

# OREGON LAND TITLE ASSOCIATION

## OREGON LAWS 2021 (REGULAR SESSION) / BILLS OF INTEREST TO TITLE COMPANIES

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### **HB 2009, Ch 106 Foreclosure moratorium; debt relief; resolution conference exemption**

Effective June 1, 2021

- **Foreclosure**

HB 2009 halts and prohibits foreclosures against 1-to-4 family residential properties during the emergency period beginning retroactively on December 31, 2020, and ending December 31, 2021 (extended by Governor's Executive Order).

In this context, foreclosure refers to judicial or non-judicial foreclosure or forfeiture of a trust deed, mortgage, or land sale contract. Exemptions from the prohibition are limited to:

- sheriff's sales and trustee's sales "*concluded*" prior to June 30, 2020,
- affidavits of forfeiture recorded prior to June 30, 2020,
- county tax foreclosures,
- foreclosures "*that dispose of vacant or abandoned property,*" and
- foreclosures "*that result from waste, destruction, or illegal use*" of the property.

Foreclosures may not be commenced and may not proceed during the emergency period.

Foreclosures commenced on or after March 8, 2020 are stayed pending expiration of the emergency period. Pending trustee's sales must be postponed until after expiration of the emergency period. Courts must dismiss new foreclosure actions filed during the emergency period. Judgments of foreclosure may not be entered, and writs of execution may not be issued during the emergency period. Sheriff's sale or trustee's sale conducted during the emergency period is "*void and does not transfer or foreclose any rights.*"

After expiration of the emergency period, pending foreclosure may be resumed:

- Trustee's sale may be resumed provided the trustee complies with ORS 86.782(12).
- Judicial foreclosure may be resumed in compliance with applicable foreclosure laws.
- Contract forfeiture may be resumed after compliance with ORS 93.918.

The original moratorium became law in 2020 as HB 2009 appears to jeopardize title to residential property acquired as the result of foreclosures resumed and completed after expiration of the 2020 moratorium) and June 1, 2021 (effective date of HB 2009). When the 2020 moratorium expired on December 31, 2020, foreclosures were resumed and completed prior to the Unless one of the exemptions in HB 2009 applies, it appears this bill jeopardizes title to residential property acquired by lenders and others through or after foreclosures completed after the 2020 moratorium expired and before the HB 2009 effective date.

- **Debt Relief**

HB 2009 contains numerous debt relief provisions, none of which relieve a borrower of the obligation to pay. Debt relief is provided in the form of payment deferral. See the bill for particulars.

Highlights include requirement for new borrower COVID-19 hardship notice to lender, after which lender may not treat borrower's failure to pay the debt as a default, may not add penalties, late fees, or default interest, may not require inspection or appraisal during the emergency period.

A borrower who suffers ascertainable loss of money or property as a result of actions by lender prohibited under HB 2009 may sue to recover actual damages plus costs and attorney's fees. Lender is not liable if lender's conduct occurred prior to receiving borrower's hardship notice, or if lender's payment or default notices were sent to borrower as result of internal clerical error, lender has not attempted debt collection, and lender confirms in writing the default amount remains deferred as provided in the bill.

Within 60 days after the effective date of HB 2009, lenders were required to send notice to all borrowers regarding borrowers' potential entitlement to relief under HB 2009.

- **Resolution conference and Affidavit of Exemption**

New provisions authorize remote audio-visual resolution conference.

New provisions govern lenders' exemption from the statutory resolution conference requirements. Exemption affidavits submitted between January 1 and June 1, 2021 are not effective. For 2021 and 2022, lender must submit a new affidavit based on the lender's 2019 foreclosure statistics. In other words, a lender who commenced more than 30 foreclosures in 2019 is not eligible for exemption in 2021 or 2022.

