

Enrolled
House Bill 2855

Sponsored by COMMITTEE ON BUSINESS AND LABOR

CHAPTER

AN ACT

Relating to enforcement of the contractual requirement for delivery of a deed of conveyance.

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

SECTION 1. Sections 2 and 3 of this 2017 Act are added to and made a part of ORS chapter 93.

SECTION 2. (1) As used in this section and section 3 of this 2017 Act, “contract for transfer or conveyance of an interest in real property,” “purchaser” and “seller” have the meanings given those terms in ORS 93.905.

(2) If a seller has received full payment and performance of a contract for transfer or conveyance of an interest in real property, but fails or refuses to provide the purchaser with a proper deed of conveyance, the contract is deemed complete and the title held by the seller is conveyed to the purchaser, provided the purchaser:

- (a) Has not instituted a suit or action to enforce the contract;
- (b) Has fulfilled all requirements of the purchaser under the contract; and
- (c) Has given the seller written notice of the purchaser’s wish to enforce a contractual requirement for delivery of a deed of conveyance, as required by this section.

(3) A purchaser who wishes to enforce a contractual requirement for delivery of a deed of conveyance from the seller shall:

(a) Record a notice of intent to enforce the contractual requirement for delivery of a deed of conveyance in each county where the property is located; and

(b) After recording the notice required by paragraph (a) of this subsection, give written notice by service pursuant to ORCP 7 D(2) and 7 D(3), or by both first class and certified mail with return receipt requested, to the last-known address of the following persons or their legal representatives:

- (A) The seller.
- (B) An occupant of the property.
- (C) Any person holding title or other interest through the seller that was recorded prior to the recording of the notice required by paragraph (a) of this subsection.

(4) The notice required by subsection (3)(b) of this section must specify:

- (a) The name of the seller, as shown of record;
- (b) A reference to the instrument creating the original contract of sale, and any assignments of the contract, including where it is recorded;

(c) The date of final payment or other final performance of the contract, whichever is applicable;

(d) That the purchaser wishes to enforce a contractual requirement for delivery of a deed of conveyance from the seller;

(e) The date by which the seller or the seller's successors in interest or assignees must submit an objection to the purchaser, which must be within 60 days after the final date of publication of the notice required by subsection (7)(a) of this section or within 120 days after the date of recording of the notice required by subsection (3)(b) of this section, whichever is later, or the seller's interest in the property may be conveyed to the purchaser;

(f) A description of the property; and

(g) The name and address of the person to whom the seller must object to the demand contained in the notice.

(5)(a) A seller may submit an objection to the enforcement of a contractual requirement for delivery of a deed of conveyance to a purchaser that gives notice to the seller under subsection (3)(b) or (7)(a) of this section, provided the seller serves or mails the objection to the purchaser within the deadline described in subsection (4)(e) of this section.

(b) A purchaser that receives an objection from a seller under this subsection may initiate a suit or action to challenge the objection and to enforce the contract.

(c) Upon initiation of a suit or action under this subsection, no title or interest to the property may be transferred until the earlier of the date the seller delivers a fulfillment deed of conveyance or the date of entry of final judgment in the suit or action.

(d) The prevailing party in a suit or action initiated under this subsection is entitled to recover actual damages or \$5,000, whichever is greater, together with costs and reasonable attorney fees incurred at trial and on appeal.

(6) The purchaser shall cause to be recorded in the real property records of each county in which the property is located an affidavit of service or mailing of the notice, including:

(a) The date the notice was served or mailed;

(b) The name and address of each person to whom the notice was given; and

(c) If the seller does not acknowledge the notice, a detailed description of the efforts made, along with the date each effort is made, to determine with due diligence the address of the seller or the seller's assignees or successors in interest.

(7) If, after notice is given and recorded as required under subsections (3) to (6) of this section, a seller does not provide the purchaser with the deed of conveyance within 30 days of service or mailing, the purchaser may acquire the seller's interest in the property by:

(a) Publishing a notice that meets the requirements described in subsection (8) of this section, at least one time per week for three consecutive weeks in a newspaper of general circulation in each county in which the property is located, that the purchaser wishes to enforce a contractual requirement for delivery of a deed of conveyance from the seller; and

(b) Recording an affidavit of compliance with the requirements of paragraph (a) of this subsection within 15 days of the date of the last publication.

(8) The notice described in subsection (7)(a) of this section must include:

(a) The name of the seller, as shown of record;

(b) A reference to the instrument creating the original contract of sale, and any assignments of the contract, including where it is recorded;

(c) A description of the property;

(d) The name and address of the person giving the notice;

(e) The date of first publication of the notice;

(f) A statement that the seller or the seller's successors in interest or assignees must submit an objection to the purchaser within the deadline described in subsection (4)(e) of this section; and

(g) The name and address of the person to whom the seller must submit an objection under subsection (5) of this section.

(9)(a) If a seller fails or refuses to provide a proper deed of conveyance after the purchaser completes the notice and recording procedures set forth in this section, the notice

provided to the seller under this section satisfies any notice required by the terms of the contract of sale.

(b) Notwithstanding paragraph (a) of this subsection, the purchaser must give written notice as required by the provisions of the contract if the contract requires that notice be provided to additional persons or sets forth a longer notice period than the period required by this section.

(10) A seller that submits an objection to the purchaser under subsection (5) of this section must record the objection in each county in which the property is located within 30 days, along with an affidavit of the seller's objection that includes the name and contact information of the objecting seller and a copy of the notice required by subsection (3)(b) or (7)(a) of this section.

(11)(a) If a seller does not submit an objection to the purchaser under subsection (5) of this section, and the contract for conveyance of real property has been fulfilled under the notice and recording procedures set forth in this section, the purchaser shall record a declaration of fulfillment in the deed records of each county in which the property is located, including:

(A) An affidavit setting forth that the seller did not provide a proper deed of conveyance before the deadline described in subsection (4)(e) of this section, that the contract has been fulfilled and that the title of the seller is hereby transferred to the purchaser;

(B) A description of the property; and

(C) Proof of mailing of a copy of the declaration to the seller.

(b) When the declaration is recorded, the recitals contained in the affidavit shall be:

(A) Prima facie evidence in any court of the truth of the matters set forth in the declaration; and

(B) Conclusive in favor of a purchaser for value in good faith relying upon them.

(12) Notices served by mail are effective when mailed.

SECTION 3. (1) Except as otherwise provided in this chapter and except to the extent otherwise provided in the contract or other agreement with the seller, fulfillment of a contract for sale under section 2 of this 2017 Act shall have the following effects:

(a) Except as provided in paragraph (c) of this subsection, the seller and all persons claiming through the seller that were given the required notices pursuant to section 2 of this 2017 Act have no further rights in the contract or the property and no person has any right, by statute or otherwise, to redeem the property.

(b) All rights, title and interest in the property held by the seller and any improvements made to the property at the time the declaration of fulfillment is recorded are transferred to the purchaser as though the seller had delivered a fulfillment of deed to the purchaser.

(c) Any claim of title or interest through the seller that was recorded prior to the recording of the contract for transfer or conveyance of an interest in real property or a memorandum of the contract shall maintain its priority and is not extinguished by the declaration of fulfillment.

(2) The failure to give notice to any person described in subsection (1) of this section does not affect the validity of the effects of fulfillment of a contract for sale as to persons so notified.

SECTION 4. Sections 2 and 3 of this 2017 Act apply to enforcements of contractual requirements for delivery of a deed of conveyance commenced on or after the effective date of this 2017 Act.

Passed by House April 3, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 16, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State