

**OREGON STATE BAR
LEGISLATIVE PROPOSAL
Part I – Legislative Summary**

Re: Post Judicial Foreclosure Evictions

Submitted by: Debtor-Creditor Section

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1. Does this amend current law or program? Yes **No** **Specify**

This proposal supplements Chapter 638 Oregon Laws 2009 (SB 241), which was sponsored by the Oregon State Bar Debtor Creditor Section, by cross-referencing the eviction statutes with ORS 18.946, the statute relating to possession following judicial execution sales.

2. Problem Presented:

In 2009, the legislature amended ORS 105.115 and 105.130 making it clear that eviction actions could be maintained by purchasers following certain foreclosure remedies. Or Laws 2009 ch. 638 Sec. 1 (SB 241, 2009).

In late 2019, the Court of Appeals issued an opinion holding that a purchaser following judicial foreclosure could not maintain an eviction of the occupants, disregarding the current statutes and relying on case law that had been overruled by the legislature in 2009 to expressly allow evictions following certain foreclosures. In April of 2020 the Oregon Court of Appeals granted a motion for reconsideration to the 2019 opinion and updated their opinion in *The Bank of New York Mellon v Lash*, 301 Or App 658 (2020). The updated opinion incorporated the changes made in SB 241 (2009).

3. Solution:

To avoid further confusion, this proposal would cross-reference the eviction statutes in ORS 18.946 to reflect the decision in *The Bank of New York Mellon v Lash*, 301 Or App 658 (2020) and ensure that the changes made by the Legislature in 2009 are applied correctly.

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LEGISLATIVE PROPOSAL
Part II – Legislative Language

Please provide your legislative language below:

ORS 18.946

(1) Subject to subsection (2) of this section, the purchaser of real property at an execution sale is entitled to possession of the property from the date of sale until a redemption of the property, if any. Subject to subsection (2) of this section, the redemptioner of real property is entitled to possession of the property from the date the payment required by ORS 18.966 or 18.967 is made until another redemption, if any. **Subject to subsection (2) of this section, the purchaser or redemptioner may obtain possession of the property from any occupant by following the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.**

(2) If property sold on execution or redeemed is in the possession of a tenant who holds the property at the time of the sale under an unexpired lease that has a priority that is inferior to the claim of the judgment creditor, the lessee has the right to remain in possession of the property until expiration of the period allowed for redemption if the lessee makes the lease payments to the purchaser or redemptioner, or pays to the purchaser or redemptioner a monthly payment equal to the value of the use and occupancy of the property, whichever amount is greater.