**HB 2289, Ch 217 Restrictions on buildings in wildfire areas**

Effective June 11, 2021

This bill removes typical permitting requirements for owners of property affected by the 2020 wildfires. A property owner may alter, restore or replace certain nonresidential uses without applying for a permit, and a city or county is required to approve an application to alter, restore or replace certain dwellings. Oregon DEQ is required to approve certain permits for repair or replacement of a subsurface sewage disposal system serving a residential dwelling. Other requirements apply to land use processes for nonresidential uses and residential property. See the bill for details.

**HB 2312, Ch 219 Judgments affecting lawful units of land**

Effective Jan 1, 2022

This bill applies to judgments resolving boundary line disputes between adverse parties. The bill clarifies that a legal lot remains legal after a judgment relocates the disputed boundary line so long as the judgment (1) resolves a boundary line dispute between adverse parties, (2) resolves issues of title and possession, (3) includes a legal description of the relocated property line, (4) is a final judgment that can no longer be appealed, (5) is recorded, and (6) does not create an additional lot or parcel.

**HB 2341, Ch 356 Property taxes on destroyed or damaged property**

Effective Sept 25, 2021

This bill amends the statute governing property taxes on property destroyed or damaged by wildfire or act of God (ORS 308.425). Property owners already can apply for tax proration for damaged or destroyed property. This bill allows counties to take automatic action to prorate taxes on property subject to Governor-ordered state of emergency due to fire or act of God or Governor's authority under the Emergency Conflagration Act. Affects property tax years on or after July 1, 2020.

**HB 2364, Ch 292 Sales of residential manufactured dwelling facilities**

Effective Jan 1, 2022

This bill contains numerous amendments to the existing statutes governing tenants' rights of first refusal in connection with sales of manufactured home parks. (ORS 90.842 - 90.846). The time within which tenants must form a committee to purchase, notify the owner, and request financial information is increased from 10 days to 15 days. If requested by the tenants committee, the owner must provide financial information including total operating expenses paid during the preceding calendar year. The tenants committee has 45 days (previously 15 days) to form an entity or to associate with a nonprofit corporation or housing authority. The owner must negotiate with the tenants in good faith. Tenants may seek damages for owner's noncompliance totaling 10 percent of the sale price (formerly "*actual damages or twice the rent, whichever is greater*"). Damages award is split equally between the tenants and the Department of Justice.

**HB 2409, Ch 64 Use of pesticides by HOA**

Effective Jan 1, 2022

This bill amends the Oregon Planned Community Act (ORS 94.550 *et seq.*). Unless application of pesticides is necessary to manage or prevent a pest issue that may harm public health or ecological health, an HOA must provide notice of the dates and times it plans to apply pesticides if requested by an owner, and the HOA must provide an option for an owner to opt out of pesticide application. If an owner opts out of HOA pesticide and associated landscaping activities, the owner assumes responsibility for landscaping. This bill applies to all planned community documents, including those executed prior to the effective date.

**HB 2534, Ch 67 Discriminatory provisions in plats, declarations, CCRs**

Effective Sept 25, 2021

Residential condominiums and planned communities may not enforce restrictions based on race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income, disability, or number of individuals simultaneously occupying a dwelling within occupancy limits based on familial or non-familial status. Such restrictions may not be included in any documents after the effective date. Associations have until December 31, 2022, to review all governing documents and amend or restate to eliminate such restrictions, or record a declaration that the documents contain no such restrictions.

**HB 2550, Ch 359 Sale of real property; fair housing; brokers**

Effective Jan 1, 2022

New statute prohibits seller's real estate broker from accepting any communication other than customary documents in a real estate transaction, including photographs provided by a potential buyer. Listing broker must reject any such communication. This new provision is intended to "help a seller avoid selecting a buyer based on the buyer's race, color, religion, sex, sexual orientation, national origin, marital status or familial status" as prohibited by the Fair Housing Act.

**HB 2583, Ch 24 Maximum occupancy restrictions; residential dwellings**

Effective Jan 1, 2022

Prohibits local governments from establishing or enforcing restriction of maximum occupancy limit for any residential dwelling if the restriction is based on familial or nonfamilial relationships among occupants.

