nine years.

42 (c) 120 percent of county median RMV if, as of April 15 of the year in which a claim is filed,  
43 the taxpayers have continuously owned and lived in the homestead at least nine years but less than  
44 11 years.

45 (d) 130 percent of county median RMV if, as of April 15 of the year in which a claim is filed,

1 the taxpayers have continuously owned and lived in the homestead at least 11 years but less than  
2 13 years.

3 (e) 140 percent of county median RMV if, as of April 15 of the year in which a claim is filed,  
4 the taxpayers have continuously owned and lived in the homestead at least 13 years but less than  
5 15 years.

6 (f) 150 percent of county median RMV if, as of April 15 of the year in which a claim is filed, the  
7 taxpayers have continuously owned and lived in the homestead at least 15 years but less than 17  
8 years.

9 (g) 160 percent of county median RMV if, as of April 15 of the year in which a claim is filed,  
10 the taxpayers have continuously owned and lived in the homestead at least 17 years but less than  
11 19 years.

12 (h) 170 percent of county median RMV if, as of April 15 of the year in which a claim is filed,  
13 the taxpayers have continuously owned and lived in the homestead at least 19 years but less than  
14 21 years.

15 (i) 180 percent of county median RMV if, as of April 15 of the year in which a claim is filed, the  
16 taxpayers have continuously owned and lived in the homestead at least 21 years but less than 23  
17 years.

18 (j) 190 percent of county median RMV if, as of April 15 of the year in which a claim is filed, the  
19 taxpayers have continuously owned and lived in the homestead at least 23 years but less than 25  
20 years.

21 (k) 200 percent of county median RMV if, as of April 15 of the year in which a claim is filed,  
22 the taxpayers have continuously owned and lived in the homestead for 25 years or more.

23 **SECTION 4. The amendments to ORS 311.670 by section 3 of this 2013 Act apply to**  
24 **property tax years beginning on or after July 1, 2011.**

25 **SECTION 5.** ORS 311.672 is amended to read:

26 311.672. (1)(a) A taxpayer's claim for deferral under ORS 311.666 to 311.701 must:

27 (A) Be in writing on a form supplied by the Department of Revenue;

28 (B) Describe the homestead;

29 (C) Recite all facts establishing the eligibility of the homestead for, and of the taxpayers to  
30 claim, the deferral; and

31 (D) Have attached:

32 (i) Any documentary proof required by the department; and

33 (ii) A statement verified by a written declaration of all taxpayers claiming deferral to the effect  
34 that the statements contained in the claim are true.

35 (b) The claim for deferral must be filed with the assessor of the county in which the homestead  
36 is located, after January 1 and on or before April 15 of the year for which deferral is claimed.

37 **(c) Notwithstanding paragraph (b) of this subsection, proof that the homestead is insured**  
38 **for fire and other casualty may be filed on or before May 15.**

39 (2) The county assessor shall forward each claim filed under this section to the department, and  
40 the department shall determine:

41 (a) Whether the [*property is eligible for the deferral.*] **taxpayers and the homestead are eligible**  
42 **under ORS 311.668 and 311.670, respectively; and**

43 (b) **Whether the equity in the homestead, in consideration of all other interests in the**  
44 **equity, is likely to be sufficient to satisfy the payment of deferred property taxes and accrued**  
45 **interest under ORS 311.684.**

1 (3)(a) If the [*taxpayers and the homestead are determined to be eligible under ORS 311.668 and*  
 2 *311.670, respectively*] **determinations under subsection (2) of this section are positive, and once**  
 3 **proof of insurance for fire and other casualty is received by the department,** a timely claim  
 4 for deferral has the effect of:

5 [(a)] (A) Deferring the payment of the property taxes levied on the homestead for the property  
 6 tax year beginning on July 1 of the year in which the claim is filed.

7 [(b)] (B) Continuing the deferral of the payment by the taxpayers of any property taxes deferred  
 8 under ORS 311.666 to 311.701 for previous years that have not become delinquent under ORS  
 9 311.686.

10 [(c)] (C) Continuing the deferral of the payment by the taxpayers of any future property taxes  
 11 for as long as the homestead remains eligible for, and the taxpayers remain eligible to claim, the  
 12 deferral.

13 **(b) If the determination under subsection (2)(b) alone is negative, the department may**  
 14 **offer partial deferral under paragraph (a)(A) of this subsection.**

15 (4)(a) Notwithstanding subsection (3) of this section:

16 (A) For the property tax year beginning on July 1, 2012, the maximum number of claims for  
 17 deferral under ORS 311.666 to 311.701 that may be granted to taxpayers who have not previously  
 18 been granted deferral is the number of such claims granted for the property tax year beginning on  
 19 July 1, 2011, multiplied by 105 percent.

20 (B) For each property tax year beginning after July 1, 2012, the maximum number of claims for  
 21 deferral that may be granted to taxpayers who have not previously been granted deferral is the  
 22 maximum number determined under this subsection for the property tax year immediately preceding  
 23 multiplied by 105 percent.

24 (b) For purposes of paragraph (a) of this subsection, spouses who continue deferral under ORS  
 25 311.688 are not considered taxpayers who have not previously been granted deferral.

26 (c) If the number of eligible claims described in paragraph (a) of this subsection exceeds the  
 27 maximum number determined under paragraph (a) of this subsection, claims shall be granted in as-  
 28 cending order based on the ratio that is equal to the real market value of the homestead entered  
 29 on the last certified assessment and tax roll divided by the applicable percentage of county median  
 30 RMV of the homestead determined under ORS 311.670 (2), until the maximum number determined  
 31 under paragraph (a) of this subsection is reached.

32 (5) Any taxpayer aggrieved by the denial of a claim for, or discontinuation of, deferral under  
 33 ORS 311.666 to 311.701 may appeal in the manner provided by ORS 305.404 to 305.560.

34 **SECTION 6.** ORS 311.674 is amended to read:

35 311.674. (1) If eligibility for deferral of homestead property is established as provided in ORS  
 36 311.666 to 311.701, the Department of Revenue shall notify the county assessor and the county  
 37 assessor shall show on the current ad valorem assessment and tax roll that the property is tax-  
 38 deferred property by an entry clearly designating the property as tax-deferred property.

39 (2) When requested by the department, the tax collector shall send to the department the tax  
 40 statement for each tax-deferred property as soon as the taxes are extended upon the roll.

41 (3) Interest shall accrue on the actual amount of taxes advanced to the county for the tax-  
 42 deferred property at the rate of six percent [*compounded*] annually.

43 (4)(a) For property taxes deferred after October 3, 1979, the state liens provided by ORS 311.673  
 44 and 311.679 and recorded under ORS 311.675 shall be for the actual amount of taxes advanced to the  
 45 counties and not for the gross amount of taxes for which the property would be liable as shown on

1 the tax statement for each tax-deferred property.

2 (b) For taxes deferred prior to October 3, 1979, the lien under ORS 311.673 is for the gross  
 3 amount of taxes extended upon the tax roll against each tax-deferred property and interest shall  
 4 continue to accrue on the gross amount of taxes rather than on the actual amount of taxes paid to  
 5 the county.

6 **SECTION 7. The amendments to ORS 311.672 and 311.674 by sections 5 and 6 of this 2013  
 7 Act apply to property tax years beginning on or after July 1, 2013.**

8 **SECTION 8.** ORS 311.700 is amended to read:

9 311.700. [(1)] A clause or statement in a mortgage trust deed or land sale contract executed after  
 10 September 9, 1971, that prohibits the owner from applying for deferral of homestead property taxes  
 11 provided in ORS 311.666 to 311.701 is void.

12 *[(2) A homestead on which amounts deferred under ORS 311.666 to 311.701 remain outstanding  
 13 may not be pledged as security for a reverse mortgage by any person.]*

14 **SECTION 9. (1) The amendments to ORS 311.700 by section 8 of this 2013 Act apply to  
 15 property tax years beginning before, on or after the effective date of this 2013 Act.**

16 **SECTION 10. (1) This section applies to a homestead that was determined to be ineligible  
 17 for deferral under ORS 311.666 to 311.701 for any of the following reasons, singly or in com-  
 18 bination with each other:**

19 (a) **The homestead was pledged as security for a reverse mortgage.**

20 (b) **The property had not been the homestead of the individuals claiming deferral for at  
 21 least five years at the time the property was determined to be ineligible.**

22 (c) **The claim for deferral did not include proof that the homestead is insured for fire and  
 23 other casualty.**

24 (d) **A claim for recertification of deferral was not filed on or after September 29, 2011.**

25 (2)(a) **The Department of Revenue shall contact individuals to whose homestead sub-  
 26 section (1) of this section applies to determine whether, pursuant to the amendments to ORS  
 27 311.670, 311.672 and 311.700 by sections 3, 5 and 8 of this 2013 Act, the homestead is eligible  
 28 for deferral under ORS 311.666 to 311.701.**

29 (b) **If the determination under paragraph (a) of this subsection is positive, the depart-  
 30 ment shall, in consultation with the individuals, complete claims for recertification for the  
 31 homestead, including proof that the homestead is insured for fire and other casualty.**

32 (3) **The Department of Revenue shall, as soon as practicable after the effective date of  
 33 this 2013 Act:**

34 (a) **Notify the respective tax collectors of homesteads determined to be eligible under  
 35 subsection (2) of this section for which claims for recertification are completed; and**

36 (b) **Pay, in the manner prescribed under ORS 311.676, an amount equivalent to the prop-  
 37 erty taxes that are eligible for deferral by operation of this section.**

38 (4) **If property taxes that are eligible for deferral by operation of this section have not  
 39 been paid, any interest on the property taxes is abated.**

40 (5)(a) **The tax collector of the county in which a homestead determined to be eligible for  
 41 deferral pursuant to subsection (2) of this section is located shall notify the governing body  
 42 of the county of any refund required by operation of this section.**

43 (b) **Upon receipt of notice from the tax collector under paragraph (a) of this subsection,  
 44 the governing body shall cause a refund of any amount of property taxes and interest on the  
 45 taxes that have been paid to be made from the refund reserve account, if the county has**

1 established a refund reserve account under ORS 311.807, or from the unsegregated tax col-  
2 lections account described in ORS 311.385.

3 (c) A refund under this subsection shall be made without interest.

4 (d) The county assessor and the tax collector shall make the necessary corrections in the  
5 records of their offices.

6 **SECTION 11.** (1) As soon as practicable, the Department of Revenue shall, in consultation  
7 with the Housing and Community Services Department, transfer responsibility for all aspects  
8 of the homestead property tax deferral program involving contact with the individuals served  
9 by the program to the Housing and Community Services Department.

10 (2) The Department of Revenue shall retain responsibility for all aspects of the program  
11 involving payments to counties, liens, computation of deferred amounts owing, collections  
12 and confidential financial records.

13 **SECTION 12.** This 2013 Act takes effect on the 91st day after the date on which the 2013  
14 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.

15

# House Bill 2493

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

## 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**.

Grants tax exemption to property of nonprofit corporation exclusively occupied by low income persons or held exclusively for future development as low income housing.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to low income housing; amending ORS 307.130; and prescribing an effective date.

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

4 **SECTION 1.** ORS 307.130, as amended by section 14, chapter 31, Oregon Laws 2012, is amended  
5 to read:

6 307.130. (1) As used in this section:

7 (a) "Art museum" means a nonprofit corporation organized to display works of art to the public.

8 (b) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect  
9 on December 31, 2011.

10 (c) "**Low income**" means **income at or below 60 percent of the area median income as**  
11 **determined by the State Housing Council based on information from the United States De-**  
12 **partment of Housing and Urban Development.**

13 [(c)] (d) "Nonprofit corporation" means a corporation that:

14 (A) Is organized not for profit, pursuant to ORS chapter 65 or any predecessor of ORS chapter  
15 65; or

16 (B) Is organized and operated as described under section 501(c) of the Internal Revenue Code.

17 [(d)] (e) "Volunteer fire department" means a nonprofit corporation organized to provide fire  
18 protection services in a specific response area.

19 (2) Upon compliance with ORS 307.162, the following property owned or being purchased by art  
20 museums, volunteer fire departments, or incorporated literary, benevolent, charitable and scientific  
21 institutions shall be exempt from taxation:

22 (a) Except as provided in ORS 748.414, only such real or personal property, or proportion  
23 thereof, as is actually and exclusively occupied or used in the literary, benevolent, charitable or  
24 scientific work carried on by such institutions.

25 (b) Parking lots used for parking or any other use as long as that parking or other use is per-  
26 mitted without charge for no fewer than 355 days during the tax year.

27 (c) All real or personal property of a rehabilitation facility or any retail outlet thereof, including  
28 inventory. As used in this subsection, "rehabilitation facility" means either those facilities defined  
29 in ORS 344.710 or facilities which provide individuals who have physical, mental or emotional disa-  
30 bilities with occupational rehabilitation activities of an educational or therapeutic nature, even if

**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 remuneration is received by the individual.

2 (d) All real and personal property of a retail store dealing exclusively in donated inventory,  
 3 where the inventory is distributed without cost as part of a welfare program or where the proceeds  
 4 of the sale of any inventory sold to the general public are used to support a welfare program. As  
 5 used in this subsection, "welfare program" means the providing of food, shelter, clothing or health  
 6 care, including dental service, to needy persons without charge.

7 (e) All real and personal property of a retail store if:

8 (A) The retail store deals primarily and on a regular basis in donated and consigned inventory;

9 (B) The individuals who operate the retail store are all individuals who work as volunteers; and

10 (C) The inventory is either distributed without charge as part of a welfare program, or sold to  
 11 the general public and the sales proceeds used exclusively to support a welfare program. As used  
 12 in this paragraph, "primarily" means at least one-half of the inventory.

13 (f) The real and personal property of an art museum that is used in conjunction with the public  
 14 display of works of art or used to educate the public about art, but not including any portion of the  
 15 art museum's real or personal property that is used to sell, or hold out for sale, works of art, re-  
 16 productions of works of art or other items to be sold to the public.

17 (g) All real and personal property of a volunteer fire department that is used in conjunction with  
 18 services and activities for providing fire protection to all residents within a fire response area.

19 (h) All real and personal property, including inventory, of a retail store owned by a nonprofit  
 20 corporation if:

21 (A) The retail store deals exclusively in donated inventory; and

22 (B) Proceeds of the retail store sales are used to support a not-for-profit housing program whose  
 23 purpose is to:

24 (i) Acquire property and construct housing for resale to individuals at or below the cost of ac-  
 25 quisition and construction; and

26 (ii) Provide loans bearing no interest to individuals purchasing housing through the program.

27 (3) An art museum or institution shall not be deprived of an exemption under this section solely  
 28 because its primary source of funding is from one or more governmental entities.

29 (4) An institution shall not be deprived of an exemption under this section because its purpose  
 30 or the use of its property is not limited to relieving pain, alleviating disease or removing constraints.

31 **(5) Upon compliance with ORS 307.162, property or the portion of property of a nonprofit**  
 32 **corporation that is exclusively occupied by low income persons or held exclusively for future**  
 33 **development as low income housing shall be exempt from taxation.**

34 **SECTION 2. This 2013 Act takes effect on the 91st day after the date on which the 2013**  
 35 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

36

# House Bill 2489

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

## 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**.

Delays for additional two property tax years prohibition on deferral of homestead property taxes for certain homesteads pledged as security for reverse mortgage.  
Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to tax deferral programs; amending section 7, chapter 13, Oregon Laws 2012; and pre-  
3 scribing an effective date.

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

5 **SECTION 1.** Section 7, chapter 13, Oregon Laws 2012, is amended to read:

6 **Sec. 7.** (1) Notwithstanding section 24 (1), chapter 723, Oregon Laws 2011, the amendments to  
7 ORS 311.700 by section 16, chapter 723, Oregon Laws 2011, apply to property tax years beginning  
8 on or after July 1, [2013] **2015**, for homesteads:

9 (a) That were determined, pursuant to chapter 723, Oregon Laws 2011, to be ineligible for  
10 deferral under ORS 311.666 to 311.701 solely because the homestead was pledged as security for a  
11 reverse mortgage;

12 (b) That had been granted deferral under ORS 311.666 to 311.701 at the time of the determi-  
13 nation of ineligibility; and

14 (c) For which an application for recertification of deferral under ORS 311.666 to 311.701, as re-  
15 quired pursuant to chapter 723, Oregon Laws 2011, was submitted on or before February 1, 2012, for  
16 the property tax year beginning on July 1, 2011.

17 (2) The Department of Revenue shall, as soon as practicable after [*the effective date of this 2012*  
18 *Act*] **June 4, 2012**:

19 (a) Notify the respective tax collectors of homesteads to which subsection (1) of this section  
20 applies; and

21 (b) Pay, in the manner prescribed under ORS 311.676, an amount equivalent to the property  
22 taxes that are eligible for deferral by operation of subsection (1) of this section.

23 (3) If property taxes that are eligible for deferral by operation of subsection (1) of this section  
24 have not been paid, any interest on the property taxes is abated.

25 (4)(a) The tax collector of the county in which a homestead described in subsection (1) of this  
26 section is located shall notify the governing body of the county of any refund required by operation  
27 of subsection (1) of this section.

28 (b) Upon receipt of notice from the tax collector under paragraph (a) of this subsection, the  
29 governing body shall cause a refund of any amount of property taxes and interest on the taxes that  
30 have been paid to be made from the refund reserve account, if the county has established a refund

**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 reserve account under ORS 311.807, or from the unsegregated tax collections account described in  
2 ORS 311.385.

3 (c) A refund under this subsection shall be made without interest.

4 (d) The county assessor and the tax collector shall make the necessary corrections in the re-  
5 cords of their offices.

6 **SECTION 2. This 2013 Act takes effect on the 91st day after the date on which the 2013**  
7 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

8

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# House Bill 2473

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

## 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**.

Extends sunset for tax credit for closure of manufactured dwelling park.

## A BILL FOR AN ACT

1  
2 Relating to tax credits for closure of manufactured dwelling park; amending section 18, chapter 906,  
3 Oregon Laws 2007.

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

5 **SECTION 1.** Section 18, chapter 906, Oregon Laws 2007, as amended by section 33, chapter 913,  
6 Oregon Laws 2009, is amended to read:

7 **Sec. 18.** Section 17, chapter 906, Oregon Laws 2007, applies to individuals whose household ends  
8 tenancy at a manufactured dwelling park during a tax year that begins on or after January 1, 2007,  
9 and before January 1, ~~2014~~ **2020**.

10

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**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.

# House Bill 2459

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

## 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**.

Applies statutory bar to foreclosure of outstanding property taxes to outstanding taxes owed by individual who was, or whose homestead was determined to be, ineligible for homestead property tax deferral program as result of recent changes in law and whose homestead was reactivated for deferral during certain period.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to homestead property taxes; creating new provisions; amending ORS 311.693; and pre-  
3 scribing an effective date.

