

**Oregon State Bar
Meeting of the Board of Governors
April 4, 2013
Conference Call
Special Open Session Agenda**

The Special Open Session Conference Call Meeting of the Oregon State Bar Board of Governors will begin at 8:00 a.m. on April 4, 2013.

Thursday, April 4, 2013, 8:00 a.m.

1. Call to Order/Finalization of the Agenda

2. Public Affairs Committee Recommendation

A. Consider PAC recommendation to take position on pending legislation. [Mr. Kehoe]

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|-----------|-----------------|--------|----------|
| 1. | House Bill 2822 | Action | Exhibits |
| 2. | Senate Bill 28 | Action | |
| 3. | House Bill 2829 | Action | |

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: March 28, 2013
From: Matt Kehoe, Public Affairs Committee Chair
Re: Pending Legislative issues

Action Recommended

Consider PAC recommendation to take a position on pending legislation.

Background

Under current law, most public notices are required to be published in physical printed newspapers in the county where the relevant matter is under consideration. These include notices for foreclosures, probates, and the disposal of various types of property by local government. Internet publication does not meet statutory requirements – only publication in physical, printed newspapers. Many public notices are also published on a website run by the Oregon Newspapers Association. This is a voluntary reprinting of newspaper advertising, and does not meet any statutory requirements. Only notices published in printed newspapers appear on this website.

The major exception to the printed notice requirement is that notices of “Sheriff’s Sales” of real property are published on the internet, on a website specifically set up by Sheriff’s Association. These notices are not required to be published in physical newspapers. This is a relatively new system, and the website has only been in operation for about a year.

House Bill 2822 would essentially overturn the Sheriff’s Sale provisions, and require that Sheriff’s sales once again be published in newspapers. This bill was heard before the House Consumer Protection Committee on February 21st, but was not acted upon and has received no further action. However, there is a pending compromise between the newspapers and Sheriffs where all notices would be required to be published in the newspaper **and** on the internet for a substantial increase in costs. There is also an amendment that would continue to require the newspaper notice, but greatly abbreviate what it contains, see below.

Senate Bill 28, on the other hand, was introduced at the request of the Oregon State Police, and would expand internet publication. This bill relates to publication of notices from criminal and civil forfeiture and intent to dispose of unclaimed property. Under current law, all of these notices must be published in physical printed newspapers. SB 28 would require the Oregon Criminal Justice Commission to establish a website for the publication of these notices, and would eliminate the requirement that they be published in newspapers. Senate Bill 28 has not received a hearing thus far.

A third bill which has some relevance to internet publication of notices is **House Bill 2829**. This bill allows counties to post certain notices related to expenditures on the internet. However, these notices are not currently published in newspapers – currently they are physically posted at courthouses and libraries. Likely for this reason, this bill has not received significant opposition. This bill has passed the Oregon House and is now in the Senate awaiting a hearing.

House Bill 2822

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Disallows publication of notice of sale of real property by Internet posting without additional publication in newspaper of general circulation.

A BILL FOR AN ACT

Relating to execution sales of real property; creating new provisions; and amending ORS 18.924.

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

SECTION 1. ORS 18.924 is amended to read:

18.924. (1) Before conducting an execution sale of real property, a sheriff shall give written notice of the sale in the manner provided by this section. The notice must identify the property to be sold by legal description and by street address, if any, and the time and place of the sale, and must include the following notice:

Before bidding at the sale, a prospective bidder should independently investigate:

- (a) The priority of the lien or interest of the judgment creditor;
- (b) Land use laws and regulations applicable to the property;
- (c) Approved uses for the property;
- (d) Limits on farming or forest practices on the property;
- (e) Rights of neighboring property owners; and
- (f) Environmental laws and regulations that affect the property.

(2) Before any execution sale of real property, the sheriff shall:

(a) Mail copies of the notice of sale by first class mail and by certified mail, return receipt requested, to the judgment debtor at the address provided in the instructions to the sheriff;

(b) Mail a copy of the notice of sale by first class mail to any attorney for the judgment debtor identified in the instructions at the address provided in the instructions; and

(c) Mail a copy of the notice of sale by first class mail to any other person listed in the instructions pursuant to ORS 18.918 at the address provided in the instructions.

(3) The notices required by subsection (2) of this section must be mailed not less than 28 days before an execution sale is conducted.

(4) Before any execution sale of real property for which the judgment creditor has provided a street address under ORS 18.875 (3), the sheriff shall post a notice of the sale in a conspicuous place on the property. The notice must be posted not more than seven days after the sheriff mails notices

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 as required by subsection (2) of this section.

2 (5) The sheriff shall publish a copy of the notice of sale of real property once a week for four
3 successive weeks in a newspaper of general circulation in the county where the real property is
4 located. The sheriff may not conduct the sale until the expiration of the four-week period.

5 (6) In *[lieu of]* **addition to** publication in a newspaper under subsection (5) of this section, a
6 sheriff *[shall]* **may** publish a notice of sale of real property by Internet posting if a website has been
7 established under ORS 18.926 for the purpose of giving legal notices under ORS 18.860 to 18.993, and
8 the judgment creditor has requested that notice be published by Internet posting in the instructions
9 provided to the sheriff under ORS 18.875. Subject to ORS 18.926 (3), the notice must be posted on
10 the Internet not less than 28 days before the date identified in the notice of sale and remain posted
11 until that date.

