

LAW PRACTICE



Business, Consumer, and Debtor-Creditor Law

RECORDING OF INSTRUMENT CONTAINING ELECTRONIC SIGNATURES

2019 Oregon Laws Ch. 402 (HB 2425)

HB 2425 amends ORS 93.804 to allow the county clerk to record an electronic instrument, and/or an instrument containing an electronic signature, by expanding the definition of an “Instrument” to include an “electronic record,” and the definitions of “original certification” and “original signature” to include an “electronic signature.”

Practice Tip: See ORS 84.004 (Oregon’s Uniform Electronic Transactions Act) for more on electronic records and signatures.

SENIOR LIEN PAYOFFS

2019 Oregon Laws Ch. 140 (HB 2459)

HB 2459 amends ORS Chapter 105 by adding a provision under which the holder of a lien that is an encumbrance on real property (a term defined to mean the holder of a “claim, lien, charge or other liability...or a reservation of title...under a land sales contract”) may request an itemized payoff statement from the holder of another encumbrance against the same real property. The person who receives the request (generally a senior lienholder) may provide the statement without the permission of the obligor unless state or federal law requires such consent.

ADDITIONAL NOTICES IN FORECLOSURE AND EVICTION MATTERS

2019 Oregon Laws Ch. 405 (HB 2530)

HB 2530 amends the form of notice under ORS 86.756 (Notice of Default to grantor for residential trust deed foreclosure) and 105.113 (statutory form of summons in residential FED action) to require additional information regarding available services for veterans of the armed forces. This includes contact information for each county's veterans' service officer or community action agency, and for the statewide "211" information system, which provides free information and referrals to benefits and social service organizations available to anyone (not just veterans) in need.

The additional information must also be included in a notice of termination of tenancy issued under any provision of ORS Chapter 90, and in any summons issued in any action brought under ORS 88.010 to foreclose a residential trust deed.

SALE OF REDEMPTION RIGHTS

2019 Oregon Laws Ch. 309 (SB 11)

SB 11 amends and supplements ORS 18.924 and 88.010, to address sales of statutory redemption rights and other interests in real property during foreclosure proceedings. Specifically, SB 11 requires a purchaser of rights in real property during a pending judicial foreclosure to provide a proscribed "notice in clear and conspicuous type" advising the seller that the transfer of an interest in real property during a foreclosure may include the transfer of redemption rights and the right to claim surplus funds arising from the foreclosure sale. The purchaser is further required to record an affidavit of compliance with the notice provision prior to, or concurrently with, recording the deed that transfers the interest in the foreclosure property.

SB 11 also amends ORS 18.924 to require that a sheriff's notice of execution sale include a notice to the judgment debtor regarding the sale of redemption rights and the potential impact of selling any rights to a property in foreclosure on potential rights to claim surplus funds. SB 11

amends ORS 88.010 by adding a new provision requiring the inclusion of a statutory notice to lien debtors advising them to carefully consider offers to purchase "redemption rights" or "all rights under ORS chapter 18." The new notice includes a recommendation that the party speak with a lawyer or consumer rights nonprofit organization for assistance, and requires that the notice include the contact information for the OSB Lawyer Referral Service and for additional resources to be proscribed by rule by the Department of Consumer and Business Services.

SB 11 takes effect on January 1, 2020, and applies to transactions occurring and to notices given on or after the effective date.

EXEMPTION FROM GARNISHMENT

2019 Oregon Laws Ch. 263 (SB 519)

SB 519 amends ORS 18.385, 18.840, 18.845, and 18.896, to increase the minimum net disposable earnings payable to an individual that are exempt from garnishment. The exemption amounts are modified under SB 519 for weekly, bi-weekly, semi-monthly, and monthly payment periods, and the related statutory exemption forms (which must be served with a notice of garnishment) are adjusted accordingly.

The minimum net disposable income numbers were increased under SB 519 for the first time since 2011 to increase the minimum take-home pay for a garnished debtor by approximately 16.5% per pay period. Under current law on garnishments, at least 75% of disposable wages are exempt from garnishment, but additional amounts are exempt under ORS 18.385(2), if the net take home pay would be below the statutory minimum for the pay period.

The statute provides a floor for net take home pay that only can be crossed by federal tax claims and orders of a bankruptcy court.

CORRECTION OF DEFECTIVE CORPORATE ACTIONS

2019 Oregon Laws Ch. 325 (SB 359)

Numerous new provisions in SB 359 provide structure and procedures by which business corporations and nonprofit corporations may validate, ratify, and approve defective corporate actions. “Defective corporate action” means an overissue of stock, or an action that is and would have been within the corporation’s power to take at the time of the validation and at the time the action was taken. The bill provides for filing Articles of Validation with Secretary of State under certain circumstances.

NONPROFIT CORPORATIONS CODE

2019 Oregon Laws Ch. 174 (SB 360)

For a detailed explanation of the bill and discussion of the purposes behind some of the changes, see the Report on the Nonprofit Organizations Law website: <https://nonprofitlaw.osbar.org/files/2019/05/SB360report.pdf>.

SB 360 took effect on May 24, 2019.

DATA BREACHES

2019 Oregon Laws Ch. 180 (SB 684)

SB 684 was the product of a work group formed after a major data breach in 2017 and makes a number of updates and modifications to Oregon’s Consumer Identity Theft Protection Act.

Among the bill’s major provisions is a new requirement that a vendor must notify a covered entity as soon as possible, but no more than 10 days after discovering a data breach. This requirement also applies to vendors who subcontract with other vendors. Further, the bill requires a vendor to notify the Attorney General if the breach involves personal information of more than 250 consumers, or if the vendor cannot determine the number of consumers involved.