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

5 **SECTION 1. (1) This section applies to outstanding property taxes that became due on**  
6 **or after September 29, 2011, and before January 1, 2016, and that are owed by an individual:**

7 (a) **Whose homestead was granted deferral under ORS 311.666 to 311.701 prior to Sep-**  
8 **tember 29, 2011;**

9 (b) **Who was, or whose homestead was, determined to be ineligible pursuant to ORS**  
10 **311.689 (1) on or after September 29, 2011; and**

11 (c) **Whose homestead was reactivated for the homestead property tax deferral program**  
12 **on or after September 29, 2011, and before January 1, 2016.**

13 (2)(a) **Notwithstanding any provision of ORS chapter 312 to the contrary and ORS 311.696**  
14 **(1), upon compliance with ORS 311.693, taxes described in subsection (1) of this section that**  
15 **remain unpaid shall remain a lien and, except as provided in paragraph (b) of this subsection,**  
16 **shall become delinquent as otherwise provided by law, but are not subject to foreclosure**  
17 **under ORS chapter 312 before August 15 of the calendar year following the calendar year in**  
18 **which one of the circumstances listed in ORS 311.684 occurs.**

19 (b) **Interest on delinquent taxes described in subsection (1) of this section shall accrue**  
20 **at the rate provided in ORS 311.674 (3).**

21 (3) **This section does not apply if:**

22 (a) **The tax-deferred homestead property is a manufactured structure or floating home**  
23 **and is moved out of state;**

24 (b) **The tax-deferred homestead property is personal property, other than a manufactured**  
25 **structure or floating home; or**

26 (c) **The owner of the tax-deferred homestead property has household income, for the**  
27 **calendar year immediately preceding the calendar year in which application is filed under**  
28 **ORS 311.693, that exceeds the amounts allowable under ORS 311.668.**

29 (4) **If property described in subsection (1) of this section has been included on a foreclo-**

**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 sure list, or a judgment of foreclosure entered, the property shall be removed from the  
 2 foreclosure list, or the judgment vacated, unless the proceeding against the property involves  
 3 delinquent taxes other than those described in subsection (1) of this section.

4 (5)(a) Upon removal from the foreclosure list, or upon vacation of the judgment, a pen-  
 5 alty may not be imposed under ORS 312.110 or 312.120.

6 (b) If the penalty has been imposed, the penalty is abated, or if the penalty has been paid,  
 7 upon application made to the county assessor on or before July 1 of the year immediately  
 8 following the year of removal or vacation, the penalty shall be refunded out of the unsegre-  
 9 gated tax collections account in the manner provided in ORS 311.806.

10 (6) Within 60 days after approval of an application under ORS 311.693, with respect to any  
 11 property to which this section applies, the tax collector shall make the proper entries on the  
 12 tax roll and shall remove the property from the foreclosure list and proceeding.

13 (7) If a judgment has been entered foreclosing liens for delinquent taxes against any  
 14 property that is the subject of an application filed under ORS 311.693 pursuant to this sec-  
 15 tion, and the delinquent taxes include only those taxes described in subsection (1) of this  
 16 section, or taxes in excess of those described in subsection (1) of this section are paid, the  
 17 judgment shall be null and void and of no effect and the tax collector shall make the proper  
 18 entries on the assessment and tax rolls to reflect the vacation of the judgment and to ac-  
 19 knowledge the subsisting liens.

20 (8) Nothing in this section removes or releases property to which this section applies  
 21 from the lien of any unpaid tax thereon, but the unpaid taxes remain valid and subsisting  
 22 liens as though the foreclosure proceeding had not been instituted or as though the foreclo-  
 23 sure proceeding had not been instituted and a judgment entered.

24 (9) Nothing in this section affects a foreclosure proceeding instituted, or a judgment en-  
 25 tered, to foreclose liens for delinquent taxes against properties subject to foreclosure if the  
 26 delinquent taxes include taxes other than those described under subsection (1) of this sec-  
 27 tion. Such foreclosure proceedings shall be instituted or continued without regard to this  
 28 section and such judgment shall be of full force and effect as if this section did not exist.

29 (10) Interest on taxes to which this section applies shall be determined from the same  
 30 dates, in the same manner and until paid as for other property taxes remaining unpaid upon  
 31 the due dates, upon preparation of the foreclosure list in accordance with ORS chapter 312  
 32 and subsection (2) of this section and upon entry and following a judgment of foreclosure.

33 **SECTION 2.** Section 1 of this 2013 Act is repealed on January 2, 2020.

34 **SECTION 3.** ORS 311.693 is amended to read:

35 311.693. (1)(a) Delay in foreclosure on account of delinquent taxes as provided in ORS 311.691  
 36 or section 1 of this 2013 Act may not be granted unless the owner of the tax-deferred homestead  
 37 files an application for the delay with the county assessor prior to the date the period of redemption  
 38 expires under ORS 312.120.

39 (b) An application filed under this subsection must contain or be accompanied by a verified  
 40 statement of total household income of the owner for the calendar year immediately preceding the  
 41 calendar year in which the application is filed.

42 (2)(a) Upon receipt of an application under subsection (1) of this section, the county assessor  
 43 shall approve or deny the application.

44 (b) If the application is denied, the owner may appeal to the circuit court in the county where  
 45 the tax-deferred homestead property is located within 90 days after notice in writing of the denial

1 is mailed to the owner by the county assessor.

2 (c) Orders of the circuit court in an appeal taken under this subsection may be appealed to the  
3 Court of Appeals within the time and in the manner provided under ORS 312.210.

4 **SECTION 4.** ORS 311.693, as amended by section 3 of this 2013 Act, is amended to read:

5 311.693. (1)(a) Delay in foreclosure on account of delinquent taxes as provided in ORS 311.691  
6 [*or section 1 of this 2013 Act*] may not be granted unless the owner of the tax-deferred homestead  
7 files an application for the delay with the county assessor prior to the date the period of redemption  
8 expires under ORS 312.120.

9 (b) An application filed under this subsection must contain or be accompanied by a verified  
10 statement of total household income of the owner for the calendar year immediately preceding the  
11 calendar year in which the application is filed.

12 (2)(a) Upon receipt of an application under subsection (1) of this section, the county assessor  
13 shall approve or deny the application.

14 (b) If the application is denied, the owner may appeal to the circuit court in the county where  
15 the tax-deferred homestead property is located within 90 days after notice in writing of the denial  
16 is mailed to the owner by the county assessor.

17 (c) Orders of the circuit court in an appeal taken under this subsection may be appealed to the  
18 Court of Appeals within the time and in the manner provided under ORS 312.210.

19 **SECTION 5. The amendments to ORS 311.693 by section 4 of this 2013 Act become oper-**  
20 **ative on January 2, 2016.**

21 **SECTION 6. This 2013 Act takes effect on the 91st day after the date on which the 2013**  
22 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

23

# House Bill 2458

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

## 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**.

Freezes assessed value of homestead of certain seniors and disabled individuals at assessed value on date claim filed.

Applies to property tax years beginning on or after July 1, 2014.

Takes effect only if constitutional revision proposed by \_\_\_\_\_ Joint Resolution \_\_\_\_\_ (2013) (LC 1233) is approved by people at next primary election. Takes effect on effective date of constitutional revision proposed by \_\_\_\_\_ Joint Resolution \_\_\_\_\_ (2013) (LC 1233).

## A BILL FOR AN ACT

1  
2 Relating to the assessed value of property; and prescribing an effective date.

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

4 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 311.666 to**  
5 **311.701.**

6 **SECTION 2. (1) Individuals eligible under ORS 311.668 to claim deferral with respect to**  
7 **a homestead that is eligible under ORS 311.670 for deferral under ORS 311.666 to 311.701 may**  
8 **file a claim in the manner prescribed under ORS 311.672 to have the assessed value of the**  
9 **homestead determined under this section.**

10 **(2) Notwithstanding ORS 308.146, pursuant to a claim approved under this section, the**  
11 **county assessor shall list on the assessment and tax roll an assessed value that equals the**  
12 **assessed value of the homestead on the date the claim was filed.**

13 **(3) The assessed value of a homestead may be determined under this section regardless**  
14 **of whether a claim for deferral under ORS 311.666 to 311.701 is made or granted.**

15 **SECTION 3. Section 2 of this 2013 Act applies to property tax years beginning on or after**  
16 **July 1, 2014.**

17 **SECTION 4. This 2013 Act does not become effective unless the revision of the Oregon**  
18 **Constitution proposed by \_\_\_\_\_ Joint Resolution \_\_\_\_\_ (2013) (LC 1233) is approved by the**  
19 **people at the primary election held in May 2014. This 2013 Act becomes effective on the ef-**  
20 **fective date of that revision.**

21 \_\_\_\_\_

**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.

# House Bill 2447

Sponsored by Representative NATHANSON; Representatives DOHERTY, HOYLE, KENNEMER (at the request of Manufactured Housing Landlord/Tenant Coalition) (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 **as introduced**.

Extends sunset for tax credit for closure of manufactured dwelling park.

## A BILL FOR AN ACT

1  
2 Relating to tax credits for closure of manufactured dwelling park; amending section 18, chapter 906,  
3 Oregon Laws 2007.

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

5 **SECTION 1.** Section 18, chapter 906, Oregon Laws 2007, as amended by section 33, chapter 913,  
6 Oregon Laws 2009, is amended to read:

7 **Sec. 18.** Section 17, chapter 906, Oregon Laws 2007, applies to individuals whose household ends  
8 tenancy at a manufactured dwelling park during a tax year that begins on or after January 1, 2007,  
9 and before January 1, *[2014]* **2020**.

10

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**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.

# House Bill 2446

Sponsored by Representative NATHANSON; Representatives DOHERTY, HOYLE, KENNEMER (at the request of Manufactured Housing Landlord/Tenant Coalition) (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 **as introduced**.

Extends sunset for tax exemptions for gain realized by manufactured dwelling park landlord from sale of park to certain associations or organizations or to housing authority.

## A BILL FOR AN ACT

1  
2 Relating to tax treatment of sale of manufactured dwelling park; amending sections 7 and 10, chap-  
3 ter 826, Oregon Laws 2005.

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

5 **SECTION 1.** Section 7, chapter 826, Oregon Laws 2005, as amended by section 21, chapter 906,  
6 Oregon Laws 2007, is amended to read:

7 **Sec. 7.** Section 6, chapter 826, Oregon Laws 2005, applies to tax years beginning on or after  
8 January 1, 2006, and before January 1, [2014] **2020**.

9 **SECTION 2.** Section 10, chapter 826, Oregon Laws 2005, as amended by section 22, chapter 906,  
10 Oregon Laws 2007, is amended to read:

11 **Sec. 10.** Section 9, chapter 826, Oregon Laws 2005, applies to tax years beginning on or after  
12 January 1, 2006, and before January 1, [2014] **2020**.

13

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**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.

# House Bill 2437

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Energy, Environment and Water)

## 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**.

Allows credit against income taxes for purchase of energy efficient home.  
Applies to tax years beginning on or after January 1, 2013, and before January 1, 2019.  
Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to tax credits for energy efficient homes; and prescribing an effective date.

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

**SECTION 1. Sections 2 and 3 of this 2013 Act are added to and made a part of ORS chapter 315.**

**SECTION 2. (1) As used in this section and section 3 of this 2013 Act:**

**(a) "Energy efficient home" means an owner-occupied single family residential dwelling:**

**(A) For which construction or renovation begins on or after January 1, 2013, and before January 1, 2019;**

**(B) For which an energy efficient home income tax credit has not been previously claimed;**

**(C) That has a HERS index rating of 50 or lower; and**

**(D) That has been issued a certificate of occupancy.**

**(b) "HERS index" means a relative energy use index, where a rating of 100 represents the energy use of a home built to a HERS 2004 International Energy Conservation Code reference building design standard and a zero rating indicates that the home uses no net purchased energy.**

**(c) "Homeowner" means a person who is the purchaser, owner and occupant of an energy efficient home. "Homeowner" does not include the subsequent purchaser of an energy efficient home with respect to which a credit under this section has been previously claimed.**

**(2) A taxpayer who is a homeowner shall be allowed a credit against the taxes that are otherwise due under ORS chapter 316 for the purchase of an energy efficient home.**

**(3) The tax credit allowed under this section shall be calculated based on the HERS index rating of the energy efficient home, as follows:**

**(a) \$4,000, if the HERS index rating is 50 or less, but more than 25.**

**(b) \$6,000, if the HERS index rating of 25 or less, but more than zero.**

**(c) \$8,000, if the HERS index rating is zero or less.**

**(4) To be eligible for the credit allowed under this section, the taxpayer shall provide to the Department of Revenue a certificate of eligibility issued by the State Department of Energy pursuant to section 3 of this 2013 Act and any other information the Department of**

**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 Revenue may require to determine the amount of the tax credit for which the taxpayer is  
2 eligible.

3 (5) A taxpayer may only claim the credit allowed under this section for the tax year in  
4 which the energy efficient home is purchased, and may not claim, in that tax year, a credit  
5 under ORS 316.116 for an alternative energy device installed or constructed in the same  
6 home.

7 (6) A nonresident taxpayer is allowed the credit under this section in the proportion  
8 provided in ORS 316.117.

9 (7) If a change in the status of a taxpayer from resident to nonresident or from nonres-  
10 ident to resident occurs, the credit allowed by this section shall be determined in a manner  
11 consistent with ORS 316.117.

12 (8) If a change in the tax year of a taxpayer occurs as described in ORS 314.085, or if the  
13 Department of Revenue terminates the taxpayer's tax year under ORS 314.440, the credit  
14 allowed under this section shall be prorated or computed in a manner consistent with ORS  
15 314.085.

16 **SECTION 3.** (1) A taxpayer may apply to the State Department of Energy for a certificate  
17 of eligibility for the credit allowed under section 2 of this 2013 Act, after the construction  
18 or renovation of the energy efficient home is completed.

19 (2) A taxpayer shall apply for a certificate of eligibility within one year following the end  
20 of the calendar year in which the energy efficient home is purchased. A taxpayer shall sub-  
21 mit a certificate of occupancy at the time the taxpayer applies for a certificate of eligibility.

22 (3) The department shall consider applications in the order received. If the department  
23 determines that a taxpayer meets the requirements of this section and section 2 of this 2013  
24 Act and that the home for which the tax credit application is made meets the requirements  
25 of section 2 of this 2013 Act as an energy efficient home, the department may issue a cer-  
26 tificate of eligibility to the taxpayer. The certificate shall include the HERS index rating  
27 awarded to the energy efficient home and the amount of the tax credit for which the tax-  
28 payer is eligible.

29 (4) All certificates of eligibility issued pursuant to this section shall be dated and shall  
30 be sequentially numbered, and an account of all certificates issued or destroyed shall be  
31 maintained by the department.

32 (5) The taxpayer shall maintain any documents received by the taxpayer in connection  
33 with the receipt of a tax credit under section 2 of this 2013 Act, including documents in  
34 support of an eligibility determination made pursuant to subsection (3) of this section, in the  
35 records of the taxpayer for the length of time prescribed by the Department of Revenue and  
36 shall provide a copy of the documents to the Department of Revenue if requested.

37 (6) The State Department of Energy shall establish by rule standards and procedures for  
38 determining the eligibility of taxpayers to claim the credit allowed under section 2 of this  
39 2013 Act. The department may establish standards for determining the HERS index rating  
40 of an energy efficient home for which an application is submitted under this section.

41 **SECTION 4.** Sections 2 and 3 of this 2013 Act apply to tax years beginning on or after  
42 January 1, 2013, and before January 1, 2019.

43 **SECTION 5.** This 2013 Act takes effect on the 91st day after the date on which the 2013  
44 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.

# House Bill 2417

Sponsored by Representative MATTHEWS (Presession 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 **as introduced**.

Increases amount of fees charged and collected by county clerks to record or file certain real property documents. Directs transfer of increased fees to Housing and Community Services Department accounts for housing-related programs. Requires that 25 percent of moneys deposited in Housing and Community Services Department accounts be allocated to assist veterans with housing-related needs.

## A BILL FOR AN ACT

1  
2 Relating to document fee increases to provide housing assistance for veterans; amending ORS  
3 205.323, 306.815, 458.610, 458.650, 458.655 and 458.665; and providing for revenue raising that  
4 requires approval by a three-fifths majority.

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

6 **SECTION 1.** ORS 205.323 is amended to read:

7 205.323. (1) In addition to and not in lieu of the fees charged and collected under ORS 205.320  
8 and other fees, the county clerk shall charge and collect the following fees for the recording or fil-  
9 ing of any instrument described in ORS 205.130:

- 10 (a) A fee of \$1, to be credited as provided in subsection (4)(a) of this section;  
11 (b) A fee of \$10, to be credited as provided in subsection (4)(b) of this section; and  
12 (c) A fee of [~~\$15~~] **\$20**, to be credited as provided in subsection (4)(c) of this section.

13 (2) Subsection (1) of this section does not apply to the recording or filing of the following:

14 (a) Instruments that are otherwise exempt from recording or filing fees under any provision of  
15 law;

16 (b) Any satisfaction of judgment or certificate of satisfaction of judgment; or

17 (c) Internal county government instruments not otherwise charged a recording or filing fee.

18 (3) Subsection (1)(c) of this section does not apply to the recording or filing of:

19 (a) Instruments required under ORS 517.210 to maintain mining claims;

20 (b) Warrants issued by the Employment Department pursuant to ORS 657.396, 657.642 and  
21 657.646; or

22 (c) A certified copy of a judgment, a lien record abstract as described in ORS 18.170 or a sat-  
23 isfaction of a judgment, including a judgment noticed by recordation of a lien record abstract.

24 (4) Of the amounts charged and collected under this section:

25 (a) The recording or filing fee charged and collected under subsection (1)(a) of this section must  
26 be deposited and credited to the Oregon Land Information System Fund established under ORS  
27 306.132.

28 (b) The recording or filing fee charged and collected under subsection (1)(b) of this section shall  
29 be credited as follows:

30 (A) Five percent of the fee must be credited for the benefit of the county;

**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 (B) Five percent of the fee must be credited for the benefit of the county clerk for the purposes  
2 described in ORS 205.320 (18); and

3 (C) 90 percent of the fee must be credited to and deposited in the County Assessment and Tax-  
4 ation Fund created under ORS 294.187.

5 (c) The recording or filing fee charged and collected under subsection (1)(c) of this section must  
6 be credited to and deposited in the County Assessment and Taxation Fund created under ORS  
7 294.187.

8 (5) The Department of Revenue is exempt from paying the fee under subsection (1)(c) of this  
9 section.

10 **SECTION 2.** ORS 458.610 is amended to read:

11 458.610. For purposes of ORS 458.600 to 458.665:

12 (1) "Council" means the State Housing Council established in ORS 456.567.

13 (2) "Department" means the Housing and Community Services Department established in ORS  
14 456.555.

15 (3) "Low income" means individuals or households that receive more than 50 percent and not  
16 more than 80 percent of the median family income for the area, subject to adjustment for areas with  
17 unusually high or low incomes or housing costs, all as determined by the council based on infor-  
18 mation from the United States Department of Housing and Urban Development.

19 (4) "Minority" means an individual:

20 (a) Who has origins in one of the black racial groups of Africa but who is not Hispanic;

21 (b) Who is of Hispanic culture or origin;

22 (c) Who has origins in any of the original peoples of the Far East, Southeast Asia, the Indian  
23 subcontinent or the Pacific Islands; or

24 (d) Who is an American Indian or Alaskan Native having origins in one of the original peoples  
25 of North America.

26 (5) "Organization" means a:

27 (a) Nonprofit corporation established under ORS chapter 65;

28 (b) Housing authority established under ORS 456.055 to 456.235; or

29 (c) Local government as defined in ORS 197.015.