12 **SECTION 2. The amendments to ORS 18.924 by section 1 of this 2013 Act apply only to**
13 **execution sales conducted on or after the effective date of this 2013 Act.**

14

**PROPOSED AMENDMENTS TO
HOUSE BILL 2822**

1 On page 1 of the printed bill, line 2, after “18.924” insert “and 18.926”.

2 Delete lines 4 through 31.

3 On page 2, delete lines 1 through 11 and insert:

4 **“SECTION 1.** ORS 18.924 is amended to read:

5 “18.924. (1) Before conducting an execution sale of real property, a sheriff
6 shall [*give written*] **publish** notice of the sale [*in the manner provided by this*
7 *section*] **by Internet posting on the website established under ORS**
8 **18.926.** The notice must identify the property to be sold by legal description
9 [*and by street address, if any,*] and the time and place of the sale, and must
10 include the following notice:

11 “ _____
12 Before bidding at the sale, a prospective bidder should independently in-
13 vestigate:

14 (a) The priority of the lien or interest of the judgment creditor;

15 (b) Land use laws and regulations applicable to the property;

16 (c) Approved uses for the property;

17 (d) Limits on farming or forest practices on the property;

18 (e) Rights of neighboring property owners; and

19 (f) Environmental laws and regulations that affect the property.

20 “ _____

21 “(2) Before any execution sale of real property, the sheriff shall:

22 “(a) Mail copies of the notice of sale **published under subsection (1)**

1 **of this section** by first class mail and by certified mail, return receipt re-
2 quested, to the judgment debtor at the address provided in the instructions
3 to the sheriff;

4 “(b) Mail a copy of the notice of sale **published under subsection (1)**
5 **of this section** by first class mail to any attorney for the judgment debtor
6 identified in the instructions at the address provided in the instructions; and

7 “(c) Mail a copy of the notice of sale **published under subsection (1)**
8 **of this section** by first class mail to any other person listed in the in-
9 structions pursuant to ORS 18.918 at the address provided in the in-
10 structions.

11 “(3) The notices required by subsection (2) of this section must be mailed
12 not less than 28 days before an execution sale is conducted.

13 “(4) Before any execution sale of real property for which the judgment
14 creditor has provided a street address under ORS 18.875 (3), the sheriff shall
15 post [a] **the notice of the sale published under subsection (1) of this**
16 **section** in a conspicuous place on the property. The notice must be posted
17 not more than seven days after the sheriff mails notices as required by sub-
18 section (2) of this section.

19 “(5) The sheriff shall publish [*a copy of the notice of*] **information about**
20 **the sale of real property once a week for four successive weeks in a news-**
21 **paper of general circulation in the county where the real property is located.**
22 **The sheriff may not conduct the sale until the expiration of the four-week**
23 **period. The information published under this subsection must include:**

24 “(a) **The name of the owner of the property subject to the sale;**

25 “(b) **The street address of the property, if any;**

26 “(c) **The date of the sale;**

27 “(d) **The place of the sale; and**

28 “(e) **Instructions for locating information about the sale on the**
29 **website established under ORS 18.926.**

30 “(6) In [*lieu of*] **addition to** publication in a newspaper under subsection

1 (5) of this section, [*a sheriff shall publish a notice of sale of real property*] **if**
2 **the judgment creditor has requested that notice be published by**
3 **Internet posting in the instructions provided to the sheriff under ORS**
4 **18.875, the sheriff shall publish the information listed in subsection (5)**
5 **of this section** by Internet posting [*if a website has been*] **on the website**
6 established under ORS 18.926 for the purpose of giving legal notices under
7 ORS 18.860 to 18.993[, *and the judgment creditor has requested that notice be*
8 *published by Internet posting in the instructions provided to the sheriff under*
9 *ORS 18.875*]. Subject to ORS 18.926 (3), the [*notice*] **information** must be
10 posted on the Internet not less than 28 days before the date identified in the
11 notice of sale and remain posted until that date.

12 **“SECTION 2.** ORS 18.926 is amended to read:

13 “18.926. (1) [*A website where legal notices under ORS 18.860 to 18.993 may*
14 *be posted shall be established if a majority of the elected sheriffs in this state*
15 *enter into an intergovernmental agreement under ORS chapter 190 for the*
16 *purpose of establishing and maintaining the website.*] **The elected sheriffs**
17 **of this state shall establish and maintain a website where legal notices**
18 **under ORS 18.860 to 18.993 may be posted. The sheriffs may enter into**
19 **an intergovernmental agreement for establishing and maintaining the**
20 **website.**

21 “(2) An intergovernmental agreement entered into under this section may
22 establish fees for posting legal notices on a website maintained under this
23 section.

24 “(3) For the purpose of determining whether a legal notice has been
25 posted for the period of time required by law, an interruption of service of
26 a website maintained under this section that does not exceed 48 hours does
27 not affect the continuity of the posting. An interruption of service of a
28 website maintained under this section does not prevent the sheriff from
29 conducting an execution sale unless the court orders otherwise.”.

30 In line 12, delete “2” and insert “3”.

