

TITLE 9

MORTGAGES AND LIENS

- Chapter 86. Mortgages (Real and Chattel) ; Trust Deeds
87. Statutory Liens
88. Foreclosure of Liens Generally

Chapter 86

1959 REPLACEMENT PART

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REAL PROPERTY MORTGAGES**86.010 Nature of mortgagee's interest.**

A mortgage of real property is not a conveyance so as to enable the owner of the mortgage to recover possession of the property without a foreclosure and sale. This section is not intended as a limitation upon the right of the owner of real property to mortgage or pledge the rents and profits thereof, nor as prohibiting the mortgagee or pledgee of such rents and profits, or any trustee under a mortgage or trust deed from entering into possession of any real property, other than farm lands or the homestead of the mortgagor or his successor in interest, for the purpose of operating the same and collecting the rents and profits thereof for application in accordance with the provisions of the mortgage or trust deed or other instrument creating the lien, nor as any limitation upon the power of a court of equity to appoint a receiver to take charge of the property and collect the rents and profits thereof.

86.020 Covenant to pay money not implied. No mortgage shall be construed as implying a covenant for the payment of the sum thereby secured. When there is no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

86.030 Absolute deed as a mortgage. When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by a deed of defeasance or other instrument, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance is recorded with the recording officer of the county where the lands lie.

86.040 Improvements on mortgaged lands. No person shall sell, dispose of, remove or damage any building or other improvements upon mortgaged lands. All such improvements are deemed a part of the mortgaged property and are subject to the mortgage lien. When any improvements are removed from the mortgaged premises in violation of this section, the mortgagee may follow and regain possession of such im-

provements wherever found or may recover the reasonable value thereof from the person removing them.

86.050 Payment of taxes and other charges by mortgagee. Whenever a mortgagor fails to pay when due any taxes, assessments, interest on prior mortgages, insurance premiums or other charges necessary to be paid for the protection of the lien of a mortgagee, the mortgagee may pay the same, and such payments shall be added to the mortgage debt and secured by the mortgage held by the mortgagee, and shall bear interest at the same rate as specified in the mortgage. This section applies only to mortgages executed after June 3, 1929, and does not affect the right of parties to specifically contract otherwise than as provided in this section.

86.060 Assignment of mortgage. Mortgages may be assigned by an instrument in writing, executed and acknowledged with the same formality as required in deeds and mortgages of real property, and recorded in the records of mortgages of the county where the land is situated.

86.070 Record of assignment. Every assignment of mortgage shall be recorded at full length, and a reference shall be made to the book and page containing such assignment upon the margin of record of the mortgage.

86.080 Record of assignment not notice to mortgagor. The recording of the assignment of a mortgage is not of itself notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate a payment made by any of them to the mortgagee.

86.090 Discharge by entry in margin of record. Any recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the recording officer or his deputy, who shall subscribe the same as a witness. Such entry shall have the same effect as a deed of release duly acknowledged and recorded.

86.100 Discharge of record on deed of release. Any mortgage shall also be discharged upon the record thereof, by the recording officer in whose custody it is, whenever there is presented to him a certificate

executed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as prescribed by law to entitle conveyances to be recorded, specifying that such mortgage has been paid or otherwise discharged. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book and page containing such record, in the minute of the discharge of such mortgage made by the recording officer upon the record thereof.

86.110 Discharge of record by owner and holder of mortgage note who is not the mortgagee of record. (1) Whenever a promissory note secured by mortgage on real property is transferred by indorsement without a formal assignment of the mortgage, and the mortgage is recorded, the mortgage, upon payment of the promissory note, may be discharged of record by the owner and holder of the promissory note making and filing with the recording officer in whose custody the record of such mortgage is, a certificate, verified by his oath, declaring, in substance, that he is the owner and holder of the note secured by said mortgage by indorsement of the mortgagee, and that the note has been fully paid, and proving that fact to the satisfaction of the recording officer, and delivering the original note to such officer.

(2) Upon receiving the certificate and original note, the recording officer shall enter them in full length upon the record book of mortgages, and a reference shall be made to the book and page containing such record in the minute of discharge of the mortgage made upon the record thereof, and he shall note in the index of mortgages the discharge thereof, and such entry shall have the same effect as a deed of release of the mortgagee duly acknowledged and recorded.

86.120 Discharge of mortgage on real property; effect of discharge. No mortgage upon real property shall be discharged except as provided in ORS 86.110 or by the person appearing upon the records of the county where the mortgage is recorded to be the owner thereof. A discharge of the mortgage by such person shall operate to free the land described in the mortgage from the lien of the mortgage as against all

subsequent purchasers and incumbrances for value and without notice.