30 (6) "Persons with disabilities" means persons with handicaps described in 42 U.S.C. 3602(h).

31 (7) "Very low income" means individuals or households that receive 50 percent or less of the  
32 median family income for the area, subject to adjustment for areas with unusually high or low in-  
33 comes or housing costs, all as determined by the council based on information from the United  
34 States Department of Housing and Urban Development.

35 **(8) "Veteran" has the meaning given that term in ORS 408.225.**

36 **SECTION 3.** ORS 458.650 is amended to read:

37 458.650. (1) The Emergency Housing Account shall be administered by the Housing and Com-  
38 munity Services Department to assist homeless persons and those persons who are at risk of be-  
39 coming homeless. **The department must expend a minimum of 25 percent of moneys deposited**  
40 **in the account pursuant to ORS 294.187 for assistance to veterans who are homeless or at**  
41 **risk of becoming homeless.** For purposes of this section, "account" means the Emergency Housing  
42 Account.

43 (2) The State Housing Council shall develop policy for giving grants to organizations that shall  
44 use the funds to provide to low and very low income persons, including but not limited to, persons  
45 more than 65 years of age, persons with disabilities, farmworkers and Native Americans:

1 (a) Emergency shelters and attendant services;

2 (b) Transitional housing services designed to assist persons to make the transition from  
3 homelessness to permanent housing and economic independence;

4 (c) Supportive housing services to enable persons to continue living in their own homes or to  
5 provide in-home services for such persons for whom suitable programs do not exist in their ge-  
6 ographic area;

7 (d) Programs that provide emergency payment of home payments, rents or utilities; or

8 (e) Some or all of the needs described in paragraphs (a) to (d) of this subsection.

9 (3)(a) The council shall require as a condition of awarding a grant that the organization dem-  
10 onstrate to the satisfaction of the council that the organization has the capacity to deliver any  
11 service proposed by the organization.

12 (b) Any funds granted under this section shall not be used to replace existing funds. Funds  
13 granted under this section may be used to supplement existing funds. An organization may use funds  
14 to support existing programs or to establish new programs.

15 (c) The council, by policy, shall give preference in granting funds to those organizations that  
16 coordinate services with those programs established under ORS 458.625.

17 (4) The department may expend funds from the account for administration of the account as  
18 provided for in the legislatively approved budget, as that term is defined in ORS 291.002, for the  
19 department.

20 **SECTION 4.** ORS 458.655 is amended to read:

21 458.655. (1) The Home Ownership Assistance Account shall be administered by the Housing and  
22 Community Services Department to expand [*the*] **this** state's supply of homeownership housing for  
23 low and very low income families and individuals, including, but not limited to, [*housing for*] persons  
24 over 65 years of age, persons with disabilities, minorities, **veterans** and farmworkers. **The depart-**  
25 **ment must expend a minimum of 25 percent of moneys deposited in the account pursuant**  
26 **to ORS 294.187 to expand this state's supply of homeownership housing for low and very low**  
27 **income veterans and families of veterans.** The State Housing Council shall have a policy of dis-  
28 tributing funds statewide while concentrating funds in those areas of [*the*] **this** state with the  
29 greatest need, as determined by the council, for low and very low income homeownership housing.  
30 However, the council's policy of distributing funds may differ from the distribution policy for the  
31 Housing Development and Guarantee Account.

32 (2) Funds in the Home Ownership Assistance Account shall be granted to organizations that  
33 both sponsor and manage low income homeownership programs, including lease-to-own programs, for  
34 the construction of new homeownership housing or for the acquisition or rehabilitation of existing  
35 structures for homeownership housing for persons of low or very low income, or both.

36 (3) The council shall develop a policy for disbursing grants for any or all of the following pur-  
37 poses:

38 (a) To aid low income homeownership programs, including program administration, in purchas-  
39 ing land, providing assistance with down payment costs, or providing homeownership training and  
40 qualification services or any combination thereof. Funds in the Home Ownership Assistance Account  
41 may not be used by an organization to pay for its general operations or to pay for more than 25  
42 percent of construction or rehabilitation costs.

43 (b) To match public and private moneys available from other sources for purposes of the pro-  
44 vision of low or very low income homeownership housing.

45 (c) To administer the Home Ownership Assistance Account as provided for in the legislatively

1 approved budget, as that term is defined in ORS 291.002, for the department.

2 (4) The council, in developing policy under subsection (3) of this section, shall give preference  
3 in making grants to those entities that propose to:

4 (a) Provide the greatest number of low and very low income homeownership housing units con-  
5 structed, acquired or rehabilitated for the amount of account money expended by matching account  
6 funds with other grant, loan or eligible in-kind contributions;

7 (b) Ensure the longest use for the units as low or very low income homeownership housing units,  
8 such as by including some form of equity recapture, land trust or shared equity provisions, as de-  
9 termined by the council;

10 (c) Include social services for occupants and proposed occupants of the proposed housing, in-  
11 cluding but not limited to, programs that address home health care, mental health care, alcohol and  
12 drug treatment and post-treatment care, child care, homeownership training, mortgage qualification  
13 service, credit repair and case management; and

14 (d) Support a comprehensive strategy to reverse the decreasing rates of homeownership among  
15 minorities, giving priority to activities that support adopted comprehensive community plans that  
16 incorporate recognized best practices or demonstrate proven success in increasing homeownership  
17 for minorities.

18 **SECTION 5.** ORS 458.665 is amended to read:

19 458.665. (1) The Housing and Community Services Department shall administer the General  
20 Housing Account.

21 (2) The department shall disburse moneys credited to the account to accomplish the purposes  
22 described in ORS 456.515 to 456.725, **except that the department must expend a minimum of**  
23 **25 percent of moneys deposited in the account pursuant to ORS 294.187 to meet the critical**  
24 **housing needs of veterans in this state.**

25 (3) The department may disburse moneys in the account by contract, grant, loan or otherwise  
26 as the department determines necessary.

27 (4) The department may set interest rates on loans made with moneys in the account.

28 (5) The department shall establish guidelines for the types of loans financed with moneys in the  
29 account by rule.

30 (6) The department may use moneys in the account to pay allowable administrative expenses  
31 incurred under ORS 456.515 to 456.725.

32 (7) The department may, in the director's discretion, return moneys received for deposit in the  
33 account to the original source of the moneys.

34 (8) The department may accept moneys for deposit in the account pursuant to ORS 458.620 (4)  
35 and enter into agreements regarding the use of moneys deposited with the original source of the  
36 moneys.

37 (9) The department shall adopt rules that:

38 (a) **Subject to subsection (2) of this section,** govern the allocation of moneys deposited in the  
39 account to best meet critical housing needs and build organizational capacity of partners throughout  
40 *[the]* **this** state; and

41 (b) Require equitable distribution of resources over time based on objective measures of need,  
42 including the number and percentage of low and very low income households in an area.

43 **SECTION 6.** ORS 306.815 is amended to read:

44 306.815. (1) A city, county, district or other political subdivision or municipal corporation of this  
45 state shall not impose, by ordinance or other law, a tax or fee upon the transfer of a fee estate in

1 real property, or measured by the consideration paid or received upon transfer of a fee estate in real  
2 property.

3 (2) A tax or fee upon the transfer of a fee estate in real property does not include any fee or  
4 charge that becomes due or payable at the time of transfer of a fee estate in real property, unless  
5 that fee or charge is imposed upon the right, privilege or act of transferring title to real property.

6 (3) Subsection (1) of this section does not apply to any fee established under ORS 203.148.

7 (4) Subsection (1) of this section does not apply to any tax if the ordinance or other law im-  
8 posing the tax is in effect and operative on March 31, 1997.

9 (5) Subsection (1) of this section does not apply to any tax or fee that is imposed upon the  
10 transfer of a fee estate in real property if the fee that is imposed under ORS 205.323, for the re-  
11 cording or filing of the instrument conveying the real property being transferred, is less than [\$27]  
12 **\$32.**

13

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# House Bill 2412

Sponsored by Representative CAMERON; Representatives BERGER, FREEMAN, GILLIAM, Senator WINTERS (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 **as introduced**.

Requires Environmental Quality Commission to contract with unit of local government or private individual, partnership or corporation to implement motor vehicle pollution control system inspection program.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to motor vehicle pollution control system inspection program; creating new provisions; amending ORS 468A.365 and 468A.370; and declaring an emergency.

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

**SECTION 1.** ORS 468A.370 is amended to read:

468A.370. The Environmental Quality Commission shall determine the most cost-effective method of conducting a motor vehicle pollution control system inspection program as required by ORS 468A.365. *[Upon finding that savings to the public and increased efficiency would result and the quality of the program would be adequately maintained,]* The commission *[may]* **shall** contract with a unit of local government or with a private individual, partnership or corporation authorized to do business in the State of Oregon, for the performance of tests *[or]* **and** other services associated with conducting a motor vehicle pollution control system inspection program.

**SECTION 2.** ORS 468A.365 is amended to read:

468A.365. The Environmental Quality Commission shall:

(1) Determine and adopt by rule criteria for certification of motor vehicle pollution control systems. In determining the criteria the commission shall consider the following:

(a) The experience of any other state or the federal government;

(b) The cost of the system and of its installation;

(c) The durability of the system;

(d) The ease of determining whether the system, when installed on a motor vehicle, is functioning properly; and

(e) Any other factors which, in the opinion of the commission, render such a system suitable for the control of motor vehicle air pollution or for the protection of the health, safety and welfare of the public.

(2) Prescribe by rule the manner in which a motor vehicle pollution control system shall be tested for certification. The rules may prescribe a more rigorous inspection procedure in the areas designated under ORS 815.300 (2)(a), including any expansion of such boundary under ORS 815.300 (2)(b), in order to reduce air pollution emissions in those areas of the state. No such rule shall require testing for certification more often than once during the period for which registration or renewal of registration for a motor vehicle is issued. No rule shall require testing for certification of

**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 motor vehicle that is exempted from the requirement for certification under ORS 815.300.

2 (3) Issue certificates of approval for classes of motor vehicle pollution control systems which,  
3 after being tested by the commission or by a method acceptable to the commission, the commission  
4 finds meet the criteria adopted under subsection (1) of this section.

5 (4) Designate by rule classifications of motor vehicles for which certified systems are available.

6 (5) Revoke, suspend or restrict a certificate of approval previously issued upon a determination  
7 that the system no longer meets the criteria adopted under subsection (1) of this section pursuant  
8 to procedures for a contested case under ORS chapter 183.

9 (6) Designate suitable methods and standards for testing systems and inspecting motor vehicles  
10 to determine and insure compliance with the standards and criteria established by the commission.

11 (7) [*Except as provided in ORS 468A.370,*] Contract for the use of or the performance of tests  
12 [*or*] **and** other services within or without the state.

13 **SECTION 3. (1) Except as provided in subsection (2) of this section, the amendments to**  
14 **ORS 468A.365 and 468A.370 by sections 1 and 2 of this 2013 Act become operative on January**  
15 **1, 2014.**

16 **(2) The Environmental Quality Commission may adopt rules or take any other action**  
17 **before the operative date specified in subsection (1) of this section that is necessary to im-**  
18 **plement, on or after the operative date specified in subsection (1) of this section, the**  
19 **amendments to ORS 468A.365 and 468A.370 by sections 1 and 2 of this 2013 Act.**

20 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**  
21 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
22 **on its passage.**

23

# House Bill 2402

Sponsored by Representative WITT (at the request of Oregon State Building and Construction Trades Council)  
(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 **as introduced**.

Prohibits public body from providing public subsidy in amount equal to or greater than \$750,000 for purpose of constructing, reconstructing, renovating, altering, maintaining or repairing, or entering into contract to construct, reconstruct, renovate, alter, maintain or repair, structure on real property unless iron, steel and manufactured goods used in structure are made within United States.

Provides that prohibition does not apply if public body or contracting agency finds that amount or quality of iron, steel or manufactured goods made within United States are insufficient or if applying prohibition would increase cost or contract price by more than 25 percent.

## A BILL FOR AN ACT

1  
2 Relating to public subsidies for structures on real property.

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

4 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of the Public Con-**  
5 **tracting Code.**

6 **SECTION 2. (1) As used in this section, "public subsidy" means moneys or the equivalent**  
7 **of moneys in the amount of \$750,000 or more that this state, a subdivision of this state or**  
8 **the federal government, or an agency of this state, of a subdivision of this state or of the**  
9 **federal government, provides in the form of:**

10 (a) **A direct appropriation;**

11 (b) **A tax credit or abatement;**

12 (c) **A loan or loan guarantee;**

13 (d) **A combination of the forms described in paragraph (a), (b) or (c) of this subsection;**

14 **or**

15 (e) **Any other form by means of which moneys from taxpayers are used or by reason of**  
16 **which this state, a subdivision of this state or the federal government, or an agency of this**  
17 **state, of a subdivision of this state or of the federal government, does not charge or collect**  
18 **moneys for a public purpose that would otherwise be due.**

19 (2) **A public body, as defined in ORS 174.109, may not provide a public subsidy to con-**  
20 **struct, reconstruct, renovate, alter, maintain or repair, or for the purpose of entering into**  
21 **a contract to construct, reconstruct, renovate, alter, maintain or repair, a structure or**  
22 **appurtenances for a structure on real property unless the iron, steel and manufactured**  
23 **goods used in the structure or the appurtenances are produced within the United States.**

24 (3)(a) **Subsection (2) of this section does not apply if the public body or a contracting**  
25 **agency finds that:**

26 (A) **Iron, steel or manufactured goods intended for use in the structure or the**  
27 **appurtenances are not produced within the United States in sufficient and reasonably avail-**  
28 **able quantities or with satisfactory quality; or**

**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       **(B) Applying the provisions of subsection (2) of this section would increase the cost or**  
2 **contract price for constructing, reconstructing, renovating, altering, maintaining or repair-**  
3 **ing the structure or the appurtenances by more than 25 percent.**

4       **(b) If a public body, as defined in ORS 174.109, or a contracting agency makes a finding**  
5 **described in paragraph (a) of this subsection, the public body or contracting agency shall**  
6 **publish and make the finding publicly available, together with detailed reasons for the find-**  
7 **ing.**

8       **SECTION 3.** **Section 2 of this 2013 Act applies to public subsidies that are provided for:**

9       **(1) Constructing, reconstructing, renovating, altering, maintaining or repairing a struc-**  
10 **ture or appurtenances for a structure on real property on or after the effective date of this**  
11 **2013 Act.**

12       **(2) A contract that a public body, as defined in ORS 174.109, or a contracting agency ad-**  
13 **vertises or otherwise solicits, or if the public body or contracting agency does not advertise**  
14 **or solicit the contract, into which the public body or contracting agency enters on or after**  
15 **the effective date of this 2013 Act for the purpose of constructing, reconstructing, renovat-**  
16 **ing, altering, maintaining or repairing a structure or appurtenances for a structure on real**  
17 **property.**

# House Bill 2400

Sponsored by Representative WITT; Representatives BAILEY, BUCKLEY, DOHERTY, FREDERICK, GELSER, HOLVEY (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 **as introduced**.

Removes exemption for certain beneficiaries from requirement to enter into mediation with grantor before initiating foreclosure of residential trust deed by advertisement and sale. Removes exemption for certain beneficiaries from requirement for beneficiary to pay \$100 fee to county clerk when recording notice of default.

Requires beneficiary or beneficiary's agent to enter into mediation with grantor in good faith.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to foreclosures of residential trust deeds; creating new provisions; amending ORS 86.735  
3 and 86.740 and sections 2 and 4, chapter 112, Oregon Laws 2012; and declaring an emergency.

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

5 **SECTION 1.** Section 2, chapter 112, Oregon Laws 2012, is amended to read:

6 **Sec. 2.** (1) As used in this section and sections 3 and 4a [*of this 2012 Act*], **chapter 112, Oregon**  
7 **Laws 2012**, "foreclosure avoidance measure" means an agreement between a beneficiary and a  
8 grantor that uses one or more of the following methods to modify an obligation that is secured by  
9 a trust deed:

10 (a) The beneficiary defers or forbears from collecting one or more payments due on the obli-  
11 gation.

12 (b) The beneficiary modifies, temporarily or permanently, the payment terms or other terms of  
13 the obligation.

14 (c) The beneficiary accepts a deed in lieu of foreclosure from the grantor.

15 (d) The grantor conducts a short sale.

16 (e) The beneficiary provides the grantor with other assistance that enables the grantor to avoid  
17 a foreclosure.

18 (2)(a) Except as provided in paragraph (d) of this subsection, a beneficiary that seeks to fore-  
19 close a residential trust deed under ORS 86.735 shall enter into mediation with the grantor for the  
20 purpose of negotiating a foreclosure avoidance measure in accordance with the provisions of this  
21 section.

22 (b) The Attorney General shall:

23 (A) Appoint a mediation service provider to coordinate a mediation program and shall enter into  
24 an agreement to pay the mediation service provider for the mediation service provider's services  
25 from the Foreclosure Avoidance Mediation Fund established in section 4 [*of this 2012 Act*], **chapter**  
26 **112, Oregon Laws 2012**. The appointment and the agreement are not subject to ORS chapter 279A  
27 or 279B.

28 (B) Prescribe qualifications, training and experience requirements for mediators by rule.

**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 (C) Set the schedule of fees for the mediation by rule.

2 (c) The beneficiary and the grantor shall share the cost of the mediation, except that the  
 3 grantor's portion of the cost may not exceed \$200. The mediator may waive the grantor's portion  
 4 of the fee in accordance with rules that the Attorney General adopts to describe circumstances that  
 5 permit a waiver.

6 (d) The requirement to enter into mediation with a grantor does not apply[:]

7 [(A) *To an individual, a financial institution, as defined in ORS 706.008, a mortgage banker, as*  
 8 *defined in ORS 86A.100, or a licensee, as defined in ORS 725.010, if the individual, financial institu-*  
 9 *tion, mortgage banker or licensee provides to the Attorney General a sworn affidavit that states that*  
 10 *during the preceding calendar year the individual, financial institution, mortgage banker or licensee*  
 11 *did not commence or cause an affiliate or agent of the individual, financial institution, mortgage banker*  
 12 *or licensee to commence more than a total of 250 actions to foreclose a residential trust deed by ad-*  
 13 *vertisement and sale under ORS 86.735 or a residential mortgage by suit under ORS 88.010. An indi-*  
 14 *vidual, financial institution, mortgage banker or licensee that intends to claim an exemption under this*  
 15 *subparagraph shall file the affidavit either:]*

16 [(i) *Within 30 days after the operative date specified in section 11 of this 2012 Act to claim the*  
 17 *exemption for calendar year 2012 and not later than January 31 in any subsequent calendar year in*  
 18 *which the individual, financial institution, mortgage banker or licensee intends to claim the exemption;*  
 19 *or]*

20 [(ii) *At the time the individual, financial institution, mortgage banker or licensee files a notice of*  
 21 *default under ORS 86.735.]*

22 [(B)] if the grantor fails to confirm that the grantor will enter into mediation by the date spec-  
 23 ified under subsection (3)(c) of this section.

24 (3) Within 30 days after the date on which the beneficiary caused a notice of mediation to be  
 25 served or mailed as provided in ORS 86.740, the mediation service provider shall send a notice to  
 26 the grantor and the beneficiary that:

27 (a) Schedules a date, time and location for the mediation. The date must be not earlier than  
 28 45 days and not later than 90 days after the date on which the notice of mediation was served or  
 29 mailed as provided in ORS 86.740.