**HB 2703, Ch 161 Real estate continuing education; fair housing**

Effective July 1, 2021

Three-hour law and rule required course (LARRC) for real estate brokers' license renewal or reactivation must include instruction on state and federal fair housing laws.

Applies to real estate licenses renewed or reactivated on or after July 1, 2022.

**HB 2809, Ch 235 RV siting on residential property; Natural Disasters**

Effective Jan 1, 2022

Allows temporary siting of recreational vehicles on property where single-family or manufactured dwelling was made uninhabitable by natural disaster. Sets deadlines for removal.

**HB 2884, Ch 237 Partition plat recording deadline**

Effective Jan 1, 2022

Extends from 90 to 365 days the time to record a partition plat after tentative approval by a city or county. If a city or county approves or validates a unit of land before Jan 1, 2022, the partition plat must be recorded on or before December 31, 2022. Amends ORS 92.176.

**HB 3143, Ch 548 Interest on delinquent property taxes**

Effective Sept 25, 2021

Delays to December 15 the accrual of interest on first one-third of unpaid property taxes due November 15. Interest on the other two installments continues to accrue from the normal due dates of February 15 and May 15. Applies to property tax years beginning on or after July 1, 2022.

**SB 182, Ch 272 Revocation of powers of attorney; creditors of spouse**

Effective Jan 1, 2022

- **Powers of attorney**

After a petition for marital dissolution is filed and served, the statutory automatic restraining order applies to any exercise of authority under a power of attorney unless the power of attorney specifically provides otherwise.

Unless otherwise specifically provided in the POA, or by agreement of the parties or court order, the agent’s authority terminates upon the occurrence of any of the following:

- Death of principal or revocation by principal,
- Death, resignation, or incapacity of agent,
- Expiration under terms of the POA,
- Entry of judgment in action for dissolution or annulment of marriage, or legal separation.
- Entry of order in conservatorship revoking agent’s authority under POA.

- **Creditors of spouse; transfers of real property held as tenants by the entirety**

New statute provides that real property owned by spouses as tenants by the entirety and subsequently conveyed to themselves as trustees of their revocable trust(s) has the same immunity from claims of individual spouse’s creditors that would exist if the spouses had continued to own the property as tenants by the entirety. This new protection applies if the spouses remain married to each other, the property continues to be held in trust(s), both spouses are trust beneficiaries or beneficiaries of their separate trusts that together own the real property. Spouses may waive protection as to specific creditor or property.

**SB 220, Ch 273 Remote attestation**

Effective June 11, 2021

New legislation provides for remote attestation of writings while in the “electronic presence” of others. Applies to situations where documents must be signed in the presence of witnesses. See the bill for particulars, including numerous specific requirements for a witness to be in “the electronic presence of the person” who executes or acknowledges the document. Requirements for satisfactory evidence of the signer’s identity are included. The signer and the witness(es) must complete declarations in the forms specified in the new statute, entitled Declaration of Electronic Presence and Declaration of Remote Attestation, respectively. Execution in counterparts is authorized. This bill does not apply to notarial acts, execution of wills or amendments to wills, or witnessing signatures by petition circulators.

**SB 250, Ch 484 Relating to county clerks; recording and certification**

Effective July 14, 2021

This bill amends the statute prescribing days and hours during which county clerks must receive and certify instruments presented for recording. Under SB 250, clerks are required to “establish regular business hours” for a minimum of 30 hours per week from Monday through Friday, excluding holidays. Clerks may reduce the minimum weekly hours for holidays recognized by the county governing body, training programs, states of emergency declared at the local, state or federal level, or any other event that poses a safety risk to the public and clerk’s office staff. Prior to these amendments, clerks were required to have regular business hours Monday through Friday excluding holidays for a minimum of six hours per day between 9 am and 4 pm including 9-10 am and 3-4 pm.