86.130 Discharge by foreign executors, administrators and guardians. Foreign executors, administrators and guardians may discharge mortgages upon the records of any county upon recording with the recording officer of the county in which the mortgage is recorded, a certified and authenticated copy of their letters testamentary, or of administration, or of guardianship. The certificate or authentication shall include a statement that the letters have not been revoked, and such certificate shall be recorded in the mortgage records.

86.140 Liability of mortgagee for failure to discharge mortgage. If any mortgagee or his personal representative or assignee, after full performance of the condition of the mortgage before or after a breach thereof, shall, within 30 days after being thereto requested, and after tender of his reasonable charges, fail to discharge the same, or to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of \$100 damages and also for all actual damages occasioned by such failure, to be recovered in an action at law. The owner and holder of the promissory note referred to in ORS 86.110 is deemed the personal representative of the mortgagee for the purposes of this section. [Amended by 1955 c.29 §1; 1955 c.512 §1]

86.150 to 86.300 [Reserved for expansion]

CHATTEL MORTGAGES

86.310 Property subject to mortgage. Chattel mortgages may be made upon any interest in personal property capable of being transferred, upon crops planted, sown or growing at the time of the execution of the mortgage, and upon crops to be planted, sown or grown within two years after the execution of the mortgage. [Amended by 1955 c.21 §1]

86.315 Mortgage of after-acquired property by cooperative to secure indebtedness incurred under R.E.A. Act. (1) All after-acquired property of any association organized or operating under ORS chapter 62 [1953 part] described or referred to as being mort-

gaged or pledged in any mortgage, deed of trust or other instrument executed by such association to secure any indebtedness to the United States of America or any agency or any instrumentality thereof incurred under the Rural Electrification Act of 1936, as amended, shall become subject to the lien thereof immediately upon the acquisition of such property by such association, whether or not such property was in existence at the time of the execution of such mortgage, deed of trust or other instrument.

(2) Recordation and filing or indexing, as required by the laws of this state, of any such mortgage, deed of trust or other instrument shall constitute notice and otherwise have the same effect with respect to such after-acquired property as it has with respect to property owned by such association at the time of the execution of such mortgage, deed of trust or other instrument and therein described or referred to as being mortgaged or pledged thereby. [1953 c.700 §2]

86.320 Manner of executing, acknowledging, certifying and proving. Any mortgage, deed of trust, conveyance or other instrument intended as a mortgage of personal property alone, or with real property, shall be executed and acknowledged, or certified or proved, in the same manner as a conveyance of real property.

86.330 Provisions relating to conveyances and real property mortgages applicable to chattel mortgages. The provisions of ORS 86.060, 86.070, 86.100 to 86.120, 86.140, 93.620 and 93.650 apply to mortgages, deeds of trust, conveyances or other instruments intended to operate as mortgages of personal property alone, or with real property.

86.340 Recording as including filing. The words "recorded," "recording" and "record" when used in reference to chattel mortgages in the statutes of this state mean "recorded or filed," "recording or filing" or "record or file," as the context may require.

86.350 Necessity for and manner of recording or filing. (1) Any mortgage, deed of trust, conveyance or instrument intended as a mortgage of personal property alone, or with real property, must be recorded, in a book of record kept exclusively for that purpose, or filed, in the office of the recorder of conveyances or, if none, the county clerk of the county where the mortgaged property is situated and of such other counties

as the mortgagee may elect, provided that any such mortgage upon a migratory chattel as described in ORS 86.390 must be recorded or filed in the county where the mortgaged property is situated or in the county where the mortgage is executed.

(2) A copy of a chattel mortgage, certified as a true copy of the original by the recording officer having custody of the original, may be filed in any other county with like effect as the original.

(3) A general index, direct and indirect, shall be kept by the recording officer in the same manner as the general index of mortgages of real property.

(4) If the instrument is intended as a mortgage of both real and personal property, and is recorded in the records of mortgages of real property, and the recording officer collects the fees provided for the recording of deeds to real property and indexes the instrument in the general index of mortgages of personal property as well as in the general index of mortgages of real property, it need not be recorded in the records of mortgages of personal property, or filed in the manner provided in this section. [Amended by 1955 c.182 §1]

86.360 Removal of property from county in which mortgage is recorded or filed as suspending lien; revival of lien. (1) When mortgaged personal property is removed from the county or counties in which the mortgage is recorded or filed, the lien of the mortgage shall be suspended as to subsequent purchasers and mortgagees thereof in good faith and for a valuable consideration after 20 days from the time of such removal, unless within such 20 days the mortgage is recorded or filed, as provided in ORS 86.350, in the county to which the property is removed, or the mortgagee has taken possession of the property, or a certified copy has been filed with the Secretary of State.