30 (b) Identifies and provides contact information for the mediation service provider.

31 (c) Specifies a date at least 30 days before the scheduled date of the mediation by which the  
 32 grantor must contact the mediation service provider to confirm that the grantor will enter into  
 33 mediation. The notice must state that the mediation service provider will deem the grantor to have  
 34 declined to enter into mediation if the grantor fails to confirm by the specified date.

35 (d) Lists the costs of the mediation and specifies the portion of the costs for which the grantor  
 36 is responsible.

37 (e) Provides any other information that the Attorney General requires by rule.

38 (4)(a) If the grantor confirms by the date specified under subsection (3)(c) of this section that the  
 39 grantor will enter into mediation, the beneficiary or the beneficiary's agent shall appear at the time  
 40 and the location identified in the mediation service provider's notice under subsection (3) of this  
 41 section with the documentation described in paragraph (b) of this subsection.

42 (b) The beneficiary or the beneficiary's agent must appear in person at the location of the me-  
 43 diation unless the mediator permits the beneficiary or the beneficiary's agent to appear in another  
 44 manner for good cause shown. The fact that a beneficiary or beneficiary's agent is located outside  
 45 this state does not alone constitute good cause for the purposes of this paragraph. The beneficiary

1 or the beneficiary's agent must appear at the mediation with:

2 (A) The grantor's complete payment history for the obligation that is secured by the residential  
3 trust deed that the beneficiary seeks to foreclose;

4 (B) Evidence that the beneficiary is the real party in interest with respect to the obligation,  
5 including but not limited to:

6 (i) A true copy of the original debt instrument that is the basis for the right the beneficiary  
7 claims to foreclose the trust deed; and

8 (ii) Documents that show the chain of title for the property that is subject to the residential  
9 trust deed from the date of the original loan for which the beneficiary seeks foreclosure to the date  
10 of the notices given under ORS 86.740, including conveyances, endorsements and assignments of the  
11 residential trust deed, the note and the security instrument, whether recorded or unrecorded;

12 (C) A copy of the authorization from the beneficiary to the beneficiary's agent, if the  
13 beneficiary's agent appears at the mediation;

14 (D) A copy of any of the following documents that apply to the note or obligation that is secured  
15 by the trust deed:

16 (i) A servicing agreement the beneficiary entered into with another person; or

17 (ii) An agreement by means of which the beneficiary pledged as collateral for a security the  
18 beneficiary issued or sold all or a portion of the ownership interest in the note or other obligation;  
19 and

20 (E) Other documentation the Attorney General specifies by rule.

21 (c) The beneficiary or the beneficiary's agent that enters into mediation with the grantor must  
22 have or be able to obtain, before the initial mediation session concludes, authority to accept or re-  
23 ject a proposal for a foreclosure avoidance measure and authority to enter with the grantor into an  
24 agreement for a foreclosure avoidance measure.

25 (5)(a) The beneficiary or the beneficiary's agent must enter into mediation **in good faith and** in  
26 accordance with mediation guidelines the Attorney General establishes by rule.

27 (b) If the beneficiary or the beneficiary's agent agrees with the grantor on a foreclosure avoid-  
28 ance measure, the beneficiary or beneficiary's agent and the grantor shall set forth the terms of the  
29 foreclosure avoidance measure in a written agreement, a copy of which the beneficiary or  
30 beneficiary's agent shall provide to the Attorney General. The beneficiary may elect to pay the  
31 grantor's portion of the cost of the mediation or the grantor and the beneficiary may agree to in-  
32 clude the cost of the mediation as part of and in accordance with any payment plan that is part of  
33 the foreclosure avoidance measure.

34 (c) If the beneficiary or the beneficiary's agent and the grantor do not agree on a foreclosure  
35 avoidance measure, the mediation service provider shall notify the Attorney General that the medi-  
36 ation did not result in an agreement.

37 (6)(a) At the conclusion of the mediation, if the beneficiary has complied with the requirements  
38 of subsections (4) and (5) of this section, the mediation service provider shall provide the beneficiary  
39 or the beneficiary's agent with a certificate of compliance in a form and with contents that the At-  
40 torney General specifies by rule. The certificate must state that the beneficiary has complied with  
41 the requirements of this section.

42 (b) If the grantor does not confirm by the date specified under subsection (3)(c) of this section  
43 that the grantor will enter into mediation, the mediation service provider shall provide the benefi-  
44 ciary or the beneficiary's agent with a certificate of compliance in a form and with contents that  
45 the Attorney General specifies by rule. The certificate must state that the grantor declined to enter

1 into mediation with the beneficiary.

2 (c) The mediation service provider shall provide a copy of the certificate the mediation service  
 3 provider issues under paragraph (a) or (b) of this subsection to the grantor and to the Attorney  
 4 General.

5 (7)(a) A grantor that is at risk of default before the beneficiary or the trustee has filed a notice  
 6 of default for recording under ORS 86.735 may notify the beneficiary or trustee in the trust deed  
 7 or the beneficiary's or trustee's agent that the grantor wants to enter into mediation. Within 15 days  
 8 after receiving the request, the beneficiary or trustee or the beneficiary's or trustee's agent shall  
 9 respond to the grantor's request and shall notify the Attorney General and the mediation service  
 10 provider identified in subsection (2)(b) of this section. The response to the grantor must include  
 11 contact information for the Attorney General and the mediation service provider.

12 (b) A grantor that requests mediation under paragraph (a) of this subsection may also notify the  
 13 Attorney General and the mediation service provider of the request. The Attorney General shall  
 14 post on the Department of Justice website contact information for the mediation service provider  
 15 and an address or method by which the grantor may notify the Attorney General.

16 (c) Within 10 days after receiving notice of the request under paragraph (a) of this subsection,  
 17 the mediation service provider shall send a notice to the grantor and the beneficiary that, except  
 18 with respect to the date by which the mediation service provider must send the notice, is otherwise  
 19 in accordance with the provisions of subsection (3) of this section.

20 (d) A beneficiary or beneficiary's agent that receives a request under paragraph (a) of this sub-  
 21 section is subject to the same duties as are described in subsections (2), (4) and (5) of this section.

22 **SECTION 2.** Section 4, chapter 112, Oregon Laws 2012, is amended to read:

23 **Sec. 4.** (1) The Foreclosure Avoidance Mediation Fund is established in the State Treasury,  
 24 separate and distinct from the General Fund. The fund consists of moneys the Attorney General  
 25 collects or receives for the purpose of paying the expenses of coordinating a mediation program  
 26 under section 2 [of this 2012 Act], **chapter 112, Oregon Laws 2012**, and related expenses. The  
 27 moneys in the fund are continuously appropriated to the Attorney General for the purposes of pay-  
 28 ing the expenses of coordinating the mediation program and related expenses.

29 (2) The Attorney General may receive moneys for the purposes set forth in subsection (1) of this  
 30 section from any public or private source.

31 [(3)(a)] (3) [Except as provided in paragraph (b) of this subsection,] A trustee or beneficiary that  
 32 files a notice of default under ORS 86.735 shall pay to the county clerk that records the notice \$100  
 33 in addition to and not in lieu of any fee that the county clerk charges for recording the notice of  
 34 default. The county clerk at the end of each month shall forward the proceeds of the \$100 charge  
 35 to the Attorney General for deposit into the fund described in subsection (1) of this section.

36 [(b) An individual, a financial institution, as defined in ORS 706.008, a mortgage banker, as de-  
 37 fined in ORS 86A.100, or a licensee, as defined in ORS 725.010, is not subject to the \$100 charge de-  
 38 scribed in paragraph (a) of this subsection if the individual, financial institution, mortgage banker or  
 39 licensee provides to the county clerk a sworn affidavit that states that during the preceding calendar  
 40 year the individual, financial institution, mortgage banker or licensee did not commence or cause an  
 41 affiliate or agent of the individual, financial institution, mortgage banker or licensee to commence more  
 42 than a total of 250 actions to foreclose a residential trust deed by advertisement and sale under ORS  
 43 86.735 or a residential mortgage by suit under ORS 88.010. An individual, financial institution, mort-  
 44 gage banker or licensee that intends to claim an exemption under this paragraph shall provide the af-  
 45 fidavit either:]

1       [(A) *Within 30 days after the operative date specified in section 11 of this 2012 Act to claim the*  
 2 *exemption for calendar year 2012 and not later than January 31 in any subsequent calendar year in*  
 3 *which the individual, financial institution, mortgage banker or licensee intends to claim the exemption;*  
 4 *or]*

5       [(B) *At the time the individual, financial institution, mortgage banker or licensee files a notice of*  
 6 *default under ORS 86.735.*]

7       **SECTION 3.** ORS 86.735, as amended by section 6, chapter 112, Oregon Laws 2012, is amended  
 8 to read:

9       86.735. A trustee may foreclose a trust deed by advertisement and sale in the manner provided  
 10 in ORS 86.740 to 86.755 if:

11       (1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any  
 12 appointment of a successor trustee are recorded in the mortgage records in the counties in which  
 13 the property described in the deed is situated;

14       (2) There is a default by the grantor or other person that owes an obligation, the performance  
 15 of which is secured by the trust deed, or by the grantor's or other person's successors in interest  
 16 with respect to a provision in the deed that authorizes sale in the event of default of the provision;

17       (3) The trustee or beneficiary has filed for record in the county clerk's office in each county  
 18 where the trust property, or some part of the trust property, is situated, a notice of default con-  
 19 taining the information required by ORS 86.745 and containing the trustee's or beneficiary's election  
 20 to sell the property to satisfy the obligation;

21       (4) The beneficiary or the beneficiary's agent has filed for recording in the official records of  
 22 the county or counties in which the property that is subject to the residential trust deed is located  
 23 the certificate of compliance the beneficiary received under section 2, chapter 112, Oregon Laws  
 24 2012[, *if the beneficiary must enter into mediation with the grantor under section 2 (2)(a), chapter 112,*  
 25 *Oregon Laws 2012*];

26       (5)(a) The beneficiary or the beneficiary's agent has complied with the provisions of section 4a,  
 27 chapter 112, Oregon Laws 2012; and

28       (b) The grantor is not in compliance with the terms of a foreclosure avoidance measure upon  
 29 which the beneficiary and the grantor have agreed; and

30       (6) An action has not been commenced to recover the debt or any part of the debt then re-  
 31 maining secured by the trust deed, or, if an action has been commenced, the action has been dis-  
 32 missed, except that:

33       (a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action may  
 34 be commenced to appoint a receiver or to obtain a temporary restraining order during foreclosure  
 35 of a trust deed by advertisement and sale, except that a receiver may not be appointed with respect  
 36 to a single-family residence that the grantor, the grantor's spouse or the grantor's minor or de-  
 37 pendent child occupies as a principal residence.

38       (b) An action may be commenced to foreclose, judicially or nonjudicially, the same trust deed  
 39 as to any other property covered by the trust deed, or any other trust deeds, mortgages, security  
 40 agreements or other consensual or nonconsensual security interests or liens that secure repayment  
 41 of the debt.

42       **SECTION 4.** ORS 86.740, as amended by section 7, chapter 112, Oregon Laws 2012, is amended  
 43 to read:

44       86.740. (1)(a) Subsequent to recording notice of default as provided in ORS 86.735 and at least  
 45 120 days before the day the trustee conducts the sale, notice of the sale with the contents described

1 in ORS 86.745 must be served pursuant to ORCP 7 D(2) and 7 D(3) or mailed by both first class and  
 2 certified mail with return receipt requested.

3 (b) If the sale is for the purpose of foreclosing a residential trust deed [*and the beneficiary in the*  
 4 *trust deed must enter into mediation with the grantor under section 2 (2)(a), chapter 112, Oregon Laws*  
 5 *2012*], a separate notice of mediation, in the form and with the contents described in section 3,  
 6 chapter 112, Oregon Laws 2012, must be served or mailed in the manner provided in paragraph (a)  
 7 of this subsection at least 60 days before the notice of sale described in paragraph (a) of this sub-  
 8 section is served or mailed.

9 (2) The notices described in subsection (1) of this section must be served or mailed to the last-  
 10 known address of the following persons or the legal representatives of the persons, if any:

11 (a) The grantor in the trust deed.

12 (b) Any successor in interest to the grantor whose interest appears of record, or of whose in-  
 13 terest the trustee or the beneficiary has actual notice.

14 (c) Any person, including the Department of Revenue or another state agency, that has a lien  
 15 or interest subsequent to the trust deed if the lien or interest appears of record or the beneficiary  
 16 has actual notice of the lien or interest.

17 (d) A person that requests notice as provided in ORS 86.785.

18 (e) The mediation service provider that the Attorney General appoints under section 2 (2)(b),  
 19 chapter 112, Oregon Laws 2012, if the notices are served or mailed under subsection (1)(b) of this  
 20 section.

21 (3) A notice served by mail under subsection (1) of this section is effective when the notice is  
 22 mailed.

23 (4)(a) The disability, insanity or death of a person to whom the notices required under this sec-  
 24 tion must be given does not delay or impair in any way the trustee's right under a trust deed to  
 25 foreclose under the deed. If the disability, insanity or death occurs before the notice of default is  
 26 recorded, the notices required under this section must be given instead to the guardian, the  
 27 conservator of the estate of the person or the administrator or personal representative of the person  
 28 in the manner and by the time set forth in this section.

29 (b) If the disability, insanity or death of a person to whom the notices required under this sec-  
 30 tion must be given occurs on or after **the date on which** the notice of default is recorded, the  
 31 trustee shall, if and when the trustee has knowledge of the disability, insanity or death, promptly  
 32 give the guardian, the conservator of the estate or the administrator or personal representative **the**  
 33 required notices by sending the notices by first class and certified mail with return receipt requested  
 34 to the last-known address of the guardian, conservator or administrator or personal representative.

35 (c) If there is no administrator or personal representative of the estate of the person to whom  
 36 the notices required under this section must be given, the notices may be given instead to the heirs  
 37 at law or devisees of the deceased person in the manner and by the time set forth in this section.

38 (5) If the owner of real property subject to foreclosure dies and the real property is also subject  
 39 to a transfer on death deed, as provided by ORS 93.948 to 93.979, the notices required under this  
 40 section must be given to the beneficiary designated under the transfer on death deed.

41 **SECTION 5. (1) The amendments to ORS 86.735 and 86.740 and sections 2 and 4, chapter**  
 42 **112, Oregon Laws 2012, by sections 1 to 4 of this 2013 Act become operative 91 days after the**  
 43 **effective date of this 2013 Act.**

44 **(2) The Attorney General may take any action before the operative date specified in**  
 45 **subsection (1) of this section that is necessary to enable the Attorney General to exercise,**

1 on and after the operative date specified in subsection (1) of this section, all of the duties,  
2 functions and powers conferred on the Attorney General by the amendments to ORS 86.735  
3 and 86.740 and sections 2 and 4, chapter 112, Oregon Laws 2012, by sections 1 to 4 of this 2013  
4 Act.

5 SECTION 6. The amendments to ORS 86.735 and 86.740 and sections 2 and 4, chapter 112,  
6 Oregon Laws 2012, by sections 1 to 4 of this 2013 Act apply to notices of sale and mediation  
7 that a trustee or beneficiary, or an agent of the trustee or beneficiary, sends on or after the  
8 operative date specified in section 5 of this 2013 Act.

9 SECTION 7. This 2013 Act being necessary for the immediate preservation of the public  
10 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect  
11 on its passage.  
12

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# House Bill 2399

Sponsored by Representative WITT; Representatives BAILEY, BARNHART, BUCKLEY, DOHERTY, FREDERICK, GELSER, HOLVEY, MATHEWS (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 **as introduced**.

Requires each transfer, assignment or other conveyance of beneficial ownership or beneficial interest in note or other instrument that is evidence of obligation grantor owes and that is secured by trust deed on residential property to be recorded with county clerk within 15 calendar days in order for trustee to foreclose trust deed by advertisement and sale. Requires person that seeks to record transfer, assignment, conveyance or reconveyance of trust deed to inspect and correct mortgage record and to pay county clerk certain amount for each correction.

Requires notice of sale in trust deed foreclosure to include certain documentation.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to documentation requirements for foreclosing residential property; creating new pro-  
3 visions; amending ORS 86.735, 86.745 and 86.750; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 93.780 to 93.800.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Beneficiary" has the meaning given that term in ORS 86.705.**

8 (b) **"Grantor" has the meaning given that term in ORS 86.705.**

9 (c) **"Trust deed" has the meaning given that term in ORS 86.705.**

10 (2) **Each transfer, assignment or other conveyance of beneficial ownership or a beneficial**  
11 **interest in a note or other instrument that is evidence of an obligation that a grantor owes**  
12 **to a beneficiary and that is secured by a trust deed on residential property must be recorded**  
13 **in accordance with the provisions of ORS 205.130 within 15 calendar days of the transfer,**  
14 **assignment or other conveyance. Recording a transfer, assignment or other conveyance un-**  
15 **der this subsection is subject to the fee provided for recording an instrument under ORS**  
16 **205.320.**

17 (3) **A person other than a grantor in a trust deed, as a condition of recording a transfer,**  
18 **assignment, conveyance or reconveyance of the estate of residential property described in a**  
19 **trust deed recorded for the residential property, shall inspect and correct any errors in or**  
20 **omissions of the information required to be recorded under subsection (2) of this section in**  
21 **the mortgage record that is filed with the county clerk. After correcting any errors or**  
22 **omissions, the person shall record an affidavit that states, under oath and subject to the**  
23 **penalty for perjury, that the mortgage record is complete and accurate to the best of the**  
24 **person's knowledge and belief.**

25 (4) **For each correction described in subsection (3) of this section that is necessary to**  
26 **make the mortgage record complete and accurate, the person other than the grantor that**  
27 **records the transfer, assignment, conveyance or reconveyance of the estate described in the**

**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 **trust deed shall pay to the county clerk an amount equivalent to the recording fee that would**  
 2 **have been due to record a transfer, assignment or other conveyance of the beneficial interest**  
 3 **in the note or other instrument that is evidence of the obligation, multiplied by the number**  
 4 **of months that have passed since the date on which the transfer, assignment or other**  
 5 **conveyance should have been recorded under subsection (2) of this section. A person that**  
 6 **pays a fee in accordance with this subsection, or an affiliate of the person, may not recover**  
 7 **from the grantor the amount of the fee the person paid.**

8 **SECTION 3.** ORS 86.735, as amended by section 6, chapter 112, Oregon Laws 2012, is amended  
 9 to read:

10 86.735. A trustee may foreclose a trust deed by advertisement and sale in the manner provided  
 11 in ORS 86.740 to 86.755 if:

12 (1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any  
 13 appointment of a successor trustee are recorded in the mortgage records in the counties in which  
 14 the property described in the deed is situated;

15 **(2) Each transfer, assignment or other conveyance of beneficial ownership or a beneficial**  
 16 **interest in a note or other instrument that is evidence of an obligation that the grantor owes**  
 17 **to the beneficiary and that is secured by the trust deed is recorded in accordance with sec-**  
 18 **tion 2 of this 2013 Act;**

19 [(2)] (3) There is a default by the grantor or other person that owes an obligation, the per-  
 20 formance of which is secured by the trust deed, or by the grantor's or other person's successors in  
 21 interest with respect to a provision in the deed that authorizes sale in the event of default of the  
 22 provision;

23 [(3)] (4) The trustee or beneficiary has filed for record in the county clerk's office in each county  
 24 where the trust property, or some part of the trust property, is situated, a notice of default con-  
 25 taining the information required by ORS 86.745 and containing the trustee's or beneficiary's election  
 26 to sell the property to satisfy the obligation;

27 [(4)] (5) The beneficiary or the beneficiary's agent has filed for recording in the official records  
 28 of the county or counties in which the property that is subject to the residential trust deed is lo-  
 29 cated the certificate of compliance the beneficiary received under section 2, chapter 112, Oregon  
 30 Laws 2012, if the beneficiary must enter into mediation with the grantor under section 2 (2)(a),  
 31 chapter 112, Oregon Laws 2012;

32 [(5)(a)] (6)(a) The beneficiary or the beneficiary's agent has complied with the provisions of  
 33 section 4a, chapter 112, Oregon Laws 2012; and

34 (b) The grantor is not in compliance with the terms of a foreclosure avoidance measure upon  
 35 which the beneficiary and the grantor have agreed; and

36 [(6)] (7) An action has not been commenced to recover the debt or any part of the debt then  
 37 remaining secured by the trust deed, or, if an action has been commenced, the action has been dis-  
 38 missed, except that:

39 (a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action may  
 40 be commenced to appoint a receiver or to obtain a temporary restraining order during foreclosure  
 41 of a trust deed by advertisement and sale, except that a receiver may not be appointed with respect  
 42 to a single-family residence that the grantor, the grantor's spouse or the grantor's minor or de-  
 43 pendent child occupies as a principal residence.