**SB 391, Ch 396 Relating to accessory dwellings in rural areas**

Effective June 23, 2021

This bill adds provisions to ORS Chapter 251 authorizing counties to allow an owner of land in a rural residential zone to construct one accessory dwelling no larger than 900 square feet and no greater distance from the primary dwelling than 100 feet. The parcel may not be divided or partitioned to create a separate parcel for the ADU, and the ADU may not be used for vacation occupancy.

**SB 458, Ch 103 Land division for middle housing**

Effective Jan 1, 2022

This Middle Housing Land Division bill applies to cities with population of 25,000 or more, cities outside a metropolitan service district with population of more than 10,000 and less than 25,000, and counties within a metropolitan service district. “Middle housing” is defined in ORS 197.758 as two-to-four-unit buildings, “cottage clusters” and “townhouses”, each of which terms are individually further defined. The new law requires cities or counties to approve a tentative plan for a Middle Housing Land Division if enumerated requirements are met by the applicant. Municipalities and counties responsible for approval of such plans may use only the procedures already outlined in ORS 197.360 to 197.380.

The bill also prohibits HOAs or restrictive covenants restricting or disallowing partition.

**SB 464, Ch 580 Property taxes on damaged property**

Effective Sept 25, 2021

This bill authorizes a county covered by the state of emergency declared in response to September 2020 wildfires to adopt an ordinance or resolution granting wildfire tax relief- proration or cancellation of taxes, for taxable real and personal property that suffered loss in real market value as a result of wildfires. See the bill for details.

**SB 765, Ch 282 – Remote online notarization**

Effective June 15, 2021

SB 765 permanently established remote online notarization in Oregon by repealing the sunset provision from Sections 19-32, Chapter 12, Oregon Laws 2020 (first special session) (HB 4212). The bill adds provisions governing notary certification of a tangible (paper) copy of an electronic record and recording of the tangible copy which must include a notarial certificate certifying the paper copy is an accurate copy of the electronic record. See the 2020 law referenced above along with applicable Secretary of State administrative rules, and materials available at the Secretary of State’s website.

### **SB 767, Ch 411**

Effective Jan 1, 2022

This bill amends ORS 18.225 to allow a judgment creditor's or attorney's signature on a satisfaction document to be accompanied by a declaration under penalty of perjury in lieu of a notary acknowledgement. The declaration must be in the form prescribed under Oregon Rules of Civil Procedure (ORCP) 1 E, which provides:

***Use of declaration under penalty of perjury in lieu of affidavit.***

*E(1) Definition. As used in these rules, "declaration" means a declaration under penalty of perjury. A declaration may be used in lieu of any affidavit required or allowed by these rules. A declaration may be made without notice to adverse parties.*

*E(2) Declaration made within the United States. A declaration made within the United States must be signed by the declarant and must include the following sentence in prominent letters immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury."*

*E(3) Declaration made outside the boundaries of the United States. A declaration made outside the boundaries of the United States as defined in ORS 194.805 (1) must be signed by the declarant and must include the following language in prominent letters immediately following the signature of the declarant: "I declare under penalty of perjury under the laws of Oregon that the foregoing is true and correct, and that I am physically outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. Executed on the \_\_\_\_ (day) of \_\_\_\_ (month), \_\_\_\_ (year) at \_\_\_\_\_ (city or other location), \_\_\_\_\_ (country)."*

### **SB 829, Ch 416 Possession of real property after execution sale**

Effective Jan 1, 2022

This bill amends ORS 18.946 to clarify the rights of a purchaser at sheriff's execution sale to obtain possession by forcible entry and detainer action. The bill also clarifies rights of a tenant occupying the property during the redemption period. If the tenant has a valid lease that predates the sheriff's sale and provides for a term beyond the sheriff's sale, the tenant may remain in possession until expiration of the redemption period if the tenant pays the "greater of monthly payment equal to the value of the use and occupancy of the property or the lease payments."