(2) Such mortgage lien shall remain suspended until the mortgage is recorded or filed in the county to which the property is removed, or until the property is returned to a county in which the mortgage is recorded or filed, or until the mortgagee takes possession of the property, or a certified copy has been filed with the Secretary of State.

86.370 Certified copies; effect of filing with Secretary of State. (1) Upon payment of the fee prescribed by law, any person

may have a copy of a chattel mortgage which has been recorded or filed in the county or counties where the mortgaged property was situated at the time of execution of the mortgage, certified by the recording officer of any county in which the mortgage is recorded or filed as a true copy of the mortgage recorded or filed in such county, and may file the certified copy with the Secretary of State.

(2) When such certified copy is filed with the Secretary of State, the mortgage is a lien upon all the property included therein wherever found in this state provided the mortgage is recorded or filed in the county or counties where the mortgaged property was situated at the time of the execution of the mortgage and it is unnecessary to record or file the mortgage in any other county or counties.

(3) The Secretary of State is entitled to a fee of \$1 for filing and indexing such certified copy. All such fees received by the Secretary of State shall be promptly paid to the State Treasurer and placed in the General fund. [Amended by 1957 c.404 §1]

86.380 Index of mortgages filed with Secretary of State; search for mortgage; fees. A general index, direct and indirect, shall be kept by the Secretary of State and all mortgages filed with him as provided in ORS 86.370 shall be indexed therein alphabetically. Upon payment of a fee of 50 cents for each name to be searched for chattel mortgages, the Secretary of State shall furnish to any person applying therefor a statement of any mortgages noted on such indexes, or if no mortgages are noted, a statement to that effect. All such fees received by the Secretary of State shall be promptly paid to the State Treasurer and placed in the General Fund.

86.390 Mortgage on chattel registered and licensed by Department of Motor Vehicles; filing; extent of lien. (1) Whenever it appears, from the description of personal property in any chattel mortgage filed or recorded as provided in ORS 86.350, that the mortgage creates a lien upon any chattel required by law to be registered with the Department of Motor Vehicles and a license issued by the department thereon, the county recording officer with whom it is so filed or recorded shall collect in addition to the filing or recording fee, the fee prescribed by law for making an official certificate and the fee prescribed by subsection (1) of ORS

205.320, and forthwith transmit the latter together with a certificate over his official signature to the Department of Motor Vehicles upon forms provided by the department, in which shall be set out the names of the mortgagor and mortgagee, date of filing, amount secured by the mortgage, the description of the chattel as contained in the mortgage, including maker's name, factory number and state license number with year issued.

(2) Upon receipt of the certificate and fee, the Department of Motor Vehicles shall file the certificate in chronological order and make therefrom a direct index and also upon the license number of such licensed chattel.

(3) From the date of filing of the certificate with the Department of Motor Vehicles, it shall be sufficient notice of the chattel mortgage in any county, and the lien of such mortgage shall be effective in any county.

(4) Upon payment of a fee of 50 cents for each name to be searched for chattel mortgages, the Department of Motor Vehicles shall furnish to any person applying therefor a statement of any mortgages noted on such indexes, or if no mortgages are noted, a statement to that effect.

(5) Fees received by the Department of Motor Vehicles pursuant to this section shall be deposited in the State Treasury together with and for the same purposes as the moneys described in ORS 481.950.

86.400 Mortgage on a vessel of over 20 tons burden; recording. A mortgage on a vessel, or any part of a vessel, over 20 tons burden, shall be recorded with the Collector of Customs where such vessel is registered, enrolled or licensed, and need not be recorded elsewhere, and such mortgage shall be a lien on the vessel.

86.410 Priority of liens. Unless otherwise provided by law, any chattel mortgage of personal property shall have priority over any lien which is subsequently filed or recorded with the county recording officer and shall have such priority in any county of the state when a copy is filed with the Secretary of State as prescribed in ORS 86.370. If the mortgage is upon a chattel required by law to be registered and licensed by the Department of Motor Vehicles it shall have such priority in any county when a certificate has been filed with the department as prescribed in ORS 86.390. However, anyone who expends skill, labor or materials,

excluding automobile tires, accessories and supplies, upon any chattel, shall have a prior possessory lien over such mortgage lien, but whenever such possessory lien is relinquished and credit extended, the mortgage lien shall have and retain priority.