44 (b) An action may be commenced to foreclose, judicially or nonjudicially, the same trust deed  
 45 as to any other property covered by the trust deed, or any other trust deeds, mortgages, security

1 agreements or other consensual or nonconsensual security interests or liens that secure repayment  
2 of the debt.

3 **SECTION 4.** ORS 86.745 is amended to read:

4 86.745. The notice of sale [shall] **required under ORS 86.740 must:**

5 (1) List the names of the grantor, trustee and beneficiary in the trust deed, and the mailing ad-  
6 dress of the trustee.

7 (2) Describe the property the trust deed covers.

8 (3) Identify the book and page of the mortgage records that record the trust deed.

9 **(4) Include a copy of the affidavit recorded under section 2 (2) of this 2013 Act.**

10 **(5) Include a statement that advises the grantor that:**

11 **(a) Section 2 of this 2013 Act requires any transfer, assignment or other conveyance of**  
12 **beneficial ownership or a beneficial interest in the note or other instrument that is evidence**  
13 **of the grantor's obligation to the beneficiary and that is secured by a trust deed on the**  
14 **residential property that is subject to foreclosure to be properly recorded in the mortgage**  
15 **records for the residential property; and**

16 **(b) The grantor may inspect the mortgage records to verify that the required information**  
17 **has been properly recorded in accordance with section 2 of this 2013 Act.**

18 [(4)] **(6)** State the default for which the foreclosure is made.

19 [(5)] **(7)** State the sum owing on the obligation that the trust deed secures.

20 [(6)] **(8)** State that the property will be sold to satisfy the obligation.

21 [(7)] **(9)** Set forth the date, time and place of the sale.

22 [(8)] **(10)** State that the right exists under ORS 86.753 to have the proceeding dismissed and the  
23 trust deed reinstated by paying the entire amount then due, together with costs, trustee's fees and  
24 attorney fees, and by curing any other default complained of in the notice of default, at any time  
25 that is not later than five days before the date last set for the sale.

26 [(9)] **(11)** If the property includes one or more dwelling units that are subject to ORS chapter  
27 90, include a notice addressed clearly to any individual who occupies the property and who is or  
28 might be a residential tenant. The notice required under this subsection must:

29 (a) Include contact information for the Oregon State Bar and a person or organization that  
30 provides legal help to individuals at no charge to the individual;

31 (b) Include information concerning the right the individual has to notice under ORS 86.755 (6)(c);

32 (c) Be set apart from other text in the notice of sale; and

33 (d) Be in substantially the following form:

34  
35  
36 **NOTICE TO RESIDENTIAL TENANTS**

37 The property in which you are living is in foreclosure. A foreclosure sale is scheduled for  
38 \_\_\_\_\_ (date). The date of this sale may be postponed. Unless the lender that is foreclosing on this  
39 property is paid before the sale date, the foreclosure will go through and someone new will own this  
40 property. After the sale, the new owner is required to provide you with contact information and  
41 notice that the sale took place.

42 The following information applies to you only if you are a bona fide tenant occupying and  
43 renting this property as a residential dwelling under a legitimate rental agreement. The information  
44 does not apply to you if you own this property or if you are not a bona fide residential tenant.

45 If the foreclosure sale goes through, the new owner will have the right to require you to move

1 out. Before the new owner can require you to move, the new owner must provide you with written  
2 notice that specifies the date by which you must move out. If you do not leave before the move-out  
3 date, the new owner can have the sheriff remove you from the property after a court hearing. You  
4 will receive notice of the court hearing.

5 PROTECTION FROM EVICTION

6 IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING THIS PROPERTY AS A  
7 RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROP-  
8 erty AFTER THE FORECLOSURE SALE FOR:

9 • THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED TERM  
10 LEASE; OR

11 • AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION  
12 NOTICE.

13 If the new owner wants to move in and use this property as a primary residence, the new owner  
14 can give you written notice and require you to move out after 90 days, even though you have a fixed  
15 term lease with more than 90 days left.

16 You must be provided with at least 90 days' written notice after the foreclosure sale before you  
17 can be required to move.

18 A bona fide tenant is a residential tenant who is not the borrower (property owner) or a child,  
19 spouse or parent of the borrower, and whose rental agreement:

- 20 • Is the result of an arm's-length transaction;
- 21 • Requires the payment of rent that is not substantially less than fair market rent for the  
22 property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
- 23 • Was entered into prior to the date of the foreclosure sale.

24 ABOUT YOUR TENANCY  
25 BETWEEN NOW AND THE  
26 FORECLOSURE SALE: RENT

27 YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY  
28 IS SOLD OR UNTIL A COURT TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU  
29 CAN BE EVICTED. BE SURE TO KEEP PROOF OF ANY PAYMENTS YOU MAKE.

30 SECURITY DEPOSIT

31 You may apply your security deposit and any rent you paid in advance against the current rent  
32 you owe your landlord as provided in ORS 90.367. To do this, you must notify your landlord in  
33 writing that you want to subtract the amount of your security deposit or prepaid rent from your rent  
34 payment. You may do this only for the rent you owe your current landlord. If you do this, you must  
35 do so before the foreclosure sale. The business or individual who buys this property at the foreclo-  
36 sure sale is not responsible to you for any deposit or prepaid rent you paid to your landlord.

37 ABOUT YOUR TENANCY  
38 AFTER THE FORECLOSURE SALE

39 The new owner that buys this property at the foreclosure sale may be willing to allow you to  
40 stay as a tenant instead of requiring you to move out after 90 days or at the end of your fixed term  
41 lease. After the sale, you should receive a written notice informing you that the sale took place and  
42 giving you the new owner's name and contact information. You should contact the new owner if you  
43 would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement  
44 with you or does not notify you in writing within 30 days after the date of the foreclosure sale that  
45 you must move out, the new owner becomes your new landlord and must maintain the property.

1 Otherwise:

- 2 • You do not owe rent;
- 3 • The new owner is not your landlord and is not responsible for maintaining the property on
- 4 your behalf; and
- 5 • You must move out by the date the new owner specifies in a notice to you.

6 The new owner may offer to pay your moving expenses and any other costs or amounts you and  
7 the new owner agree on in exchange for your agreement to leave the premises in less than 90 days  
8 or before your fixed term lease expires. You should speak with a lawyer to fully understand your  
9 rights before making any decisions regarding your tenancy.

10 IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR  
11 DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT  
12 TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT  
13 A LAWYER. If you believe you need legal assistance, contact the Oregon State Bar and ask for the  
14 lawyer referral service. Contact information for the Oregon State Bar is included with this notice.  
15 If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to  
16 receive legal assistance for free. Information about whom to contact for free legal assistance is in-  
17 cluded with this notice.

18 \_\_\_\_\_  
19  
20 **SECTION 5.** ORS 86.745, as amended by section 6, chapter 510, Oregon Laws 2011, is amended  
21 to read:

22 86.745. The notice of sale [*shall*] **required under ORS 86.740 must:**

23 (1) List the names of the grantor, trustee and beneficiary in the trust deed, and the mailing ad-  
24 dress of the trustee.

25 (2) Describe the property the trust deed covers.

26 (3) Identify the book and page of the mortgage records that record the trust deed.

27 (4) **Include a copy of the affidavit recorded under section 2 (2) of this 2013 Act.**

28 (5) **Include a statement that advises the grantor that:**

29 (a) **Section 2 of this 2013 Act requires any transfer, assignment or other conveyance of**  
30 **beneficial ownership or a beneficial interest in the note or other instrument that is evidence**  
31 **of the grantor’s obligation to the beneficiary and that is secured by a trust deed on the**  
32 **residential property that is subject to foreclosure to be properly recorded in the mortgage**  
33 **records for the residential property; and**

34 (b) **The grantor may inspect the mortgage records to verify that the required information**  
35 **has been properly recorded in accordance with section 2 of this 2013 Act.**

36 [(4)] (6) State the default for which the foreclosure is made.

37 [(5)] (7) State the sum owing on the obligation that the trust deed secures.

38 [(6)] (8) State that the property will be sold to satisfy the obligation.

39 [(7)] (9) Set forth the date, time and place of the sale.

40 [(8)] (10) State that the right exists under ORS 86.753 to have the proceeding dismissed and the  
41 trust deed reinstated by paying the entire amount then due, together with costs, trustee’s fees and  
42 attorney fees, and by curing any other default complained of in the notice of default, at any time  
43 that is not later than five days before the date last set for the sale.

44 [(9)] (11) If the property includes one or more dwelling units that are subject to ORS chapter  
45 90, include a notice addressed clearly to any individual who occupies the property and who is or

1 might be a residential tenant. The notice required under this subsection must:

- 2 (a) Include contact information for the Oregon State Bar and a person or organization that
- 3 provides legal help to individuals at no charge to the individual;
- 4 (b) Include information concerning the right the individual has to notice under ORS 86.755 (6)(c);
- 5 (c) Be set apart from other text in the notice of sale; and
- 6 (d) Be in substantially the following form:

7 \_\_\_\_\_  
8  
9 NOTICE TO RESIDENTIAL TENANTS

10 The property in which you are living is in foreclosure. A foreclosure sale is scheduled for  
11 \_\_\_\_\_ (date). The date of this sale may be postponed. Unless the lender that is foreclosing on this  
12 property is paid before the sale date, the foreclosure will go through and someone new will own this  
13 property. After the sale, the new owner is required to provide you with contact information and  
14 notice that the sale took place.

15 The following information applies to you only if you are a bona fide tenant occupying and  
16 renting this property as a residential dwelling under a legitimate rental agreement. The information  
17 does not apply to you if you own this property or if you are not a bona fide residential tenant.

18 If the foreclosure sale goes through, the new owner will have the right to require you to move  
19 out. Before the new owner can require you to move, the new owner must provide you with written  
20 notice that specifies the date by which you must move out. If you do not leave before the move-out  
21 date, the new owner can have the sheriff remove you from the property after a court hearing. You  
22 will receive notice of the court hearing.

23 PROTECTION FROM EVICTION

24 IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING THIS PROPERTY AS A  
25 RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROP-  
26 erty AFTER THE FORECLOSURE SALE FOR:

- 27 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF
- 28 YOU HAVE A FIXED TERM LEASE; OR
- 29 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION
- 30 NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO-WEEK RENTAL AGREEMENT.

31 If the new owner wants to move in and use this property as a primary residence, the new owner  
32 can give you written notice and require you to move out after 30 days, even though you have a fixed  
33 term lease with more than 30 days left.

34 You must be provided with at least 30 days' written notice after the foreclosure sale before you  
35 can be required to move.

36 A bona fide tenant is a residential tenant who is not the borrower (property owner) or a child,  
37 spouse or parent of the borrower, and whose rental agreement:

- 38 • Is the result of an arm's-length transaction;
- 39 • Requires the payment of rent that is not substantially less than fair market rent for the
- 40 property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
- 41 • Was entered into prior to the date of the foreclosure sale.

42 ABOUT YOUR TENANCY  
43 BETWEEN NOW AND THE  
44 FORECLOSURE SALE: RENT

45 YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY

1 IS SOLD OR UNTIL A COURT TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU  
 2 CAN BE EVICTED. BE SURE TO KEEP PROOF OF ANY PAYMENTS YOU MAKE.

3 SECURITY DEPOSIT

4 You may apply your security deposit and any rent you paid in advance against the current rent  
 5 you owe your landlord as provided in ORS 90.367. To do this, you must notify your landlord in  
 6 writing that you want to subtract the amount of your security deposit or prepaid rent from your rent  
 7 payment. You may do this only for the rent you owe your current landlord. If you do this, you must  
 8 do so before the foreclosure sale. The business or individual who buys this property at the foreclo-  
 9 sure sale is not responsible to you for any deposit or prepaid rent you paid to your landlord.

10 ABOUT YOUR TENANCY

11 AFTER THE FORECLOSURE SALE

12 The new owner that buys this property at the foreclosure sale may be willing to allow you to  
 13 stay as a tenant instead of requiring you to move out after 30 or 60 days. After the sale, you should  
 14 receive a written notice informing you that the sale took place and giving you the new owner's  
 15 name and contact information. You should contact the new owner if you would like to stay. If the  
 16 new owner accepts rent from you, signs a new residential rental agreement with you or does not  
 17 notify you in writing within 30 days after the date of the foreclosure sale that you must move out,  
 18 the new owner becomes your new landlord and must maintain the property. Otherwise:

- 19 • You do not owe rent;
- 20 • The new owner is not your landlord and is not responsible for maintaining the property on  
 21 your behalf; and
- 22 • You must move out by the date the new owner specifies in a notice to you.

23 The new owner may offer to pay your moving expenses and any other costs or amounts you and  
 24 the new owner agree on in exchange for your agreement to leave the premises in less than 30 or  
 25 60 days. You should speak with a lawyer to fully understand your rights before making any decisions  
 26 regarding your tenancy.

27 IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR  
 28 DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT  
 29 TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT  
 30 A LAWYER. If you believe you need legal assistance, contact the Oregon State Bar and ask for the  
 31 lawyer referral service. Contact information for the Oregon State Bar is included with this notice.  
 32 If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to  
 33 receive legal assistance for free. Information about whom to contact for free legal assistance is in-  
 34 cluded with this notice.

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35  
 36  
 37 **SECTION 6.** ORS 86.750 is amended to read:

38 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice [*prescribed in*]  
 39 **and documentation required under** ORS 86.745 must be served upon an occupant of the property  
 40 described in the trust deed in the manner in which a summons is served pursuant to ORCP 7 D(2)  
 41 and 7 D(3) at least 120 days before the day the trustee conducts the sale.

42 (b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this sub-  
 43 section on the first attempt, the person that attempts to effect service shall post a copy of the notice  
 44 in a conspicuous place on the property on the date of the first attempt. The person that attempts  
 45 to effect service shall make a second attempt to effect service on a day that is at least two days

1 after the first attempt.

2 (B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection  
 3 on the second attempt, the person that attempts to effect service shall post a copy of the notice in  
 4 a conspicuous place on the property on the date of the second attempt. The person that attempts  
 5 to effect service shall make a third attempt to effect service on a day that is at least two days after  
 6 the second attempt.

7 (C) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection  
 8 on the third attempt, the person that attempts to effect service shall send a copy of the notice,  
 9 bearing the word "occupant" as the addressee, to the property address by first class mail with  
 10 postage prepaid.

11 (c) Service on an occupant is effected on the earlier of the date that notice is served as provided  
 12 in paragraph (a) of this subsection or the first date on which notice is posted as described in para-  
 13 graph (b)(A) of this subsection.

14 (2)(a) Except as provided in paragraph (b) of this subsection, a copy of the notice of sale must  
 15 be published in a newspaper of general circulation in each of the counties in which the property is  
 16 situated once a week for four successive weeks. The last publication must be made more than 20  
 17 days prior to the date the trustee conducts the sale.

18 (b) The copy of the notice of sale required to be published under paragraph (a) of this subsection  
 19 does not need to include the notice to tenants required under ORS 86.745 [(9)] (11) **or the doc-  
 20 umentation described in ORS 86.745 (4) or (5).**

21 (3) At or before the time the trustee conducts the sale, the trustee shall file for recording in the  
 22 official record of the county or counties in which the property described in the deed is situated the  
 23 following affidavits with respect to the notice of sale:

- 24 (a) An affidavit of mailing, if any;
- 25 (b) An affidavit of service, if any;
- 26 (c) An affidavit of service attempts and posting, if any; and
- 27 (d) An affidavit of publication.

28 (4) At or before the time the trustee conducts the sale, the trustee shall file for recording in the  
 29 official record of the county or counties in which the property described in the deed is situated an  
 30 affidavit of mailing with respect to the notice to the grantor required under ORS 86.737.

31 **SECTION 7. (1) Subject to the provisions of subsection (2) of this section, section 2 of this  
 32 2013 Act and the amendments to ORS 86.735, 86.745 and 86.750 by sections 3, 4, 5 and 6 of this  
 33 2013 Act apply to:**

- 34 (a) **A notice of sale sent on or after the effective date of this 2013 Act;**
- 35 (b) **A foreclosure by advertisement and sale that occurs on or after the effective date of  
 36 this 2013 Act; and**
- 37 (c) **A recording of a transfer, assignment, conveyance or reconveyance of the estate of  
 38 residential property described in a trust deed previously recorded for the residential property  
 39 that occurs on or after the effective date of this 2013 Act.**

40 (2) **The provisions of section 2 (3) and (4) of this 2013 Act that require a person to inspect  
 41 and correct mortgage records, state in an affidavit that the mortgage record is accurate and  
 42 complete and pay a fee for each correction apply regardless of whether the transfer, as-  
 43 signment or other conveyance described in section 2 (2) of this 2013 Act occurred before, on  
 44 or after the effective date of this 2013 Act.**

45 **SECTION 8. This 2013 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
2 **on its passage.**

3

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# House Bill 2239

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Consumer and Business Services)

## 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 certain entities previously exempt from requirement to have license in order to engage in business of making mortgage loans to now obtain license from Department of Consumer and Business Services.

## A BILL FOR AN ACT

1  
2 Relating to licensing for mortgage loan lending; amending ORS 86A.100.

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

4 **SECTION 1.** ORS 86A.100 is amended to read:

5 86A.100. As used in ORS 86A.095 to 86A.198:

6 (1) "Fraud," "deceit" and "defraud" are not limited to common-law deceit.

7 (2) "License" means a license issued to a mortgage banker or mortgage broker under ORS  
8 86A.095 to 86A.198.

9 (3)(a) "Mortgage banker" means a person that for compensation or in the expectation of com-  
10 pensation:

11 (A) Either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage  
12 banking loan or a mortgage loan; and

13 (B) Services or sells a mortgage banking loan.

