# Chapter 88

## 1967 REPLACEMENT PART

(1971 reprint)

# Foreclosure of Liens Generally


**88.010 Foreclosure of liens by suit; decree for amount of debt**
**88.020 Joinder of foreclosure suit involving realty with suit to quiet title**
**88.030 Other lien holders and debtors as defendants**
**88.040 Foreclosure suit during and after action for debt**
**88.050 Decree where more than one lien on same property**
**88.060 Enforcement of decree**
**88.070 Decree foreclosing purchase money mortgage on real property**
**88.080 Sale and redemption; effect of sheriff's deed**
**88.090 Decree when debt payable in instalments**
**88.100 Payment of amount due before foreclosure sale; decree for payment of instalment not due**
**88.110 Duration of real property mortgage lien; suit for foreclosure barred, when**
**88.120 Foreclosure not barred by ORS 88.110, when**
**88.710 Definitions for ORS 88.710 to 88.740**
**88.720 Acquisition, administration and disposal by state of property subject to lien held by state**
**88.740 Investment of Oregon War Veterans' Bond Sinking Fund surplus moneys**


## CROSS REFERENCES

Boats, vehicles and other conveyances seized for violation of drug laws, payment, 471.665
Chattel mortgage lien, foreclosure of, Ch. 86
Entry on record when real-property mortgage is foreclosed, 93.720
Foreclosure of specific liens, Ch. 87 and cross references of Ch. 87
Foreclosure of tax liens by county, effects, stability of title, 312.214 to 312.230
Indigent injured in motor vehicle accident, foreclosing lien on award to, 445.260
Lis pendens, filing notice of, effect of, 93.740
Release of state tax liens by Department of Revenue 305.140, 321.455
Revenue department, as party in cases involving state tax liens, 305.130
Trust deed, foreclosure of, 86.710
Unit ownership, foreclosure of liens on property subject to, 91.580
Watermasters, foreclosing lien for expenses of, 540.410
Welfare recipient, lien against judgment in favor of, 416.540

**88.030**

State as defendant when it claims an interest in the realty, 30.360
Tenants in common, joinder as defendants, 13.150
Unknown claimants of realty as parties, 13.070

**88.080**

Manager of property subject to unit ownership may bid at sale of unit, 91.585
Redemption of mining claims, 517.090, 517.100
Water power project property, foreclosure sale of, 543.550

**88.110**

Suspension of statute of limitation during a war when mortgagor is enlisted man on active service in the war, 408.440

**88.010 Foreclosure of liens by suit; decree for amount of debt.** Except as otherwise provided by law, a lien upon real or personal property, other than that of a judgment or decree, whether created by mortgage or otherwise, shall be foreclosed, and the property adjudged to be sold to satisfy the debt secured thereby by a suit. Except as provided in ORS 88.070, in addition to the decree of foreclosure and sale, if a promissory note or other personal obligation for the payment of the debt has been given by the lien debtor or any other person as principal or otherwise, the court also shall decree a recovery of the amount of the debt against such person or persons, as the case may be, as in the case of an ordinary decree for the recovery of money. The provisions of this chapter as to liens upon personal property are not intended to exclude a person having such lien from any other remedy or right in regard to such property.

**88.020 Joinder of foreclosure suit involving realty with suit to quiet title.** Any cause of suit involving real property provided for in ORS 88.010 may be joined with any cause of suit provided for in ORS 105.605 in the same complaint or cross-complaint, if both causes of suit involve the same real property or some part thereof and are separately stated. Any person may be joined as a party who is a proper party to either cause of suit. The court, in event of such joinder, may render a decree which will, among other things, determine the paramount title to the real property involved or any part thereof.

**88.030 Other lien holders and debtors as defendants.** Any person having a lien subsequent to the plaintiff upon the same property or any part thereof, or who has given a promissory note or other personal obligation for the payment of the debt, or any part thereof, secured by the mortgage or other lien which is the subject of the suit, shall be made a defendant in the suit, and any person having a prior lien may be made defendant at the option of the plaintiff, or by the order of the court when deemed necessary.