86.420 When mortgage void as against subsequent purchasers or encumbrances; duration of lien; affidavit of renewal. (1) Every mortgage, deed of trust, conveyance or instrument intended as a mortgage of personal property either alone or with real property, which is not accompanied by immediate delivery and followed by the actual and continual change of possession of the personal property mortgaged, or which is not recorded or filed as provided in ORS 86.350 and 86.370, shall be void as against subsequent purchasers and mortgagees in good faith and for a valuable consideration, of the same personal property or any portion thereof.

(2) The effect of such recording or filing shall cease as to all persons upon the expiration of three years from the date of maturity of such obligation, unless prior thereto the mortgagee, his assignee or other successor in interest or one of them, if there are more than one, makes and files an affidavit showing the date of the mortgage, the names of the parties, the date of filing, and the amount of the debt justly owing at the date of the making of such affidavit, or the condition of the obligation then unfulfilled. If the obligation is not disclosed by the mortgage itself, the date of execution of the mortgage is deemed the date of maturity of the obligation.

(3) In case of the absence of the mortgagee, his assignee or successor in interest from the county where such mortgage is filed, the affidavit may be made by the attorney or other authorized representative of the mortgagee, assignee or successor as well as by the mortgagee, assignee or successor himself. If a corporation is such mortgagee, assignee or successor, the affidavit may be made in its behalf by an officer, agent, attorney or other representative of the corporation.

(4) The affidavit must be filed in the office where the mortgage therein described is filed, and thereupon the recording officer of such county shall attach the same to the mortgage therein described and note the date of filing opposite the entries of the

mortgage in the indexes; whereupon the effect of filing of the original mortgage shall continue in effect for the period of three years from the date of filing the affidavit.

(5) The affidavit or a copy thereof, certified to be full and correct by an officer authorized to take acknowledgments of conveyances of real property, may likewise be filed in the office of the Secretary of State, and shall be by him attached to the mortgage or copy filed in his office, and shall be properly indexed in his records; whereupon the effect of filing of the mortgage or copy in such office shall continue in effect for the period of three years from the date of filing the affidavit, and for a period of three years only, unless a similar affidavit be filed before the expiration of said period; but the effect of such filing may be so renewed as often as desired.

86.430 Assignment of mortgage. Chattel mortgages may be assigned by an instrument executed and acknowledged with the same formality as required in the execution of chattel mortgages. The instrument of assignment shall be recorded if the chattel mortgage so assigned is recorded; and shall be filed only in cases where the chattel mortgage so assigned is filed.

86.440 Discharge of mortgage recorded or filed with county recording officer. (1) Whenever any mortgage recorded or filed under the provisions of ORS 86.350 is paid or otherwise satisfied, it shall be discharged by the indorsing by the owner of record upon the original instrument, if filed, or upon the margin of the record thereof, if recorded, of a notation, attested by the county recording officer, of such discharge, or by the filing with the recording officer of a certificate of such owner, executed and acknowledged with the same formalities as are prerequisite to the filing or recording of any such mortgage, showing the date of execution, date of filing or recording, and file number or volume and page of the record thereof, and that such mortgage has been fully discharged.

(2) Upon receipt of the fee prescribed by law the recording officer shall prepare such notation and attest the execution of it, or file such certificate in an appropriate place in his office. Upon the making of the entry or the filing of the certificate, the recording officer shall deliver the original mortgage to the mortgagor, his personal

representatives or assigns, if such mortgage shall have been filed, and shall enter the word "satisfied," with the date thereof, opposite each entry of the mortgage in the index.

86.450 Failure of holder to discharge mortgage on payment. No holder of a chattel mortgage which has been recorded or filed in the office of the recording officer of any county shall wilfully fail or neglect, within 20 days after full payment or performance of the conditions of the mortgage, to cause to be filed or entered in the office of the recording officer where the chattel mortgage has been recorded or filed, a discharge thereof.

86.460 Discharge of mortgage filed with Secretary of State. In the event of the satisfaction or release of any chattel mortgage, a certified copy of which has been filed with the Secretary of State as provided by ORS 86.370, the person so satisfying or releasing the mortgage shall send a duly executed discharge or certified copy thereof, with a fee of 25 cents, to the Secretary of State, who shall note such discharge in an appropriate column of the index kept by him as provided in ORS 86.380. All such fees received by the Secretary of State shall be promptly paid to the State Treasurer and placed in the General Fund.

86.470 Discharge, assignment and foreclosure of mortgages on chattels registered and licensed by Department of Motor Vehicles. The recording officer of counties having less than 50,000 population on the last day of each calendar month, and the recording officer of counties having more than 50,000 population on the last day of each calendar week, shall, notify the Department of Motor Vehicles, upon forms to be provided by the department, of the partial or full satisfaction, assignment or foreclosure during such period of all mortgages theretofore certified to the department as provided in ORS 86.390. The notice shall completely identify the mortgage so satisfied, assigned or foreclosed; and the department thereupon shall note on each index margin such satisfaction, assignment or foreclosure.

