TITLE 9

MORTGAGES AND LIENS

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

Chapter 86

1961 REPLACEMENT PART

Mortgages (Real and Chattel); Trust Deeds

REAL PROPERTY MORTGAGES

86.010 Nature of mortgagee's interest
86.020 Covenant to pay money not implied
86.030 Absolute deed as a mortgage
86.040 Improvements on mortgaged lands
86.050 Payment of taxes and other charges by mortgagee
86.060 Assignment of mortgage
86.070 Record of assignment
86.080 Record of assignment not notice to mortgagor
86.090 Discharge by entry in margin of record
86.100 Discharge of record on deed of release
86.110 Discharge of record by owner and holder of mortgage note who is not the mortgagee of record
86.120 Discharge of mortgage on real property; effect of discharge
86.130 Discharge by foreign executors, administrators and guardians
86.140 Liability of mortgagee for failure to discharge mortgage

CHATTEL MORTGAGES

86.310 Property subject to mortgage
86.315 Mortgage of after-acquired property by cooperative to secure indebtedness incurred under R.E.A. Act
86.320 Manner of executing, acknowledging, certifying and proving
86.330 Provisions relating to conveyances and real property mortgages applicable to chattel mortgages
86.340 Recording as including filing
86.350 Necessity for and manner of recording or filing
86.360 Removal of property from county in which mortgage is recorded or filed as suspending lien; revival of lien
86.370 Certified copies; effect of filing with Secretary of State
86.380 Index of mortgages filed with Secretary of State; search for mortgage; fees
86.390 Mortgage on chattel registered and licensed by Department of Motor Vehicles; filing; extent of lien
86.400 Mortgage on a vessel of over 20 tons burden; recording
86.410 Priority of liens
86.420 When mortgage void as against subsequent purchasers or encumbrancers; duration of lien; affidavit of renewal
86.430 Assignment of mortgage
86.440 Discharge of mortgage recorded or filed with county recording officer
86.450 Failure of holder to discharge mortgage on payment
86.460 Discharge of mortgage filed with Secretary of State
86.470 Discharge, assignment and foreclosure of mortgages on chattels registered and licensed by Department of Motor Vehicles
86.480 Notice of intention to remove mortgaged chattel from county; injury, concealment, wrongful removal and disposal of mortgaged chattel
86.490 Right of mortgagee to possession of mortgaged chattel on condition broken
86.500 Foreclosure; sale; duty of officer to take property
86.510 Return of officer after sale; disposition of proceeds
86.520 Fees of officer making sale and of clerk

INVESTMENTS; FEDERAL HOUSING ADMINISTRATOR

86.610 Power of banks, fiduciaries and others to make loans secured by property insured by Federal Housing Administrator

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
86.630 Eligibility of securities described in ORS 86.620 as security for deposits, investment or reserve of securities
86.640 Applicability of other laws requiring security or regulating loans and investments

TRUST DEEDS

86.705 Definitions for ORS 86.705 to 86.795
86.710 Trust deeds authorized to secure performance of an obligation; methods of foreclosure after breach
86.715 Trust deed deemed to be mortgage on real property
86.720 Reconveyance upon performance; liability for failure to reconvey
86.725 Time within which foreclosure must be commenced
86.735 Foreclosure by advertisement and sale
86.740 Notice of sale to be mailed to certain persons
86.745 Contents of notice of sale
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
86.755 Sale of property
86.760 Discontinuance of foreclosure proceedings when entire amount of default paid
86.765 Disposition of proceeds of sale
86.770 Effect of sale
86.775 Contents of trustee's deed to purchaser
86.780 Recitals in trustee's deed and certain affidavits as prima facie or conclusive evidence
86.785 Requests for copies of notice of default or notice of sale
86.790 Qualifications of trustees; appointment of successor trustee
86.795 Compensation of trustee

PENALTIES

86.990 Penalties

CROSS REFERENCES

Credit accident and health insurance, 741.415
Dower in mortgaged lands, 113.120 to 113.150
Fees, filing and recording, Ch. 205
Foreclosure of liens, Ch. 88
Fraudulent conveyances, Ch. 95
Gambling debt as consideration for a mortgage, 465.090
Guardian mortgaging ward's property, 126.265, 126.406 to 126.495
Motor vehicle retail instalment contracts, Ch. 83
Public utility as mortgagor, approval of Public Utility Commissioner, 757.155
Real property mortgage foreclosure, when barred, 88.110, 88.120
Recording generally, Ch. 93
Recording officers, Ch. 205
Redemption generally, 23.510 to 23.590
Redemption, mortgagor deceased, 116.140 to 116.165
State Tax Commission as party in cases involving state tax liens, 305.130
Torrens system, as affects mortgage, 94.205, 94.305, 94.335 to 94.365, 94.835

86.020

Purchase money mortgage, no deficiency judgment permitted, 88.070

86.040

Fixtures, conditional sales of, Ch. 76
Priority, mortgage and lien for preparing land for construction or cultivation, 87.265
Priority, mortgage and mechanic's lien, 87.025
Sale of improvements for mechanic's lien, 87.025