**88.040 Foreclosure suit during and after action for debt.** During the pendency of an action for the recovery of a debt secured by any lien mentioned in ORS 88.010, a suit cannot be maintained for the foreclosure of the lien, nor thereafter, unless judgment is given in such action that the plaintiff recover the debt or some part thereof, and an execution thereon against the property of the defendant is returned unsatisfied in whole or in part.

**88.050 Decree where more than one lien on same property.** When it is adjudged that any of the defendants have a lien upon the property, the court shall make a like decree in relation thereto, and the debt secured thereby, as if such defendant were a plaintiff in the suit. When a decree is given foreclosing two or more liens upon the same property or any portion thereof in favor of different persons not united in interest, the decree shall specify the order, according to their priority, in which the debts secured by such liens shall be satisfied out of the proceeds of the sale of the property.

**88.060 Enforcement of decree.** The decree may be enforced by execution as an ordinary decree for the recovery of money, except as in this section otherwise provided:

(1) When a decree of foreclosure and sale is given, an execution may issue thereon against the property adjudged to be sold. If the decree is in favor of the plaintiff only, the execution may issue as in ordinary cases, but if it is in favor of different persons, not united in interest, it shall issue upon the joint request of such persons or upon the order of the court or judge thereof on the motion of any of them.

(2) When the decree is also against the defendants or any one of them in person, and the proceeds of the sale of the property upon which the lien is foreclosed are not sufficient to satisfy the decree as to the sum remaining unsatisfied, the decree may be enforced by execution as in ordinary cases. When in such case the decree is in favor of different persons not united in interest, it shall be deemed a separate decree as to such persons, and may be enforced accordingly.

**88.070 Decree foreclosing purchase money mortgage on real property.** When a decree is given for the foreclosure of any mortgage given to secure payment of the balance of the purchase price of real property, the decree shall provide for the sale of the real property covered by such mortgage for the satisfaction of the decree given therein, but the mortgagee shall not be entitled to a deficiency judgment on account

of the mortgage or note or obligation secured by the same.

**88.080 Sale and redemption; effect of sheriff's deed.** A decree of foreclosure shall order the mortgaged property sold. Property sold on execution issued upon a decree may be redeemed in like manner and with like effect as property sold on an execution issued on a judgment, and not otherwise. A sheriff's deed for property sold on execution issued upon a decree shall have the same force and effect as a sheriff's deed issued for property sold on an execution issued on a judgment.

**88.090 Decree when debt payable in instalments.** When a suit is commenced to foreclose a lien securing a debt payable in instalments, either of interest or principal, and any of such instalments is not then due, the court shall decree a foreclosure of the lien, and may also decree a sale of the property for the satisfaction of the whole debt, or so much thereof as may be necessary to satisfy the instalment then due, with costs of suit. In the latter case, the decree of foreclosure as to the remainder of the property may be enforced by an order of sale, in whole or in part, whenever default occurs in the payment of the instalments not then due.

**88.100 Payment of amount due before foreclosure sale; decree for payment of instalment not due.** If, before a decree is given, the amount then due with the costs of suit is brought into court and paid to the clerk, the suit shall be dismissed. If the same is done after decree and before sale, the effect of the decree as to the amount then due and paid shall be terminated, and the execution, if any has issued, shall be recalled by the clerk. When an instalment not due is adjudged to be paid, the court shall determine and specify in the decree what sum shall be received in satisfaction thereof, which sum may be equal to such instalment, or otherwise, according to the present value thereof.

**88.110 Duration of real property mortgage lien; suit for foreclosure barred, when.** Except as provided in ORS 88.120, no mortgage upon real property shall be a lien upon such property after the expiration of 10 years from the date of maturity of the mortgage debt or from the date to which the payment thereof has been extended by agreement of record; and after such 10 years the mortgage shall be conclusively presumed paid and discharged, and no suit shall be maintainable for its foreclosure. If the date of maturity of the debt is not disclosed by the mortgage itself, then the date of the execution of the mortgage shall be deemed the date of maturity of such debt.