86.480 Notice of intention to remove mortgaged chattel from county; injury, concealment, wrongful removal and disposal of mortgaged chattel. (1) No mortgaged personal property, other than migratory chat-

tels under a mortgage the certificate of which has been duly filed in the office of the Department of Motor Vehicles, shall be removed into a county of this state other than the county in which the property was situated at the date of the mortgage unless notice of the owner's intention to remove is mailed postpaid and registered to the mortgagee at his last-known address within 10 days prior or subsequent to such removal.

(2) No mortgagor of personal property, with intent to hinder, delay or defraud the mortgagee, his assigns or legal representatives, shall:

(a) Injure or destroy such property or any part thereof.

(b) Conceal such property or any part thereof.

(c) Remove such property or any part thereof from the county where it was situated at the date of the mortgage, into another county of this state, without giving notice as provided in subsection (1) of this section.

(d) Remove such property or any part thereof from this state.

(e) Sell or dispose of such property or any part thereof, or any interest therein, where he parts with the possession thereof, without the consent in writing of the mortgagee.

86.490 Right of mortgagee to possession of mortgaged chattel on condition broken. Whenever the condition of any chattel mortgage is broken, the mortgagee is entitled to the immediate possession of the mortgaged property, and when after breach of the condition of such mortgage the possession of the mortgaged property is not delivered up to the mortgagee upon demand by him or by any person duly authorized by him to make such demand of the person having the mortgaged property in possession, the mortgagee may recover the possession of the mortgaged property as provided by ORS 29.810 to 29.910.

86.500 Foreclosure; sale; duty of officer to take property. (1) Whenever in a chattel mortgage the parties provide the manner in which the mortgage is to be foreclosed, the mortgage, upon breach of the conditions thereof, may be foreclosed only in the manner therein provided.

(2) If in any chattel mortgage the manner in which it may be foreclosed is not

provided, then upon the breach of the conditions thereof:

(a) If the consideration of the mortgage does not exceed \$500, the mortgage shall be foreclosed, and the mortgaged property sold by the sheriff or any constable of the county in which the mortgage has been filed, upon the written request of the mortgagee, his agent or attorney, upon such notice, and in the manner provided by law for the sale of personal property upon execution. Such written request shall be duly verified before an officer authorized to administer oaths, and shall contain a statement of the correct amount due and unpaid on such mortgage. Thereupon the sheriff or constable shall take the property described in the mortgage into his possession, and for such purpose may forcibly, if necessary, enter any building, garage or other inclosure where the same may be, and upon his failure or refusal so to do, the sheriff or constable shall be liable in damages to the mortgagee upon his official bond.

(b) If the consideration of the mortgage exceeds \$500, the mortgage shall be foreclosed by a suit in equity in the circuit court of the county in which the mortgage is filed, or in which the mortgaged property, or any part thereof, is found. [Amended by 1955 c.30 §1]

86.510 Return of officer after sale; disposition of proceeds. Upon the sale of any mortgaged property as provided in ORS 86.500 the sheriff or constable making the same shall forthwith make his return of his proceedings to the clerk of the county in which the sale was had, and after deducting the costs and expenses of sale, and satisfying the mortgage in full, he shall deposit the balance of the proceeds, if any, with the clerk, subject to the order of the mortgagor.

86.520 Fees of officer making sale and of clerk. The officer making the foreclosure sale shall receive the same fees as are allowed by law upon the sale of personal property upon execution, and the clerk shall receive 50 cents for filing each return of sale, and a commission of two percent upon all moneys so deposited with him.

86.530 to 86.600 [Reserved for expansion]

INVESTMENTS; FEDERAL HOUSING ADMINISTRATOR

86.610 Power of banks, fiduciaries and others to make loans secured by property insured by Federal Housing Administrator. Banks, trust companies, insurance companies, savings and loan associations, trustees, guardians, executors, administrators, other fiduciaries and all other persons, associations and corporations, subject to the laws of this state, may make such loans, secured by real property or leasehold, as the Federal Housing Administrator insures or makes a commitment to insure, and may obtain such insurance.

86.620 Investment of funds of banks, fiduciaries and others in bonds and mortgages accepted by Federal Housing Administrator, debentures issued by him, and obligations of national mortgage associations. Banks, trust companies, insurance companies, savings and loan associations, trustees, guardians, executors, administrators, other fiduciaries and all other persons, associations and corporations, subject to the laws of this state, may invest their funds, and the moneys in their custody or possession, eligible for investment, in bonds and mortgages on real property insured by the Federal Housing Administrator, in debentures issued by the Federal Housing Administrator, and in obligations of national mortgage associations.