14 (b) "Mortgage banker" does not include:

15 (A) A financial institution, as defined in ORS 706.008.

16 (B) A financial holding company or a bank holding company, as defined in ORS 706.008, **if the**  
17 **financial holding company or bank holding company does not do more than control a sub-**  
18 **subsidiary or affiliate, as described in 12 U.S.C. 1841, and does not engage in the business of a**  
19 **mortgage banker or mortgage broker.** [*holding an institution described in subparagraph (A) of this*  
20 *paragraph; a savings and loan holding company as defined in 12 U.S.C. 1467a(a)(1)(D), holding an*  
21 *association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the fi-*  
22 *nanical holding company, bank holding company or savings and loan holding company; or subsidiaries*  
23 *and affiliates of institutions described in subparagraph (A) of this paragraph, provided that the ap-*  
24 *propriate statutory regulatory authority is exercising control over or is regulating or supervising the*  
25 *persons listed in this subparagraph in their mortgage banking activities in accordance with the pur-*  
26 *poses of ORS 86A.095 to 86A.198.*]

27 (C) A person that makes a loan secured by an interest in real estate with the person's own  
28 moneys for the person's own investment and that is not engaged in the business of making loans  
29 secured by an interest in real estate.

30 (D) An attorney licensed or otherwise authorized to practice law in this state if the attorney:

**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 (i) Negotiates the terms of a residential mortgage loan as an ancillary matter in the attorney's  
2 representation of a client; and

3 (ii) Does not receive compensation from a mortgage banker, mortgage broker, mortgage loan  
4 originator or lender or an agent of the mortgage banker, mortgage broker, mortgage loan originator  
5 or lender.

6 (E) A person that, as seller of real property, receives one or more mortgages or deeds of trust  
7 as security for a separate money obligation.

8 (F) An agency of a state or of the United States.

9 (G) A person that receives a mortgage or deed of trust on real property as security for an ob-  
10 ligation payable on an installment or deferred payment basis and arising out of materials furnished  
11 or services rendered in [*the improvement of*] **improving** the real property or a lien created without  
12 the consent of the owner of the real property.

13 (H) A person that funds a mortgage banking loan or mortgage loan that a licensee or exempt  
14 person originated and processed and that does not maintain a place of business in this state in  
15 connection with funding mortgage banking loans or mortgage loans, does not directly or indirectly  
16 solicit borrowers in this state for the purpose of making mortgage banking loans or mortgage loans  
17 and does not participate in negotiating mortgage banking loans or mortgage loans. For the purpose  
18 of this subparagraph, "negotiating mortgage banking loans or mortgage loans" does not include  
19 setting the terms under which a person may buy or fund a mortgage banking loan or a mortgage  
20 loan that a licensee or exempt person originated.

21 (I) A nonprofit federally tax exempt corporation certified by the United States Small Business  
22 Administration and organized to promote economic development within this state whose primary  
23 activity consists of providing financing for business expansion.

24 (J) A licensee licensed under ORS chapter 725 or a mortgage broker.

25 (K) A retirement or pension fund.

26 (L) An insurer as defined in ORS 731.106.

27 (M) A court appointed fiduciary.

28 (N) A person designated by rule or order of the Director of the Department of Consumer and  
29 Business Services.

30 (4) "Mortgage banking loan" means a loan, extension of credit or a retail sales contract that is  
31 funded exclusively from the mortgage banker's own resources, that is directly or indirectly secured  
32 by a mortgage or deed of trust or any lien interest on real estate and that is created with the con-  
33 sent of the owner of the real property. For purposes of this subsection, "own resources" means any  
34 of the following:

35 (a) Cash, corporate capital, warehouse credit lines at financial institutions defined in ORS  
36 706.008 or other sources that are liability items of the mortgage banker's financial statements for  
37 which the mortgage banker's assets are pledged;

38 (b) Correspondent contracts between the mortgage banker and a bank, savings bank, trust  
39 company, savings and loan association, credit union, profit sharing or pension trust, a licensee under  
40 ORS chapter 725 or an insurance company; or

41 (c) The mortgage banker's affiliates' cash, corporate capital, warehouse credit lines at financial  
42 institutions defined in ORS 706.008 or other sources that are liability items on the affiliates' finan-  
43 cial statements for which the affiliates' assets are pledged. As used in this paragraph, "affiliates"  
44 means entities that, directly or indirectly, through one or more intermediaries control, are con-  
45 trolled by or are under common control with the entity specified.

- 1 (5)(a) “Mortgage broker” means a person that:
- 2 (A) Engages all or part of the time, for the account of others or for the person’s own account,
- 3 in the business of selling real estate paper whether as issuer, agent or principal to persons other
- 4 than persons enumerated in ORS 59.035 (4);
- 5 (B) Engages all or part of the time, for the account of others or for the person’s own account,
- 6 in the business of accepting funds from one or more persons other than persons enumerated in ORS
- 7 59.035 (4) for investment in real estate paper; or
- 8 (C) For compensation, or in the expectation of compensation, either directly or indirectly makes,
- 9 negotiates or offers to make or negotiate a mortgage loan.
- 10 (b) “Mortgage broker” does not include:
- 11 (A) A financial institution, as defined in ORS 706.008.
- 12 ~~[(B)(i)]~~ (B) A financial holding company or a bank holding company, as defined in ORS 706.008,
- 13 **if the financial holding company or bank holding company does not do more than control a**
- 14 **subsidiary or affiliate, as described in 12 U.S.C. 1841, and does not engage in the business of**
- 15 **a mortgage banker or mortgage broker.** *[holding an institution described in subparagraph (A) of*
- 16 *this paragraph;]*
- 17 *[(ii) A savings and loan holding company as defined in 12 U.S.C. 1467a(a)(1)(D), holding an as-*
- 18 *sociation described in subparagraph (A) of this paragraph;]*
- 19 *[(iii) The subsidiaries and affiliates of the financial holding company, bank holding company or*
- 20 *savings and loan holding company; or]*
- 21 *[(iv) Subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph,*
- 22 *provided that the appropriate statutory regulatory authority is exercising control over or is regulating*
- 23 *or supervising the persons listed in this subparagraph in the persons’ mortgage brokering activities in*
- 24 *accordance with the purposes of ORS 86A.095 to 86A.198.]*
- 25 (C) A person that purchases real property and issues an obligation to finance the transaction
- 26 to the seller incidentally to the sale.
- 27 (D) A real estate licensee as defined in ORS 696.010 who performs services solely incidental to
- 28 the practice of professional real estate activity as defined in ORS 696.010, unless the real estate
- 29 licensee performs the functions of a mortgage banker or a mortgage broker as defined in this sec-
- 30 tion.
- 31 (E) A person licensed under the provisions of ORS chapter 725 or a mortgage banker.
- 32 (F) A person that makes a loan secured by an interest in real estate with the person’s own
- 33 moneys, for the person’s own investment and that is not engaged in the business of making loans
- 34 secured by an interest in real estate.
- 35 (G) An attorney licensed or otherwise authorized to practice law in this state if the attorney:
- 36 (i) Negotiates the terms of a residential mortgage loan as an ancillary matter in the attorney’s
- 37 representation of a client; and
- 38 (ii) Does not receive compensation from a mortgage banker, mortgage broker, mortgage loan
- 39 originator or lender or an agent of the mortgage banker, mortgage broker, mortgage loan originator
- 40 or lender.
- 41 (H) A person that, as a seller of real property, receives one or more mortgages or deeds of trust
- 42 as security for a separate money obligation.
- 43 (I) An agency of a state or of the United States.
- 44 (J) A person that receives a mortgage or deed of trust on real property as security for an obli-
- 45 gation payable on an installment or deferred payment basis and arising out of materials furnished

1 or services rendered in *[the improvement of]* **improving** the real property or a lien created without  
 2 the consent of the owner of the real property.

3 (K) A person that funds a mortgage loan that a licensee or exempt person originated and pro-  
 4 cessed and that does not maintain a place of business in this state in connection with funding  
 5 mortgage loans, does not directly or indirectly solicit borrowers in this state for the purpose of  
 6 making mortgage loans and does not participate in negotiating mortgage loans. For the purpose of  
 7 this subparagraph, “negotiating mortgage loans” does not include setting the terms under which a  
 8 person may buy or fund a mortgage loan that a licensee or exempt person originated.

9 (L) A nonprofit federally tax exempt corporation certified by the United States Small Business  
 10 Administration and organized to promote economic development within this state whose primary  
 11 activity consists of providing financing for business expansion.

12 (M) A person licensed under ORS 446.691 or 446.696 or a temporary manufactured structure  
 13 dealer licensee under ORS 446.701 that provides services customarily associated with the retail sales  
 14 of manufactured dwellings, including communication of generally available information regarding  
 15 mortgage loans, unless:

16 (i) The person receives from a purchaser a fee or commission as a mortgage broker or mortgage  
 17 banker that is disclosed in the sales contract, purchase agreement or applicable federal documents;

18 (ii) For the benefit of a potential purchaser, the person completes a loan application form or  
 19 other document that is part of a mortgage banking loan and completes a good faith estimate under  
 20 the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. **and Regulation H, 12**  
 21 **C.F.R. part 1008, as in effect on the effective date of this 2013 Act;**

22 (iii) The person solicits or receives credit information from a prospective purchaser for the  
 23 purpose of making credit decisions; or

24 (iv) The person negotiates with a potential purchaser the terms of a mortgage loan including  
 25 but not limited to points, interest rates, length of loan or other loan conditions.

26 (N) A person designated by rule or order of the director.

27 (6) “Mortgage loan” means a loan, extension of credit or retail sales contract, other than a  
 28 mortgage banking loan, secured by a mortgage or deed of trust or a lien interest on real estate that  
 29 is created with the consent of the owner of the real estate.

30 (7) “Mortgage loan originator” has the meaning given that term in ORS 86A.200.

31 (8) “Residential mortgage transaction” means a transaction in which a mortgage, deed of trust,  
 32 purchase money security interest arising under an installment sales contract, or equivalent  
 33 consensual security interest is created or retained in property upon which four or fewer residential  
 34 dwelling units are planned or situated, including but not limited to individual units or condominiums  
 35 and cooperatives. As used in this subsection, “residential dwelling unit” means an improvement de-  
 36 signed for residential occupancy.

37

# House Bill 2227

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Revenue)

## 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**.

Repeals certain little-used property tax exemptions, beginning with July 1, 2017, tax year.

Creates consistent deadlines for application for certain property tax exemption programs.

Eliminates application requirement for property owned by state or federal government, Indians or Indian tribe where leased, subleased or possession granted to state or federal government or Indian tribe.

Creates 10-year clawback provisions for nonprofit corporation low income housing exemption program and vertical housing exemption program, consistent with other housing exemption programs.

Requires applicant to obtain verifications required for farm labor camp and child care facility exemption programs.

Adds application requirement to exemption for property held or operated by housing authority.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to exemption from property taxation; creating new provisions; amending ORS 307.092,  
3 307.162, 307.166, 307.495, 307.500, 307.523, 307.527, 307.545, 307.547, 307.548, 307.621, 307.674,  
4 307.864, 308.459 and 308.466 and section 4, chapter 656, Oregon Laws 2011; repealing ORS  
5 263.290, 307.065, 307.205, 307.220, 307.230, 307.240, 308.559 and 308.665; and prescribing an ef-  
6 fective date.

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

8 **SECTION 1. ORS 263.290, 307.065, 307.205, 307.220, 307.230, 307.240, 308.559 and 308.665 are**  
9 **repealed.**

10 **SECTION 2. The repeal of ORS 263.290, 307.065, 307.205, 307.220, 307.230, 307.240, 308.559**  
11 **and 308.665 by section 1 of this 2013 Act applies to tax years beginning on or after July 1,**  
12 **2017.**

13 **SECTION 3. The repeal of ORS 263.290, 307.065, 307.205, 307.220, 307.230, 307.240, 308.559**  
14 **and 308.665 by section 1 of this 2013 Act becomes operative on July 1, 2017.**

15 **SECTION 4. Notice of approval of an application for exemption or special assessment, and**  
16 **any additional information required, under ORS 307.515 to 307.537, 307.540 to 307.548, 307.600**  
17 **to 307.637, 307.651 to 307.687, 307.841 to 307.867 or 308.450 to 308.481 must be filed with the**  
18 **assessor by the entity issuing the notice of approval on or before April 1 immediately pre-**  
19 **ceding the first property tax year for which the exemption or special assessment is re-**  
20 **quested.**

21 **SECTION 5. ORS 307.523 is amended to read:**

22 307.523. (1) Application shall be made on or before December 1 of the calendar year immediately  
23 preceding the first assessment year for which exemption is requested, and shall be accompanied by  
24 the application fee required under ORS 307.527. However, if the property is acquired after November  
25 1, the application shall be made within 30 days after the date of acquisition.

**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 (2) Within 60 days of the filing of an application under ORS 307.521, the governing body shall  
 2 take final action upon the application as provided under ORS 307.527, and certify the results of the  
 3 action to the county assessor, **as set forth in section 4 of this 2013 Act.**

4 (3) Upon receipt of certification under subsection (2) of this section, the county assessor shall  
 5 exempt the property from taxation to the extent certified by the governing body.

6 **SECTION 6.** ORS 307.527 is amended to read:

7 307.527. (1) Final action upon an application by the governing body shall be in the form of an  
 8 ordinance or resolution that shall contain the owner's name and address, a description of the hous-  
 9 ing unit, either the legal description of the property or the county assessor's property account  
 10 number, any specific conditions upon which the approval of the application is based and if only a  
 11 portion of the property is approved, a description of the portion that is approved.

12 (2) [*On or before April 1*] Following approval, the governing body shall file with the county  
 13 assessor and send to the applicant a copy of the ordinance or resolution approving or disapproving  
 14 the application. The copy shall contain or be accompanied by a notice explaining the grounds for  
 15 possible termination of the exemption prior to the end of the exemption period or thereafter, and the  
 16 effects of termination. In addition, the governing body shall file with the county assessor [*on or be-*  
 17 *fore April 1*] a document listing the same information otherwise required to be in an ordinance or  
 18 resolution under subsection (1) of this section, as to each application deemed approved under this  
 19 section.

20 (3) If the application is denied, the governing body shall state in writing the reasons for denial  
 21 and send the notice of denial to the applicant within 10 days after the denial. The notice shall in-  
 22 form the applicant of the right to appeal under ORS 307.533.

23 (4) The governing body, after consultation with the county assessor, shall establish an applica-  
 24 tion fee in an amount sufficient to cover the cost to be incurred by the governing body and the  
 25 county assessor in administering ORS 307.515 to 307.523. The application fee shall be paid to the  
 26 governing body at the time the application for exemption is filed. If the application is approved, the  
 27 governing body shall pay the application fee to the county assessor for deposit in the county general  
 28 fund, after first deducting that portion of the fee attributable to its own administrative costs in  
 29 processing the application. If the application is denied, the governing body shall retain that portion  
 30 of the application fee attributable to its own administrative costs and shall refund the balance to  
 31 the applicant.

32 **SECTION 7.** ORS 307.545 is amended to read:

33 307.545. (1) To qualify for the exemption provided by ORS 307.541, the corporation shall file an  
 34 application for exemption with the governing body for each assessment year the corporation wants  
 35 the exemption. The application shall be filed on or before [*April 1*] **March 1** of the assessment year  
 36 for which the exemption is sought, except that when the property designated is acquired after [*April*  
 37 *1*] **March 1** and before July 1, the [*claim*] **application** for that year shall be filed within 30 days after  
 38 the date of acquisition. The application shall include the following information, [*if*] **as** applicable:

- 39 (a) A description of the property for which the exemption is requested;
- 40 (b) A description of the charitable purpose of the project and whether all or a portion of the  
 41 property is being used for that purpose;
- 42 (c) A certification of income levels of low income occupants;
- 43 (d) A description of how the tax exemption will benefit project residents;
- 44 (e) A description of the development of the property if the property is being held for future low  
 45 income housing development; and

1 (f) A declaration that the corporation has been granted an exemption from income taxes under  
 2 section [501(c) (3) or (4)] **501(c)(3) or 501(c)(4)** of the Internal Revenue Code, as amended before  
 3 December 1, 1984.

4 (2) The applicant shall verify the information in the application by oath or affirmation.

5 **SECTION 8.** ORS 307.547 is amended to read:

6 307.547. (1) Within 30 days of the filing of an application under ORS 307.545, the governing body  
 7 shall determine whether the applicant qualifies for the exemption under ORS 307.541.

8 (2)(a) If the governing body determines **that** the applicant qualifies, the governing body shall  
 9 certify to the assessor of the county where the real property is located, **as set forth in section 4**  
 10 **of this 2013 Act**, that all or a portion of the property [*shall be*] **is** exempt from taxation under the  
 11 levy of the certifying governing body.

12 (b) **Notwithstanding paragraph (a) of this subsection, the governing body may send the**  
 13 **certification required under this subsection on or before the deadline specified in section 4**  
 14 **of this 2013 Act, or as promptly as practicable after making the determination under sub-**  
 15 **section (1) of this section, whichever is later.**

16 [(2)] (3) Upon receipt of certification [*under subsection (1)*] **sent pursuant to subsection (2)** of  
 17 this section, the county assessor shall exempt the property from taxation to the extent certified by  
 18 the governing body.

19 **SECTION 9.** ORS 307.621 is amended to read:

20 307.621. (1) The city or county shall approve or deny an application filed under ORS [*307.618*]  
 21 **307.615** within 180 days after receipt of the application. An application not acted upon within 180  
 22 days shall be deemed approved.

23 (2) Final action upon an application by the city or county shall be in the form of an ordinance  
 24 or resolution that shall contain the owner's name and address, a description of the subject  
 25 multiple-unit housing, either the legal description of the property or the assessor's property account  
 26 number, and the specific conditions upon which the approval of the application is based. [*On or be-*  
 27 *fore April 1*] Following approval **and on or before the deadline set forth in section 4 of this 2013**  
 28 **Act**, the city or county shall file with the county assessor and send to the owner at the last-known  
 29 address of the owner a copy of the ordinance or resolution approving or disapproving the applica-  
 30 tion. In addition, the city or county shall file with the county assessor [*on or before April 1*] a doc-  
 31 ument listing the same information otherwise required to be in an ordinance or resolution under this  
 32 subsection, as to each application deemed approved under subsection (1) of this section.

33 (3) If the application is denied, the city or county shall state in writing the reasons for denial  
 34 and send notice of denial to the applicant at the last-known address of the applicant within 10 days  
 35 after the denial.

36 (4) The city or county, after consultation with the county assessor, shall establish an application  
 37 fee in an amount sufficient to cover the cost to be incurred by the city or county and the assessor  
 38 in administering ORS 307.600 to 307.637. The application fee shall be paid to the city or county at  
 39 the time the application for exemption is filed. If the application is approved, the city or county shall  
 40 pay the application fee to the county assessor for deposit in the county general fund, after first de-  
 41 ducting that portion of the fee attributable to its own administrative costs in processing the appli-  
 42 cation. If the application is denied, the city or county shall retain that portion of the application fee  
 43 attributable to its own administrative costs and shall refund the balance to the applicant.

