

# Enrolled House Bill 2288

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for Oregon State Bar Debtor-Creditor Section)

CHAPTER .....

AN ACT

Relating to possessory chattel liens; creating new provisions; and amending ORS 87.196, 87.202 and 87.206.

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

**SECTION 1.** ORS 87.196 is amended to read:

87.196. (1) A lien claimant who forecloses a lien created by ORS 87.152 to 87.162 by sale shall give notice of the foreclosure sale by first class, registered or certified mail. *[The notice shall comply with the following]* **The following apply:**

(a) Notice shall be given to all persons with a security interest in the chattel to be sold who have filed a financing statement perfecting that security interest in the office of the Secretary of State or in the office of the appropriate county officer of the county in which the sale is held.

(b) Notwithstanding paragraph (a) of this subsection if the chattel to be sold at the foreclosure sale is a chattel, other than part of the motor vehicle inventory of a dealer issued a vehicle dealer certificate under ORS 822.020, for which a certificate of title is required by the laws of this state, notice need only be given to persons *[whom]* **who** the certificate of title indicates have a security interest or lien in the chattel.

(c) Notice under this subsection shall be given at least 30 days prior to the foreclosure sale. However, if the lien is claimed under ORS 87.152, the lien claimant shall give the notice required by this subsection:

(A) Not later than the 20th day after the date on which the storage charges begin;

(B) If no storage charges are imposed, not later than the 30th day after the date on which the services provided are completed; and

(C) At least 15 days prior to the foreclosure sale if the lien is for the cost of removing, towing or storage of a vehicle that is appraised at a value of \$1,000 or less but more than \$500 by a person who holds a certificate issued under ORS 819.230.

(2) A person notified under **subsection (1) of this section** may discharge the lien and preserve the person's security interest **in the chattel** by paying the lien claimant the amount of the lien claim and reasonable expenses actually incurred in foreclosing *[it]* **the lien claim**. If the person does not so discharge the lien before the day of the foreclosure sale, the person's security interest *[is extinguished]* **in the chattel is extinguished on the day the foreclosure sale is completed**.

(3) If the chattel to be sold at a foreclosure sale is a chattel for which a certificate of title is required by the laws of this state and if the lien claimant does not notify a person as required by this section, the chattel remains subject to that security interest or lien and the buyer of the chattel

at a foreclosure sale held under ORS [9.370,] 87.142 to 87.490[, 87.705, 87.710, 87.910 and 90.120] **or 87.700 to 87.736** takes the chattel subject to the security interest or lien.

(4) If a lien claimant does not notify a person, other than a person indicated on a certificate of title as a secured party or lienholder, who claims a security interest or lien on the chattel sold at a foreclosure sale as required by subsection (1) of this section, the lien claimant is liable to that person for a sum equal to the fair market value of the chattel sold at the foreclosure sale or the amount due that person under the security agreement or lien at the time of the foreclosure sale, whichever amount is less. The secured party or other lien claimant [shall] **may** recover that sum by an action at law.

**SECTION 2.** ORS 87.202 is amended to read:

87.202. (1) A person who forecloses a lien created by ORS 87.152 to 87.162 by sale shall file a statement of account verified by the oath of the person with the recording officer of the county in which the sale took place when:

(a) The chattel sold at the foreclosure sale has a fair market value of \$250 or more; or

(b) The chattel sold at the foreclosure sale is an animal bearing a brand or other mark recorded with the State Department of Agriculture under ORS chapter 604.

(2) The statement of account required under subsection (1) of this section must contain:

(a) The amount of the lien claim and the cost of foreclosing the lien;

(b) A copy of the published or posted notice of foreclosure sale; [and]

(c) The amount received for the chattel sold at the sale; **and**

**(d) The name of each person who received proceeds from the foreclosure sale as described in ORS 87.206 and the amount each person received.**

(3) A person filing a statement of account under this section shall send a copy of the statement [to the owner of the chattel sold at the foreclosure sale] by registered or certified mail [sent to the person at the] **to the owner of the chattel sold at the foreclosure sale. The person filing the statement of account shall send the copy to the** last-known address of the [person] **owner.** If the chattel sold at a foreclosure sale is an animal bearing a brand or other mark recorded with the State Department of Agriculture under ORS chapter 604, a person filing a statement of account under this section shall send a copy of the statement to the State Department of Agriculture.

**SECTION 3.** ORS 87.206 is amended to read:

87.206. [(1) *The proceeds of a sale to foreclose a lien created by ORS 87.152 to 87.162 shall first be applied to the payment of the expenses of the sale and secondly to the discharge of the lien.*]

[(2) *After the payment of expenses and the discharge of the lien, any amount remaining shall be paid by the lien claimant to the treasurer of the county in which the foreclosure sale is made. The remainder shall be accompanied by a statement of the lien claim and the cost of foreclosing the lien, a copy of the published or posted notice and a statement of the amount received for the chattel sold at the sale.*]

**(1) The proceeds of a sale to foreclose a lien created by ORS 87.152 to 87.162 shall be applied in the following order:**

**(a) To the payment of the reasonable and necessary expenses of the sale;**

**(b) To satisfy the indebtedness secured by the lien under which the sale is made;**

**(c) Subject to subsection (2) of this section, to satisfy the indebtedness secured by any subordinate lien or security interest, in order of priority, in the chattel; and**

**(d) To the treasurer of the county in which the foreclosure sale is made. The payment to the treasurer must be accompanied by a copy of the statement of account described in ORS 87.202.**

**(2) Proceeds may be applied under subsection (1)(c) of this section if the person who forecloses a lien created by ORS 87.152 to 87.162 by sale receives a written request for proceeds from the holder of any subordinate lien or security interest before the day of the foreclosure sale. The person foreclosing the lien may require the holder of the subordinate lien or security interest to furnish reasonable proof of the existence of the security interest or lien. If the person foreclosing the lien does not receive proof of the existence of the sub-**

ordinate security interest or lien, the person is not required to apply proceeds of the sale to satisfy the indebtedness secured by the subordinate security interest or lien.

(3) If a county treasurer receives proceeds under subsection (1) of this section, the county treasurer shall credit the [remainder] proceeds to the general revenue fund of the county, subject to the right of the lien debtor or the representative of the lien debtor, to reclaim the [remainder] proceeds at any time within three years of the date of deposit with the treasurer. If the [remainder is] proceeds are not demanded and claimed within [such] the three-year period, [it shall] the proceeds become the property of the county.

**SECTION 4. The amendments to ORS 87.196, 87.202 and 87.206 by sections 1 to 3 of this 2005 Act apply to foreclosure sales for which notice of sale is given to the lien debtor under ORS 87.192 on or after the effective date of this 2005 Act.**

Passed by House March 7, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate May 6, 2005

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President of Senate

Received by Governor:

.....M.,....., 2005

Approved:

.....M.,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2005

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Secretary of State