86.630 Eligibility of securities described in ORS 86.620 as security for deposits, investment or reserve of securities. Whenever, by statute, collateral is required as security for the deposit of public or other funds, or deposits are required to be made with any public official or department, or an investment of capital or surplus, or a reserve or other fund is required to be maintained consisting of designated securities, the securities described in ORS 86.620 shall be eligible for such purposes.

86.640 Applicability of other laws requiring security or regulating loans and investments. No law of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount or form of such security, or prescribing or limiting the period for which loans or invest-

ments may be made, shall apply to loans or investments made pursuant to ORS 86.610 and 86.620.

86.650 to 86.700 [Reserved for expansion]

TRUST DEEDS

86.705 Definitions. As used in ORS 86.705 to 86.795, unless the context requires otherwise:

(1) "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust deed as security for the performance of an obligation.

(3) "Trust deed" means a deed executed in conformity with ORS 86.705 to 86.795, and conveying real property to a trustee in trust to secure the performance of an obligation owed by the grantor or other person named in the deed to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by a trust deed, or his successor in interest. [1959 c.625 §1]

86.710 Trust deeds authorized to secure performance of an obligation; methods of foreclosure after breach. After August 5, 1959, transfers in trust of any estate in real property may be made to secure the performance of an obligation of a grantor, or any other person named in the deed, to a beneficiary. Where any transfer in trust of any estate in real property is made pursuant to the provisions of ORS 86.705 to 86.795 to secure the performance of an obligation, a power of sale is conferred upon the trustee. The power of sale may be exercised after a breach of the obligation for which the transfer is security; and a trust deed, executed in conformity with ORS 86.705 to 86.795, may be foreclosed by advertisement and sale in the manner provided in ORS 86.705 to 86.795, or, at the option of the beneficiary, by foreclosure as provided by law for the foreclosure of mortgages on real property; and there shall be a judicial foreclosure when notice to require it is given under subsection (1) of ORS 86.730. [1959 c.625 §2]

86.715 Trust deed deemed to be mortgage on real property. A trust deed is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real

property except to the extent that such laws are inconsistent with the provisions of ORS 86.705 to 86.795, in which event the provisions of ORS 86.705 to 86.795 shall control. For the purpose of applying the mortgage laws, the grantor in a trust deed is deemed the mortgagor and the beneficiary is deemed the mortgagee. [1959 c.625 §21]

86.720 Reconveyance upon performance; liability for failure to reconvey. Upon performance of the obligation secured by the trust deed, the trustee, upon written request of the beneficiary, shall reconvey the estate of real property described in the trust deed to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by ORS 86.140 in the case of refusal to execute a discharge or satisfaction of a mortgage on real property. [1959 c.625 §18]

86.725 Time within which foreclosure must be commenced. The foreclosure of a trust deed by advertisement and sale or the foreclosure of a trust deed by judicial procedure shall be commenced within the time, including extensions, provided by ORS 88.110 and 88.120 for the foreclosure of a mortgage on real property. [1959 c.625 §20]

86.730 Right to require judicial foreclosure. (1) After the mailing of the trustee's notice of sale and at least 30 days before the date set for the trustee's sale, a grantor in a trust deed, or his successors in interest, or any person having a lien subsequent to the interest of the trustee in the trust deed, may require judicial foreclosure of the trust deed by the trustee or beneficiary under ORS chapter 88 by recording a notice in the mortgage records of the county or counties in which the property described in the trust deed is located. The notice shall be acknowledged and shall contain a statement that the person giving the notice demands judicial foreclosure of the trust deed under ORS chapter 88 and not foreclosure by advertisement and sale. If such notice is not recorded pursuant to this section, the trustee may proceed with the trustee's sale under ORS 86.705 to 86.795. If such notice is recorded pursuant to this section, the trustee shall not proceed with the trustee's sale.

(2) The right to require a judicial foreclosure of a trust deed under ORS chapter

88 shall not be waived as a condition of obtaining or granting a loan. [1959 c.625 §§17, 22]

86.735 Foreclosure by advertisement and sale. (1) The trustee may foreclose a trust deed by advertisement and sale under ORS 86.705 to 86.795 if:

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

(b) There is a default by the grantor or other person owing an obligation, the performance of which is secured by the trust deed, or by their successors in interest with respect to any provision in the deed which authorizes sale in the event of default of such provision; and

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

(d) No action, suit or proceeding has been instituted to recover the debt or any part of it then remaining secured by the trust deed, or, if such action or proceeding has been instituted, the action or proceeding has been dismissed.