86.050

City assessment delinquency, sale of mortgaged property, notice to mortgagee, 312.390 to 312.420
Tax foreclosure list containing mortgaged property, notice to mortgagee, 312.140, 312.150

86.060

Assignment of chose in action, Ch. 80

86.070

Fee for recording or filing mortgage assignment, 205.320

86.120

Attaching creditor as a purchaser in good faith for value, 29.150

86.310

Secured transactions under Uniform Commercial Code, 1961 c.726 §§79.1010 to 79.5070 (effective September 1, 1963)

86.350

Fee for filing and recording chattel mortgage, 205.320
Placing or removing mortgage on vehicle, effect on certificate of title, 481.410

86.360

Attaching creditor as a purchaser in good faith for value, 29.150
Fee for certified copies of filed chattel mortgages, 205.320
Transfer of motor vehicle functions from Secretary of State to Department of Motor Vehicles, 1955 c.287 §7

86.390

Security interests in motor vehicles under Uniform Commercial Code, 1961 c.726 §§402 to 410 (effective September 1, 1963)

86.410

Priority of liens, 62.360, 87.080, 87.100, 87.340, 783.010, 783.020

86.420

Attaching creditor as a purchaser in good faith for value, 29.150
Presumption of fraud, chattel mortgage neither recorded, filed, nor accompanied by delivery of the chattel to mortgagee, 41.360(39)

86.430

Assignment of chose in action, Ch. 80
Fee for recording and filing mortgage assignment, 205.320

86.440

Fee for filing and recording mortgage discharge, 205.320
Motor vehicle retail instalment contract, satisfaction of, 83.610

86.460

Motor vehicle retail instalment contract, satisfaction of, 83.610

86.480

Certified mail, use of, 174.150

86.610

Insurance companies, investment in loans guaranteed by FHA, 738.238
State Treasurer investing in bonds and mortgages insured by FHA, 291.606

86.630

Security for deposit of public funds, 295.110, 295.440

86.705

Trustee's duty to execute trust, 128.010

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 improvements 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]

Note: ORS 86.310, 86.315, 86.320, 86.330, 86.340, 86.350, 86.360, 86.370, 86.380, 86.390, 86.400, 86.410, 86.420, 86.430, 86.450, 86.480, 86.490, 86.500, 86.510 and 86.520 are repealed effective September 1, 1963. See section 427 of chapter 726, Oregon Laws 1961 (Uniform Commercial Code). Until September 1, 1963, these sections remain in effect, unless otherwise provided by legislative action after 1961.

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 mortgaged 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]

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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]

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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]

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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.

Note: ORS 86.460 is amended by section 407 of chapter 726, Oregon Laws 1961 (Uniform Commercial Code, effective September 1, 1963. Until then, ORS 86.460 (1961 Replacement Part) remains in effect, unless otherwise provided by legislative action after 1961.

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.

Note: ORS 86.470 is amended by section 408 of chapter 726, Oregon Laws 1961 (Uniform Commercial Code), effective September 1, 1963. Until then, ORS 86.470 (1961 Replacement Part) remains in effect, unless otherwise provided by legislative action after 1961.

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 chattels 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.

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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]

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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.

Note: See note under ORS 86.310.

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 com-

panies, 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 investments 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 for ORS 86.705 to 86.795. 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.

(5) "Three acres" means three acres of land. Where the trust deed states that the real property involved does not exceed three acres, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of ORS 86.705 to 86.795 relative to the power to make a transfer, trust and power of sale. If by a bona fide mistake of either party the property slightly exceeds three acres, the mistake shall not make the trust deed void.
[1959 c.625 §1; 1961 c.616 §1]

86.710 Trust deeds authorized to secure performance of an obligation; methods of foreclosure after breach. After August 9, 1961, transfers in trust of any estate in real property not exceeding three acres 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.
[1959 c.625 §2; 1961 c.616 §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 [1959 c.625 §§17, 22; repealed by 1961 c.616 §8]

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 120 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 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 appears 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; 1961 c.616 §3]

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.
[1959 c.625 §7; 1961 c.616 §4]

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 occupants 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 20 days prior to the date of sale.

(3) 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; 1961 c.616 §5]

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 prior to the time and date set by the trustee for the trustee's sale, 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 and 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; 1961 c.616 §6]

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 subsecton (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 of foreclosure by advertisement and sale 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, preliminary to such sale, the trustee's fees and attorney's fees to be charged grantor shall not exceed $50. The trustee shall not be entitled to any compensation prior to commencement of foreclosure.
[1959 c.625 §19; 1961 c.616 §7]

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.

Note: ORS 86.990 is amended by section 410 of chapter 726, Oregon Laws 1961 (Uniform Commercial Code), effective September 1, 1963. Until then, ORS 86.990 (1961 Replacement Part) remains in effect, unless otherwise provided by legislative action after 1961.

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 December 1, 1961.

Sam R. Haley
Legislative Counsel