**88.120 Foreclosure not barred by ORS 88.110, when.** Foreclosure of a mortgage on real property is not barred by ORS 88.110 when all the following facts exist at the time the foreclosure suit is commenced:

(1) Any portion of the mortgage debt, or any interest thereon, has been voluntarily paid within the 10 years immediately preceding commencement of the suit.

(2) The original mortgagor still owns the mortgaged property.

(3) No lien or right of a third person has attached to the property after the expiration of the 10-year period referred to in ORS 88.110.

**88.710 Definitions for ORS 88.710 to 88.740.** As used in ORS 88.710 to 88.740:

(1) "Director" means the Director of Veterans' Affairs.

(2) "Lien" means any charge upon property for the payment or discharge of a debt, tax or duty due the State of Oregon or any agency of the state, including judgment liens, docketed warrants or any notice or claim of amount due given by the state, or an agency thereof, pursuant to law and carried forward on the lien book or judgment roll of the county wherein property is located to which a lien of the state attaches.
[1959 c.499 §1; 1963 c.578 §2]

**88.720 Acquisition, administration and disposal by state of property subject to lien held by state.** Whenever in the discretion of the director such a procedure would appear beneficial to the state, and on advice of the state agency charged with collection of a tax, duty, debt or any sum owing the state for which a lien securing such debt, tax or duty is being foreclosed by the state agency or by third parties, the director may bid in or redeem real or personal property ordered sold under foreclosure where such property is subject to any lien held by the state at a price limited to the sum of the amount of the state lien and all other prior liens plus costs but in no event to exceed the appraised value;

acquire title to real property for and in behalf of the state as a result of such foreclosure; accept deeds from debtors, taxpayers or other persons owing a debt, tax or duty to the state in lieu of foreclosure; make repairs, improvements or alterations; insure against loss or damage; pay taxes, liens and charges of every kind superior to the lien of the state; and sell, transfer, lease or assign such property for and in behalf of the state, or otherwise administer such property in such manner as he deems for the best interest of the state in the same manner the director manages and conveys property pursuant to ORS 407.080; the director shall undertake to sell property after acquiring marketable title thereto, and while holding such property shall not engage in any enterprise competitive with private enterprise other than the renting or leasing of such property or interests therein. The control of such property while title remains vested in the state shall be exercised by the director.

[1959 c.499 §2; 1963 c.578 §3; 1967 c.211 §6]

**88.730** [1959 c.499 §3; 1963 c.578 §4; repealed by 1967 c.211 §7 (88.740 enacted in lieu of 88.730)]

**88.740 Investment of Oregon War Veterans' Bond Sinking Fund surplus moneys.** (1) The director is authorized, in whatever manner he considers advisable and to the extent necessary to carry out the provisions of ORS 88.710 to 88.740, to use the surplus moneys in the Oregon War Veterans' Bond Sinking Fund, other than the moneys therein which are derived from tax levies and sales of refunding bonds, that are earnings in excess of the amount required to amortize the bonded indebtedness incurred under the authority of section 1, Article XI-A of the Oregon Constitution, and ORS 407.020 to 407.040, 407.070 and 407.120 to 407.200.

(2) The property acquired under ORS 88.710 to 88.740 shall represent an investment of the Oregon War Veterans' Bond Sinking Fund and all moneys received by the director from the sale, lease or other disposition of any property shall be deposited in the Oregon War Veterans' Bond Sinking Fund.

(3) The director may pay to the State Treasurer, to be deposited in the General Fund available for general governmental expenses:

(a) An amount equal to the balance owing on any existing real estate contract arising out of the sale of property by the director which was an investment of the General Fund pursuant to ORS 88.710 to 88.740, and upon such payment the interest represented by the real estate contract shall represent an investment of the Oregon War Veterans' Bond Sinking Fund.

(b) An amount equal to the General Fund moneys expended for the acquisition of presently unsold properties pursuant to ORS 88.710 to 88.740, and upon such payment the properties shall represent an investment of the Oregon War Veterans' Bond Sinking Fund.

[1967 c.211 §8 (enacted in lieu of 88.730)]

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Robert W. Lundy, 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, 1967.

Robert W. Lundy
Legislative Counsel

## CHAPTERS 89 AND 90

**[Reserved for expansion]**