(2) A trust deed may be foreclosed in the manner provided in ORS 86.740 to 86.760. [1959 c.625 §§4, 5]

86.740 Notice of sale to be mailed to certain persons. (1) Subsequent to recording notice of default as provided in subsection (1) of ORS 86.735 and at least 180 days before the day fixed by the trustee for the trustee's sale, notice of the sale shall be given by registered or certified mail to the last known address of the following persons or their legal representatives, if any:

(a) The grantor in the trust deed.

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

(c) Any lessee or other person in possession of or occupying the property.

(d) Any person having a lien or interest subsequent to the interest of the trustee in the trust deed where such lien or interest ap-

pears of record or where the trustee or the beneficiary has actual notice of such lien or interest.

(e) Any person requesting notice as provided in ORS 86.785.

(2) The disability, insanity or death of any person to whom notice of sale must be given under subsection (1) of this section shall not delay or impair in any way the trustee's right under a trust deed to foreclose under the deed. If the disability, insanity or death occurs prior to the time when notice to any such person must be mailed, the notice shall be given instead to the legal guardian or the administrator or executor of the person, as the case may be, in the manner and by the time set forth in subsection (1) of this section. If the disability, insanity or death occurs on or after the date the notice is mailed, the trustee shall, if and when he has knowledge of the disability, insanity or death, promptly give the legal guardian or the administrator or executor of the person, as the case may be, the notice provided in ORS 86.745. Such notice shall be given by registered or certified mail to the last known address of the legal guardian or administrator or executor. [1959 c.625 §6]

86.745 Contents of notice of sale. The notice of sale shall set forth:

(1) The names of the grantor, trustee and beneficiary in the trust deed.

(2) A description of the property covered by the trust deed.

(3) The book and page of the mortgage records where the trust deed is recorded.

(4) The default for which the foreclosure is made.

(5) The sum owing on the obligation secured by the trust deed.

(6) The date, time and place of the sale, which shall be held at a designated time after 9 a.m. and before 4 p.m. Pacific Standard Time and at a designated place in the county or one of the counties where the property is situated.

(7) The rights of election contained in subsection (1) of ORS 86.730, which shall be set forth in typewriting or print at least as large as and distinguishable from the largest typewriting or print found in any other part of such notice. [1959 c.625 §7]

86.750 Service of notice on occupants of property or posting notice; publication of notice; recording proof of compliance with ORS 86.740 to 86.750. (1) If there be occu-

pants of the property described in the deed, the notice prescribed in ORS 86.745 shall be personally served upon them in the manner in which a summons is served; if the property be vacant, or if after reasonable efforts to do so the notice has not been personally served on the occupants of the property, the notice shall be posted in a conspicuous place on the property.

(2) A copy of the notice of sale shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks. The last publication shall be made at least 30 days prior to the date of sale.

(3) At least 20 days prior to the date of sale, an affidavit of mailing notice of sale, proof of personal service (if any), an affidavit of posting (when posting is required) and an affidavit of publication of notice of sale shall be recorded in the mortgage records in the county or counties in which the property described in the deed is situated. [1959 c.625 §8]

86.755 Sale of property. (1) The sale shall be held on the date and at the time and place designated in the notice of sale. The trustee may sell the property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder. Any person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the trustee's sale. The attorney for the trustee may conduct the sale and act in the sale as the auctioneer of the trustee.

(2) The purchaser at the sale shall pay the price bid, and, upon receipt of payment, the trustee shall execute and deliver the trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the officer making the sale shall have the right to resell or reject any subsequent bid as provided by law in the case of sales under execution.

(3) The trustee's deed shall convey to the purchaser the interest in the property which the grantor had, or had the power to convey, at the time of the execution by him of the trust deed, together with any interest the grantor or his successors in interest acquire after the execution of the trust deed.

(4) The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession after

that day under any interest, except one prior to the trust deed, shall be deemed to be tenants at sufferance. [1959 c.625 §9]

86.760 Discontinuance of foreclosure proceedings when entire amount of default paid. Whenever all or a portion of any obligation secured by a trust deed has become due by reason of a default of any part of that obligation, including taxes, assessments, premiums for insurance or advances made by a beneficiary in accordance with the terms of the trust deed, the grantor or his successor in interest in the trust property, or any part of it, any beneficiary under a subordinate trust deed or any person having a subordinate lien or encumbrance of record on the property, at any time with 175 days of the recording of the notice of default under the trust deed, if the power of sale therein is to be exercised, may pay to the beneficiary or his successors in interest, respectively, the entire amount then due under the terms of the trust deed and the obligation secured thereby (including costs and expenses actually incurred in enforcing the terms of the obligation and trustee's or attorney's fees actually incurred, not exceeding \$50) other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default. After payment of this amount, all proceedings had or instituted to foreclose the trust deed shall be dismissed or discontinued, and the obligation and trust deed shall be reinstated and shall remain in force the same as if no acceleration had occurred. [1959 c.625 §10]

86.765 Disposition of proceeds of sale. The trustee shall apply the proceeds of the trustee's sale as follows:

(1) To the expenses of the sale, including a reasonable charge by the trustee.