44 **SECTION 10.** ORS 307.674 is amended to read:

45 307.674. (1) The city shall approve or deny an application filed under ORS 307.667 within 180

1 days after receipt of the application. An application not acted upon within 180 days shall be deemed  
 2 approved.

3 (2) Final action upon an application by the city shall be in the form of an ordinance or resol-  
 4 ution that shall contain the owner's name and address, a description of the structure that is the  
 5 subject of the application that includes either the legal description of the property or the assessor's  
 6 property account number and the specific conditions upon which the approval of the application is  
 7 based.

8 (3) *[On or before April 1]* Following approval **and on or before the deadline set forth in sec-**  
 9 **tion 4 of this 2013 Act**, the city shall file with the county assessor and send to the owner at the  
 10 last-known address of the owner a copy of the ordinance or resolution approving the application.  
 11 The copy shall contain or be accompanied by a notice explaining the grounds for possible termi-  
 12 nation of the exemption prior to the end of the exemption period or thereafter, and the effects of  
 13 termination. In addition, the city shall file with the county assessor *[on or before April 1]* a docu-  
 14 ment listing the same information otherwise required to be in an ordinance or resolution under  
 15 subsection (2) of this section, as to each application deemed approved under subsection (1) of this  
 16 section.

17 (4) If the application is denied, the city shall state in writing the reasons for denial and send  
 18 notice of denial to the applicant at the last-known address of the applicant within 10 days after the  
 19 denial. The notice shall inform the applicant of the right to appeal under ORS 307.687.

20 (5) The city, after consultation with the county assessor, shall establish an application fee in  
 21 an amount sufficient to cover the cost to be incurred by the city and the assessor in administering  
 22 ORS 307.651 to 307.687. The application fee shall be paid to the city at the time the application for  
 23 exemption is filed. If the application is approved, the city shall pay the application fee to the county  
 24 assessor for deposit in the county general fund, after first deducting that portion of the fee attrib-  
 25 utable to its own administrative costs in processing the application. If the application is denied, the  
 26 city shall retain that portion of the application fee attributable to its own administrative costs and  
 27 shall refund the balance to the applicant.

28 **SECTION 11.** ORS 307.864 is amended to read:

29 307.864. (1) For the first tax year in which, as of the assessment date, a vertical housing devel-  
 30 opment project is occupied or ready for occupancy following certification under ORS 307.857, and  
 31 for the next nine consecutive tax years:

32 (a) The property of the vertical housing development project, except for the land of the project,  
 33 shall be partially exempt from ad valorem property taxes imposed by local taxing districts, other  
 34 than the districts that elected not to participate in the vertical housing development zone as de-  
 35 scribed in ORS 307.844 (4), according to the following schedule and as identified in the certification  
 36 issued by the department under ORS 307.857 (7):

37 (A) If the project consists of the equivalent of one equalized floor allocated to residential hous-  
 38 ing, the project shall be 20 percent exempt.

39 (B) If the project consists of the equivalent of two equalized floors allocated to residential  
 40 housing, the project shall be 40 percent exempt.

41 (C) If the project consists of the equivalent of three equalized floors allocated to residential  
 42 housing, the project shall be 60 percent exempt.

43 (D) If the project consists of the equivalent of four or more equalized floors allocated to resi-  
 44 dential housing, the project shall be 80 percent exempt.

45 (b) The land of the vertical housing development project shall be partially exempt from ad

1 valorem property taxes imposed by local taxing districts, other than the districts that elected not  
 2 to participate in the vertical housing development zone as described in ORS 307.844 (4), in the same  
 3 percentages determined under paragraph (a) of this subsection, for each equalized floor allocated to  
 4 low income residential housing, as identified in the certification issued by the department under ORS  
 5 307.857 (7).

6 (2) In order **for the property of a vertical housing development project** to receive the partial  
 7 property tax exemption described in subsection (1) of this section, the vertical housing development  
 8 project property owner, project applicant or other person responsible for the payment of property  
 9 taxes on the project [*shall notify the county assessor of the county in which the project exists,*] **must**  
 10 **notify the Housing and Community Services Department that the project is occupied or ready**  
 11 **for occupancy, and the department must notify the assessor of the county in which the**  
 12 **project is located, in the manner set forth in section 4 of this 2013 Act**, that the project [*meets*  
 13 *the requirements of subsection (1) of this section. The notification must be given to the assessor in*  
 14 *writing on or before April 1 preceding the first tax year for which the partial property tax exemption*  
 15 *is sought*] **is occupied or ready for occupancy and has been certified by the department under**  
 16 **ORS 307.857.**

17 (3) During the period in which property would otherwise be partially exempt under subsection  
 18 (1)(a) of this section, if all or a portion of a project has been decertified by the Housing and Com-  
 19 munity Services Department under ORS 307.861, the property shall be disqualified from exemption  
 20 under this section in proportion to the equivalent of each equalized floor that has ceased qualifying  
 21 as residential housing, as set forth in the notice of decertification.

22 (4) During the period in which land would otherwise be partially exempt under subsection (1)(b)  
 23 of this section, if all or a portion of a project has been decertified by the Housing and Community  
 24 Services Department under ORS 307.861, the land shall be disqualified from exemption under this  
 25 section in proportion to the equivalent number of equalized floors that have ceased qualifying as low  
 26 income residential housing, as set forth in the notice of decertification.

27 **SECTION 12.** ORS 308.459 is amended to read:

28 308.459. (1) For purposes of ORS 308.232, the assessed value of rehabilitated residential property  
 29 shall be not more than its assessed value as it appears in the last certified assessment roll next  
 30 preceding the date on which the application for limited assessment is filed with the governing body  
 31 as provided in ORS 308.462. If the certificate of qualification is filed with the assessor as provided  
 32 in ORS 308.466 [*after December 31 and before April 1*] **and section 4 of this 2013 Act**, the limited  
 33 assessment shall apply with respect to the first assessment roll certified after that date or if the  
 34 certificate of qualification is filed after [*April 1 and before January 1*] **the deadline set forth in**  
 35 **section 4 of this 2013 Act**, the limited assessment shall apply as of the following January 1, and  
 36 shall continue to apply for a total of 10 consecutive assessment rolls.

37 (2) Notwithstanding subsection (1) of this section, if the multifamily rehabilitated residential  
 38 housing is subject to a low income rental assistance contract with an agency of this state or of the  
 39 United States, the city may extend the limited assessment provided by ORS 308.450 to 308.481  
 40 through December 31 of the assessment year during which the termination date of the contract falls.

41 **SECTION 13.** ORS 308.466 is amended to read:

42 308.466. (1) The governing body or its duly authorized agent shall approve or deny an applica-  
 43 tion filed under ORS 308.462 within 90 days after receipt of the application. An application not acted  
 44 upon within 90 days shall be deemed approved.

45 (2) Subject to ORS 308.471, the governing body shall complete a certificate of qualification on

1 a form approved by the Department of Revenue and file the certificate with the county assessor **on**  
 2 **or before the deadline set forth in section 4 of this 2013 Act.** The certificate shall contain a  
 3 statement by a duly authorized agent of the governing body that the property is in substantial  
 4 compliance as defined in ORS 308.450, and that the owner of the property has complied with the  
 5 provisions of ORS 308.471. In addition, the governing body shall file with the county assessor copies  
 6 of applications filed and deemed approved under subsection (1) of this section, together with copies  
 7 of those statements filed under ORS 308.462 and 308.471.

8 (3) If the application is denied, the governing body or its authorized agent shall state in writing  
 9 the reasons for denial and send the notice to the applicant at the last-known address of the applicant  
 10 within 10 days after the denial.

11 (4) Upon denial by a duly authorized agent, an applicant may appeal the denial to the governing  
 12 body within 30 days after receipt of the denial. Upon denial of the appeal by the governing body,  
 13 or denial of the application, the applicant may appeal to the circuit court, and from the decision of  
 14 the circuit court to the Court of Appeals, as provided by law.

15 **SECTION 14. Section 4 of this 2013 Act and the amendments to ORS 307.523, 307.527,**  
 16 **307.545, 307.547, 307.621, 307.674, 307.864, 308.459 and 308.466 by sections 5 to 13 of this 2013**  
 17 **Act apply to property tax years beginning on or after July 1, 2014.**

18 **SECTION 15.** ORS 307.166 is amended to read:

19 307.166. (1) If property is owned or being purchased by an institution, organization or public  
 20 body that is granted exemption or the right to claim exemption for any of its property under a  
 21 provision of law contained in this chapter, and the institution, organization or public body leases  
 22 or otherwise grants the use and possession of the property to another institution, organization or  
 23 public body that is likewise granted exemption or the right to claim exemption for property under  
 24 a provision of law contained in this chapter, the property is exempt from taxation if used by the  
 25 lessee or possessor in the manner, if any, required by law for the exemption of property owned or  
 26 being purchased by the lessee or possessor and the rent payable under the lease or other grant of  
 27 use and possession of the property has been established to reflect the savings below market rent  
 28 resulting from the exemption from taxation. Likewise, if the property is sublet or otherwise the use  
 29 and possession of the property is granted to another institution, organization or public body of the  
 30 kind described in this subsection, the property is exempt if used by the sublessee or possessor in the  
 31 manner, if any, required by law for the exemption of property owned or being purchased by the  
 32 sublessee or possessor and the rent payable under the sublease or other grant of use and possession  
 33 of the property has been established to reflect the savings below market rent resulting from the  
 34 exemption from taxation.

35 (2) **Except as provided in subsection (4) of this section,** to obtain the exemption under this  
 36 section, the lessee or entity in possession must file a claim for exemption with the county assessor,  
 37 verified by the oath or affirmation of the president or other proper officer of the institution or or-  
 38 ganization, or head official of the public body or the legally authorized delegate of the head official,  
 39 showing:

40 (a) A complete description of the property for which exemption is claimed.

41 (b) All facts relating to the ownership or purchase of the property.

42 (c) All facts relating to the use of the property by the lessee or entity in possession.

43 (d) A true copy of the lease, sublease or other grant of use and possession covering the property  
 44 for which exemption is claimed.

45 (e) Any other information required by the claim form.

1 (3)(a) The claim **required under subsection (2) of this section** must be filed on or before April  
 2 1 preceding the tax year for which the exemption is claimed, except:

3 (A) If the lease, sublease or other grant of use and possession is entered into after March 1 but  
 4 not later than June 30, the claim must be filed within 30 days after the date the lease, sublease or  
 5 other grant of use and possession is entered into if the exemption is claimed for the assessment year  
 6 beginning on the preceding January 1; or

7 (B) If a late filing fee is paid in the manner provided in ORS 307.162 (2), the claim may be filed  
 8 within the time specified in ORS 307.162 (2).

9 (b) The exemption first applies for the tax year beginning July 1 of the year for which the claim  
 10 is filed. The exemption continues as long as the ownership and use of the property remain un-  
 11 changed and during the period of the lease, sublease or other grant of use and possession. If either  
 12 the ownership or use changes, a new claim must be filed as provided in this section. If the lease,  
 13 sublease or other grant of use and possession expires before July 1 of any year, the exemption ter-  
 14 minates as of January 1 of the same calendar year.

15 (4)(a) **In lieu of filing a claim under subsection (2) of this section, the lessor, sublessor**  
 16 **or person granting the use and possession of property that is exempt from taxation under**  
 17 **ORS 307.040 or 307.090 to a lessee, sublessee or entity the property of which is eligible for**  
 18 **exemption under ORS 307.040 or 307.090 must provide the assessor of the county in which the**  
 19 **property is located with the following information as soon as practicable after execution of**  
 20 **a lease, sublease or other grant of use and possession of the property:**

21 (A) **The name and address of the lessee, sublessee or possessor;**

22 (B) **Upon request of the assessor, a copy of the lease, sublease or other grant of use and**  
 23 **possession of the property; and**

24 (C) **The location of the property.**

25 (b) **Upon compliance with paragraph (a) of this subsection, the property is exempt from**  
 26 **taxation under this section during the term of the lease, sublease or other grant of use and**  
 27 **possession.**

28 **SECTION 16. The amendments to ORS 307.166 by section 15 of this 2013 Act apply to**  
 29 **leases, subleases and other grants of use and possession of property executed before, on or**  
 30 **after the effective date of this 2013 Act.**

31 **SECTION 17.** ORS 307.548 is amended to read:

32 307.548. (1)(a) If the governing body that has granted an exemption under ORS 307.540 to  
 33 307.548 to property in anticipation of future development of low income housing in connection with  
 34 the exempt property finds that the property is being used for any purpose other than the provision  
 35 of low income housing, or that any provision of ORS 307.540 to 307.548 is not being complied with,  
 36 the governing body shall give notice of the proposed termination of the exemption to the owner, by  
 37 mailing the notice to the last-known address of the owner, and to every known lender, by mailing  
 38 the notice to the last-known address of every known lender.

39 (b) The notice **required under this subsection** shall state the reasons for the proposed termi-  
 40 nation and shall require the owner to appear at a specified time, not less than 20 days after mailing  
 41 the notice, to show cause, if any, why the exemption should not be terminated.

42 (2) If the owner fails to appear and show cause why the exemption should not be terminated, the  
 43 governing body shall notify every known lender, and shall allow any lender not less than 30 days  
 44 after the date the notice of the failure to appear and show cause is mailed to cure any noncompli-  
 45 ance or to provide assurance adequate to the governing body that all noncompliance [*shall*] **will** be

1 remedied.

2 (3)(a) If the owner fails to appear and show cause why the exemption should not be terminated,  
 3 and the lender fails to cure or give adequate assurance of the cure of any noncompliance, the gov-  
 4 erning body shall adopt an ordinance or resolution stating its findings that terminate the exemption.

5 (b) A copy of the ordinance or resolution **required under this subsection** shall be filed within  
 6 10 days after its adoption with the county assessor, and a copy shall be sent to the owner at the  
 7 owner's last-known address and to the lender at the last-known address of the lender within 10 days  
 8 after its adoption.

9 (4) Upon the county assessor's receipt of the governing body's termination findings:

10 (a) The exemption granted the housing unit or portion under ORS 307.540 to 307.548 [*shall ter-*  
 11 *minate*] **terminates** immediately, without right of notice or appeal;

12 (b) The property shall be assessed and taxed as other property similarly situated is assessed and  
 13 taxed; and

14 (c) Notwithstanding ORS 311.235, there shall be added to the general property tax roll for the  
 15 tax year next following the presentation or discovery, to be collected and distributed in the same  
 16 manner as other real property tax, an amount equal to the difference between the taxes assessed  
 17 against the property and the taxes that would have been assessed against the property had it not  
 18 been exempt under ORS 307.540 to 307.548 for each of the years, not to exceed the last 10 years,  
 19 during which the property was exempt from taxation under ORS 307.540 to 307.548.

20 (5) **Notwithstanding subsection (4) of this section, if at the time of presentation or dis-**  
 21 **covery, the property is no longer exempt, additional taxes may be collected as provided in**  
 22 **subsection (4) of this section, except that the number of years for which the additional taxes**  
 23 **shall be collected shall be reduced by one year for each year that has elapsed since the year**  
 24 **the property was last granted exemption, beginning with the oldest year for which additional**  
 25 **taxes are due.**

26 [(5)] (6) The assessment and tax rolls shall show potential additional tax liability for each  
 27 property granted exemption under ORS 307.540 to 307.548 because the property is being held for  
 28 future development of low income housing.

29 [(6)] (7) Additional taxes collected under this section shall be deemed to have been imposed in  
 30 the year to which the additional taxes relate.

31 **SECTION 18.** ORS 307.864, as amended by section 11 of this 2013 Act, is amended to read:

32 307.864. (1) For the first tax year in which, as of the assessment date, a vertical housing devel-  
 33 opment project is occupied or ready for occupancy following certification under ORS 307.857, and  
 34 for the next nine consecutive tax years:

35 (a) The property of the vertical housing development project, except for the land of the project,  
 36 shall be partially exempt from ad valorem property taxes imposed by local taxing districts, other  
 37 than the districts that elected not to participate in the vertical housing development zone as de-  
 38 scribed in ORS 307.844 (4), according to the following schedule and as identified in the certification  
 39 issued by the department under ORS 307.857 (7):

40 (A) If the project consists of the equivalent of one equalized floor allocated to residential hous-  
 41 ing, the project shall be 20 percent exempt.

42 (B) If the project consists of the equivalent of two equalized floors allocated to residential  
 43 housing, the project shall be 40 percent exempt.

44 (C) If the project consists of the equivalent of three equalized floors allocated to residential  
 45 housing, the project shall be 60 percent exempt.

1 (D) If the project consists of the equivalent of four or more equalized floors allocated to resi-  
2 dential housing, the project shall be 80 percent exempt.

3 (b) The land of the vertical housing development project shall be partially exempt from ad  
4 valorem property taxes imposed by local taxing districts, other than the districts that elected not  
5 to participate in the vertical housing development zone as described in ORS 307.844 (4), in the same  
6 percentages determined under paragraph (a) of this subsection, for each equalized floor allocated to  
7 low income residential housing, as identified in the certification issued by the department under ORS  
8 307.857 (7).

9 (2) In order for the property of a vertical housing development project to receive the partial  
10 property tax exemption described in subsection (1) of this section, the vertical housing development  
11 project property owner, project applicant or other person responsible for the payment of property  
12 taxes on the project must notify the Housing and Community Services Department that the project  
13 is occupied or ready for occupancy, and the department must notify the assessor of the county in  
14 which the project is located, in the manner set forth in section 4 of this 2013 Act, that the project  
15 is occupied or ready for occupancy and has been certified by the department under ORS 307.857.

16 *[(3) During the period in which property would otherwise be partially exempt under subsection*  
17 *(1)(a) of this section, if all or a portion of a project has been decertified by the Housing and Community*  
18 *Services Department under ORS 307.861, the property shall be disqualified from exemption under this*  
19 *section in proportion to the equivalent of each equalized floor that has ceased qualifying as residential*  
20 *housing, as set forth in the notice of decertification.]*

21 *[(4) During the period in which land would otherwise be partially exempt under subsection (1)(b)*  
22 *of this section, if all or a portion of a project has been decertified by the Housing and Community*  
23 *Services Department under ORS 307.861, the land shall be disqualified from exemption under this*  
24 *section in proportion to the equivalent number of equalized floors that have ceased qualifying as low*  
25 *income residential housing, as set forth in the notice of decertification.]*

26 **SECTION 19. Section 20 of this 2013 Act is added to and made a part of ORS 307.841 to**  
27 **307.867.**

28 **SECTION 20. (1)(a) During the period in which property of a vertical housing development**  
29 **project would otherwise be partially exempt under ORS 307.864 (1)(a), if all or a portion of**  
30 **the project has been decertified by the Housing and Community Services Department under**  
31 **ORS 307.861, the property is disqualified from exemption in proportion to the equivalent of**  
32 **each equalized floor that has ceased qualifying as residential housing, as set forth in the**  
33 **notice of decertification.**

34 **(b) During the period in which the land of a vertical housing development project would**  
35 **otherwise be partially exempt under ORS 307.864 (1)(b), if all or a portion of the project has**  
36 **been decertified by the Housing and Community Services Department under ORS 307.861, the**  
37 **land is disqualified from exemption in proportion to the equivalent number of equalized floors**  
38 **that have ceased qualifying as low income residential housing, as set forth in the notice of**  
39 **decertification.**

40 **(2) Notwithstanding ORS 307.864, there shall be added to the general property tax roll for**  
41 **the tax year next following decertification described in subsection (1) of this section, to be**  
42 **collected and distributed in the same manner as other real property tax, an amount equal**  
43 **to the difference between the taxes assessed against the property and land granted ex-**  
44 **emption under ORS 307.864 and the taxes that would have been assessed against the property**  
45 **and land but for the exemption for each of the years, not to exceed the last 10 years, during**

1 which the property and land were exempt from taxation under ORS 307.864.

