

**OREGON STATE BAR**  
**Legislative Proposal**  
**Part I – Legislative Summary**

**RE:** SB 241 Evictions after foreclosure sales and related transfers of property interests

**Submitted by:** Debtor/Creditor Section

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1. **This bill would amend ORS Statute(s):** 86.755; 105.115; and 105.130.

2. **PROBLEM PRESENTED** (including level of severity):

Confusion and lack of consistency exist about the applicability of Oregon’s residential F.E.D. (forcible entry and detainer) statute in four common situations: (a) and (b) to allow the purchaser at either a judicial or non-judicial foreclosure or execution sale to obtain possession of the property; (c) to allow a seller under a forfeited or foreclosed land sale contract to obtain possession of the property; (d) to allow the grantee under a deed in lieu of foreclosure to obtain possession of the property.

This proposal is designed to make procedures similar to the present procedure authorized under ORS 86.755(5) available for all of the foregoing situations and to modify ORS 86.775(5) to clarify the effect of timing of notices on entry of a judgment of restitution. The proposal also makes clear that a residential F.E.D. may be used in all such cases, whether or not the property involved is used for residential purposes.

The changes contemplated by this proposal do not alter the protections available to pre-foreclosure tenants of the party whose interest is foreclosed and sold under a trustee’s sale. This proposal adds those same protections to tenants involved in the other three categories of transfers described above.

3. **SOLUTION:**

Amend ORS 105.115 to include within the scope of “unlawful holding by force” those situations where a purchaser at a trustee’s sale or at an execution sale is entitled to possession, where a seller has the right to possess after a contract forfeiture, or where the borrower has conveyed property to the secured lender in lieu of foreclosure. Amend ORS 86.755(5) to clarify when a purchaser may initiate a proceeding under the F.E.D. statutes. Amend ORS 105.130 to provide for consistent procedures for such F.E.D. cases.

4. **PUBLIC POLICY IMPLICATION** of this proposed legislative change:

This change would eliminate any confusion about the available appropriate judicial procedure to be used to enforce a purchaser's right to possession of property purchased at a foreclosure or execution sale and clarify that the well-known, expedient, and inexpensive procedures in the F.E.D. statutes are available in such situations.

5. Could the problem be addressed through a **NON-LEGISLATIVE SOLUTION**, such as administrative rule or education?

No. The problem is the effect of a statute.

6. **COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL?** If so, have you suggested it to the section or group?

No. The Debtor-Creditor Section is the appropriate section to introduce the bill.

The Debtor-Creditor Section Legislative Committee has consulted with the General Landlord/Tenant Coalition. This version of the proposal was amended to address concerns expressed by members of the Coalition the rights of tenants of owners whose property has been foreclosed by providing at least the protections afforded by ORS 86.775(5) to all the situations covered by this proposal.

7. **IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED** or interested in this change. Who would support it and who would oppose it?

The groups or constituencies that would be most affected by the change would be purchasers at foreclosure and execution sales, which group consists principally of lenders who have had to foreclose their mortgages or trust deeds after default by the borrowers, and the borrowers who have been foreclosed of their interest in the property because of their defaults. Additionally, courts and practitioners would be affected by having a clearly defined procedure authorized by statute, eliminating existing confusion.