(2) To the obligation secured by the trust deed.

(3) To all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority.

(4) The surplus, if any, to the grantor of the trust deed or to his successor in interest entitled to such surplus. [1959 c.625 §11]

86.770 Effect of sale. (1) A sale made by a trustee under ORS 86.705 to 86.795 shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under ORS

86.740 and of any other person claiming by, through or under such persons, and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of these persons shall not affect the validity of the sale as to persons so notified.

(2) When a sale is made by a trustee under ORS 86.705 to 86.795, or under a judicial foreclosure, no other or further action, suit or proceedings shall be taken, nor judgment entered for any deficiency, against the grantor or his surety, guarantor, successor in interest, if any, on the note, bond or other obligation secured by the trust deed or against any other person obligated on such note, bond or other obligation. [1959 c.625 §§12, 13]

86.775 Contents of trustee's deed to purchaser. The trustee's deed to the purchaser at the trustee's sale shall contain, in addition to a description of the property conveyed, a recital of the facts concerning the default, the notice given, the conduct of the sale and the receipt of the purchase money from the purchaser. [1959 c.625 §14]

86.780 Recitals in trustee's deed and certain affidavits as prima facie or conclusive evidence. When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under subsection (3) of ORS 86.750 shall be prima facie evidence in any court of the truth of the matters set forth herein, but the recitals shall be conclusive in favor of a purchaser for value in good faith relying upon them. [1959 c.625 §15]

86.785 Requests for copies of notice of default or notice of sale. At any time subsequent to the recordation of a trust deed and prior to a recording of notice of default under the deed, any person desiring a copy of any notice of default or any notice of sale under a trust deed as provided in subsection (1) of ORS 86.740 may cause to be filed for record in the county clerk's office of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale or default where service is made upon the trustee. The request shall contain the name and address of the person requesting copies of the notice or notices

and shall identify the trust deed by stating the names of the parties to the deed, the date of recordation of the deed and the book and page where the deed is recorded. The county clerk shall immediately make a cross reference of the request to the trust deed, either on the margin of the page where the trust deed is recorded or in some other suitable place. No request, statement or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien or charge upon the property referred to in the trust deed. [1959 c.625 §16]

86.790 Qualifications of trustee; appointment of successor trustee. (1) The trustee of a trust deed under ORS 86.705 to 86.795 shall not be required to comply with the provisions of ORS chapters 707 and 709 and shall be:

(a) An attorney who is an active member of the Oregon State Bar; or

(b) A bank, trust company or savings and loan association authorized to do business under the laws of Oregon or the United States; or

(c) A title insurance company authorized to insure title to real property under the provisions of ORS chapter 748, its subsidiaries, affiliates, agents or branches.

(2) If at any time after the trust deed is executed, the trustee, by reason of death, dissolution, incapacity, disability, resignation or otherwise, ceases to act as trustee, the beneficiary may appoint in writing another qualified trustee. If the appointment of the successor trustee is recorded in the mortgage records of the county or counties in which the trust deed is recorded, the successor trustee shall be vested with all the powers of the original trustee. [1959 c.625 §3]

86.795 Compensation of trustee. The charge of a trustee for the performance of powers and duties imposed under ORS 86.705 to 86.795 shall not exceed 50 percent of the compensation allowable to an executor or administrator under ORS 117.680. Such compensation shall be based upon the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If the grantor prior to trustee's sale pays the entire amount then due, including costs and expenditures actually incurred, the trustee's fees shall not exceed \$50. The trustee shall

not be entitled to any compensation prior to commencement of foreclosure. [1959 c.625 §19]

86.800 to 86.980 [Reserved for expansion]

PENALTIES

86.990 Penalties. (1) Violation of ORS 86.040 is punishable, upon conviction, by a

fine not exceeding \$500 or imprisonment in the county jail not exceeding six months, or both.

(2) Violation of ORS 86.450 is punishable, upon conviction, by a fine not exceeding \$100.

(3) Violation of subsection (2) of ORS 86.480 is punishable, upon conviction, by a fine not exceeding \$200 or imprisonment in the county jail not exceeding six months, or both.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on November 1, 1959.

Sam R. Haley
Legislative Counsel