2 (3) Notwithstanding ORS 307.864, if after a period of exemption under ORS 307.864 has  
 3 terminated the Housing and Community Services Department discovers that the property  
 4 or land of a vertical housing development project was granted exemption to which the project  
 5 was not entitled, additional taxes may be collected as provided in subsection (2) of this sec-  
 6 tion, except that the number of years for which the additional taxes may be collected shall  
 7 be reduced by one year for each year that has elapsed since the year the property or land  
 8 was last granted exemption, beginning with the oldest year for which additional taxes are  
 9 due.

10 (4) The assessment and tax rolls shall show potential additional tax liability for all prop-  
 11 erty and land granted exemption under ORS 307.864.

12 (5) Additional taxes collected under this section shall be deemed to have been imposed in  
 13 the year to which the additional taxes relate.

14 **SECTION 21.** (1) The amendments to ORS 307.548 by section 17 of this 2013 Act apply to  
 15 property granted exemption under ORS 307.540 to 307.548 before, on or after the effective  
 16 date of this 2013 Act.

17 (2) Section 20 of this 2013 Act and the amendments to ORS 307.864 by section 18 of this  
 18 2013 Act apply to applications for exemption filed pursuant to ORS 307.857 on or after the  
 19 effective date of this 2013 Act.

20 **SECTION 22.** ORS 307.495 is amended to read:

21 307.495. (1)(a) *[Each]* A nonprofit corporation claiming exemption under ORS 307.485 shall file  
 22 with the county assessor **two copies of** a written claim *[therefor in five copies]* **for exemption** on  
 23 or before April 1 of each assessment year for which the exemption is claimed[.].

24 (b) *[Except that when the property designated]* **Notwithstanding paragraph (a) of this sub-**  
 25 **section, if the property for which exemption is claimed** is acquired after March 1 and before  
 26 July 1, the claim shall be filed within 30 days after acquisition.

27 (2) The claim shall:

28 (a) Designate the property *[to which the exemption may apply, shall]* **for which exemption is**  
 29 **claimed;**

30 (b) State the facts *[which]* **that** make the property eligible within the definitions of ORS  
 31 307.480; **and** *[, and shall certify that the eligible farm labor camp or eligible child care facility is, to*  
 32 *the best of taxpayer's knowledge, in compliance with the requirements of the State Fire Marshal, the*  
 33 *health code for farm labor camps or is a certified child care facility.]*

34 (c) **Include all verifications required under subsection (3) of this section.**

35 (3) **The claim for exemption under this section must include written verification:**

36 (a) **By the State Fire Marshal that the property is in compliance with applicable laws and**  
 37 **rules relating to safety from fire.**

38 (b) **If for a farm labor camp, by the appropriate authority under the Oregon Safe Em-**  
 39 **ployment Act that the farm labor camp is in compliance with the health code for farm labor**  
 40 **camps.**

41 (c) **If for a child care facility, in whole or in part, by the Child Care Division that the**  
 42 **child care facility is certified.**

43 (4) **Verification of compliance under subsection (3)(b) of this section may be denied if**  
 44 **access to the farm labor camp for purposes of inspection is denied to the appropriate au-**  
 45 **thority.**

1 (5) If any verification required under subsection (3) of this section is refused by the ap-  
 2 propriate authority or is otherwise not included with a claim for exemption, the county  
 3 assessor shall deny the claim and cause the nonprofit corporation to be billed for the real  
 4 and personal property taxes it would otherwise be liable to pay.

5 [(3)] (6) [No] An exemption [shall] may not be allowed for any year subsequent to the first year  
 6 unless the corporation submits to the assessor details as to the rentals for the prior year and proof  
 7 that the payments required by ORS 307.490 have been made.

8 **SECTION 23.** ORS 307.500 is amended to read:

9 307.500. (1) Immediately upon receipt of the claim, or any subsequent rental statement, **filed**  
 10 **under ORS 307.495** the county assessor shall promptly transmit one copy of the claim to the De-  
 11 partment of Revenue.

12 (2) The rent subsequently reported for the eligible child care facility or eligible farm labor camp  
 13 for which the claim is made **under ORS 307.485** is subject to verification and modification by the  
 14 Department of Revenue.

15 [(2) *The county assessor shall promptly transmit one copy of each claim or statement for exemption*  
 16 *to the State Fire Marshal for verification of compliance with applicable laws and rules and regulations*  
 17 *relating to safety from fire. If the State Fire Marshal refuses such verification, the county assessor shall*  
 18 *deny the claim and cause the nonprofit corporation to be billed for the real and personal property taxes*  
 19 *it would otherwise be liable to pay.*]

20 [(3) *The county assessor shall promptly transmit one copy of each claim or statement for exemption*  
 21 *of an eligible farm labor camp to the appropriate authority under the Oregon Safe Employment Act for*  
 22 *verification of compliance with the health code for farm labor camps. That authority shall refuse to*  
 23 *verify compliance if the farm labor camp does not comply with the health code applicable to it or if*  
 24 *access to the camp for inspection has been denied the county assessor or the authorized representative*  
 25 *of the county assessor. If verification is refused, the county assessor shall deny the claim and cause the*  
 26 *nonprofit corporation to be billed for the real and personal property taxes it would otherwise be liable*  
 27 *to pay.*]

28 [(4) *If the claim or statement or any part thereof applies to property used for an eligible child care*  
 29 *facility, the county assessor shall promptly transmit a copy to the Child Care Division for verification*  
 30 *of certification. If the division refuses such verification, the county assessor shall deny the claim and*  
 31 *cause the nonprofit corporation to be billed for the real and personal property taxes it would otherwise*  
 32 *be liable to pay.*]

33 **SECTION 24.** The amendments to ORS 307.495 and 307.500 by sections 22 and 23 of this  
 34 2013 Act apply to claims for exemption for assessment years beginning on or after January  
 35 1, 2014.

36 **SECTION 25.** ORS 307.092 is amended to read:

37 307.092. (1) As used in this section, “property of a housing authority” includes, but is not limited  
 38 to:

- 39 (a) Property that is held under lease or lease purchase agreement by the housing authority; and
- 40 (b) Property of a partnership, nonprofit corporation or limited liability company for which the  
 41 housing authority is a general partner, limited partner, director, member, manager or general man-  
 42 ager, if the property is leased or rented to persons of lower income for housing purposes.

43 (2)(a) [Except as provided in subsection (3) of this section,] The property of a housing authority  
 44 is declared to be public property used for essential public and governmental purposes and, **upon**  
 45 **compliance with ORS 307.162**, [such] the property and [an] the housing authority [shall be] are

1 exempt from all taxes and special assessments of the city, the county, the state or any political  
 2 subdivision [*thereof*] **of the city, county or state.**

3 (b) In lieu of [*such*] taxes or special assessments, [*an*] **the** authority may agree to make pay-  
 4 ments to the city, county or [*any such*] political subdivision for improvements, services and facilities  
 5 furnished by [*such*] **the** city, county or political subdivision for the benefit of a housing project, but  
 6 in no event [*shall such*] **may the** payments exceed the estimated cost to the city, county or political  
 7 subdivision of the improvements, services or facilities [*to be so*] furnished.

8 (3) [*The provisions of*] **Notwithstanding** subsection (2) of this section, [*regarding exemption from*  
 9 *taxes and special assessments shall not apply to*] property of [*the*] **a** housing authority that is com-  
 10 mercial property leased to a taxable entity **is not exempt from taxation and special assessments**  
 11 **under this section.**

12 **SECTION 26.** ORS 307.162, as amended by section 3, chapter 42, Oregon Laws 2012, is amended  
 13 to read:

14 307.162. (1)(a) Before any real or personal property may be exempted from taxation under ORS  
 15 **307.092**, 307.115, 307.118, 307.130 to 307.140, 307.145, 307.147, 307.150, 307.160, 307.181 (3) or 307.580  
 16 for any tax year, the institution or organization entitled to claim the exemption must file a claim  
 17 with the county assessor, on or before April 1 preceding the tax year for which the exemption is  
 18 claimed. The claim must contain statements, verified by the oath or affirmation of the president or  
 19 other proper officer of the institution or organization, that:

20 (A) List all real property claimed to be exempt and show the purpose for which the real property  
 21 is used; and

22 (B) Cite the statutes under which exemption for personal property is claimed.

23 (b) If the ownership of all property included in the claim filed with the county assessor for a  
 24 prior year remains unchanged, a new claim is not required.

25 (c) When the property designated in the claim for exemption is acquired after March 1 and be-  
 26 fore July 1, the claim for that year must be filed within 30 days from the date of acquisition of the  
 27 property.

28 (2)(a) Notwithstanding subsection (1) of this section, a claim may be filed under this section for  
 29 the current tax year:

30 (A) On or before December 31 of the tax year, if the claim is accompanied by a late filing fee  
 31 of the greater of \$200, or one-tenth of one percent of the real market value as of the most recent  
 32 assessment date of the property to which the claim pertains.

33 (B) On or before April 1 of the tax year, if the claim is accompanied by a late filing fee of \$200  
 34 and the claimant demonstrates good and sufficient cause for failing to file a timely claim, is a  
 35 first-time filer or is a public entity described in ORS 307.090.

36 (b)(A) Notwithstanding subsection (1) of this section, a claimant that demonstrates good and  
 37 sufficient cause for failing to file a timely claim, is a first-time filer or is a public entity described  
 38 in ORS 307.090 may file a claim under this section for the five tax years prior to the current tax  
 39 year:

40 (i) Within 60 days after the date on which the county assessor mails notice of additional taxes  
 41 owing under ORS 311.206 for the property to which the claim filed under this subparagraph pertains;  
 42 or

43 (ii) At any time if no notice is mailed.

44 (B) A claim filed under this paragraph must be accompanied by a late filing fee of the greater  
 45 of \$200, or one-tenth of one percent of the real market value as of the most recent assessment date

1 of the property to which the claim pertains, multiplied by the number of prior tax years for which  
2 exemption is claimed.

3 (c) If a claim filed under this subsection is not accompanied by the late filing fee or if the late  
4 filing fee is not otherwise paid, an exemption may not be allowed for the tax years sought by the  
5 claim. A claim may be filed under this subsection notwithstanding that there are no grounds for  
6 hardship as required for late filing under ORS 307.475.

7 (d) The value of the property used to determine the late filing fee under this subsection and the  
8 determination of the county assessor relative to a claim of good and sufficient cause are appealable  
9 in the same manner as other acts of the county assessor.

10 (e) A late filing fee collected under this subsection must be deposited in the county general fund.

11 (3) As used in this section:

12 (a) "First-time filer" means a claimant that:

13 (A) Has never filed a claim for the property that is the subject of the current claim; and

14 (B) Did not receive notice from the county assessor on or before December 1 of the tax year for  
15 which exemption is claimed regarding the potential property tax liability of the property.

16 (b)(A) "Good and sufficient cause" means an extraordinary circumstance beyond the control of  
17 the taxpayer or the taxpayer's agent or representative that causes the failure to file a timely claim.

18 (B) "Good and sufficient cause" does not include hardship, reliance on misleading information  
19 unless the information is provided by an authorized tax official in the course of the official's duties,  
20 lack of knowledge, oversight or inadvertence.

21 (c) "Ownership" means legal and equitable title.

22 (4)(a) Notwithstanding subsection (1) of this section, if an institution or organization owns  
23 property that is exempt from taxation under a provision of law listed in subsection (1) of this section  
24 and fails to file a timely claim for exemption under subsection (1) of this section for additions or  
25 improvements to the exempt property, the additions or improvements may nevertheless qualify for  
26 exemption.

27 (b) The organization must file a claim for exemption with the county assessor to have the addi-  
28 tions or improvements to the exempt property be exempt from taxation. The claim must:

29 (A) Describe the additions or improvements to the exempt property;

30 (B) Describe the current use of the property that is the subject of the application;

31 (C) Identify the tax year and any preceding tax years for which the exemption is sought;

32 (D) Contain any other information required by the Department of Revenue; and

33 (E) Be accompanied by a late filing fee equal to the product of the number of tax years for  
34 which exemption is sought multiplied by the greater of \$200 or one-tenth of one percent of the real  
35 market value as of the most recent assessment date of the property that is the subject of the claim.

36 (c) Upon the county assessor's receipt of a completed claim and late filing fee, the assessor shall  
37 determine for each tax year for which exemption is sought whether the additions or improvements  
38 that are the subject of the claim would have qualified for exemption had a timely claim been filed  
39 under subsection (1) of this section. Any property that would have qualified for exemption had a  
40 timely claim been filed under subsection (1) of this section is exempt from taxation for each tax year  
41 for which the property would have qualified.

42 (d) A claim for exemption under this subsection may be filed only for tax years for which the  
43 time for filing a claim under subsections (1) and (2)(a) of this section has expired. A claim filed under  
44 this subsection, however, may serve as the claim required under subsection (1) of this section for  
45 the current tax year.

1 (e) A late filing fee collected under this subsection must be deposited in the county general fund.

2 (5) For each tax year for which an exemption granted pursuant to subsection (2) or (4) of this  
3 section applies:

4 (a) Any tax, or interest attributable thereto, that was paid with respect to the property that is  
5 declared exempt from taxation must be refunded. Refunds must be made without interest from the  
6 unsegregated tax collections account established under ORS 311.385.

7 (b) Any tax, or interest attributable thereto, that remains unpaid as of the date the exemption  
8 is granted must be abated.

9 (6) If an institution or organization owns property that is exempt from taxation under a pro-  
10 vision of law listed in subsection (1) of this section and changes the use of the property to a use that  
11 would not entitle the property to exemption from taxation, the institution or organization must no-  
12 tify the county assessor of the change to a taxable use within 30 days.

13 **SECTION 27. The amendments to ORS 307.092 and 307.162 by sections 25 and 26 of this**  
14 **2013 Act apply to claims for exemption for tax years beginning on or after July 1, 2014.**

15 **SECTION 28.** Section 4, chapter 656, Oregon Laws 2011, is amended to read:

16 **Sec. 4. (1)** The amendments to ORS 307.175 by section 3, **chapter 656, Oregon Laws 2011**, [*of*  
17 *this 2011 Act*] apply to tax years beginning on or after July 1, 2011[, *and before July 1, 2018*].

18 **(2) An exemption under ORS 307.175 may not be allowed for tax years beginning after**  
19 **July 1, 2017.**

20 **SECTION 29. This 2013 Act takes effect on the 91st day after the date on which the 2013**  
21 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

22

# House Bill 2046

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Veterans' Affairs)

## 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**.

Permits Director of Veterans' Affairs to retract waiver of claim against estate of person under certain circumstances. Establishes priority for payment of claim from estate of decedent.

## A BILL FOR AN ACT

1  
2 Relating to claims of the Department of Veterans' Affairs against estates; amending ORS 87.533,  
3 115.125 and 406.110.

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

5 **SECTION 1.** ORS 115.125 is amended to read:

6 115.125. (1) If the applicable assets of the estate are insufficient to pay all expenses and claims  
7 in full, the personal representative shall make payment in the following order:

8 (a) Support of spouse and children, subject to the limitations imposed by ORS 114.065.

9 (b) Expenses of administration.

10 (c) Expenses of a plain and decent funeral and disposition of the remains of the decedent.

11 (d) Debts and taxes with preference under federal law.

12 (e) Reasonable and necessary medical and hospital expenses of the last illness of the decedent,  
13 including compensation of persons attending the decedent.

14 (f) Taxes with preference under the laws of this state that are due and payable while possession  
15 of the estate of the decedent is retained by the personal representative.

16 (g) Debts owed employees of the decedent for labor performed within 90 days immediately pre-  
17 ceding the date of death of the decedent.

18 (h) Child support arrearages.

19 (i) **The claim of the Department of Veterans' Affairs under ORS 406.100, including a claim**  
20 **the waiver of which was retracted by the Director of Veterans' Affairs under ORS 406.110.**

21 [(i)] (j) The claim of the Department of Human Services or the Oregon Health Authority for the  
22 amount of the state's monthly contribution to the federal government to defray the costs of outpa-  
23 tient prescription drug coverage provided to a person who is eligible for Medicare Part D pre-  
24 scription drug coverage and who receives benefits under the state medical assistance program or  
25 Title XIX of the Social Security Act.

26 [(j)] (k) The claim of the Department of Human Services or the Oregon Health Authority for the  
27 net amount of assistance paid to or for the decedent, in the following order:

28 (A) Public assistance, as defined in ORS 411.010, funded entirely by moneys from the General  
29 Fund; and

30 (B) Public assistance, as defined in ORS 411.010, funded by a combination of state and federal  
31 funds.

**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        [(k)] (L) The claim of the Department of Human Services or the Oregon Health Authority for  
2 the care and maintenance of the decedent at a state institution, as provided in ORS 179.610 to  
3 179.770.

4        [(L)] (m) The claim of the Department of Corrections for care and maintenance of any decedent  
5 who was at a state institution to the extent provided in ORS 179.610 to 179.770.

6        [(m)] (n) All other claims against the estate.

7        (2) If the applicable assets of the estate are insufficient to pay in full all expenses or claims of  
8 any one class specified in subsection (1) of this section, each expense or claim of that class shall  
9 be paid only in proportion to the amount thereof.

10        **SECTION 2.** ORS 406.110 is amended to read:

11        406.110. (1) The Director of Veterans' Affairs may waive all or any portion of a claim arising  
12 under ORS 406.100 if the director finds that payment of the claim, or a portion thereof, would pose  
13 a hardship to the person from whose estate the claim is payable, or would deplete the estate.

14        (2) **The director may retract a waiver made under subsection (1) of this section if the**  
15 **director finds that payment of the claim, or a portion thereof, would no longer pose a hard-**  
16 **ship to the person from whose estate the claim is payable, or would no longer deplete the**  
17 **estate.**

18        (3) **The statute of limitations applicable to a claim under ORS 406.100, the waiver of which**  
19 **has been retracted under this section, is tolled for the period of time from the date the di-**  
20 **rector waived the claim to the date the director retracted the waiver of the claim.**

21        **SECTION 3.** ORS 87.533 is amended to read:

22        87.533. A lien created by ORS 87.503 shall not be enforced so as to interfere with:

23        (1) Any assets or income allowed to the community spouse or dependent family member under  
24 42 U.S.C. 1396r-5(d) or any rule of the Department of Human Services or the Oregon Health Au-  
25 thority.

26        (2) The priority given to the recovery of medical assistance payments under ORS 115.125 [(1)(i)  
27 or (j)] **(1)(j) or (k)** or other medical assistance claims under ORS 411.708, 411.795 and 416.350.

28        (3) The eligibility of a person for medical assistance or entitlement to Medicaid assistance pay-  
29 ments.

30        (4) The priority given to the recovery of cost of care payments under ORS 115.125 [(1)(k)]  
31 **(1)(L)**, 179.620 or 179.740.

32