



**DEPARTMENT OF JUSTICE**  
OFFICE OF THE ATTORNEY GENERAL

**MEMORANDUM**

DATE: May 16, 2019

TO: Honorable Jennifer Williamson, Chair  
House Judiciary Committee

FROM: Cheryl Hiemstra, Deputy Legislative Director

SUBJECT: Senate Bill 11A – Redemption Rights

This testimony is presented in support of Senate Bill 11A

**SENATE BILL 11A: SHINING A LIGHT ON REDEMPTION RIGHTS TRANSACTIONS**

**Background**

Averages of home sales have increased significantly in the last 5 years.<sup>1</sup> While Oregon is no longer at the crisis levels of foreclosure earlier in the decade, some homes are still going into foreclosure. Homeowners and people who are caught in foreclosure are often facing other life events: serious illness, death of a family member, loss of income. These challenging life events, piled with complexity around real estate transactions, make for a playing field ripe for confusion and sometimes, fraud.

The confluence of rising house prices and foreclosure has led to a new exploit involving “redemption rights.” The right to redeem harkens back to times when farmers would go into default, but then would be able to buy back their farms once their crops were harvested and sold. When a house is sold at a judicial foreclosure auction, a holder of the “redemption rights” has the option to “redeem” the house.<sup>2</sup> In other words, the holder can repay the winning bidder at the sale and restore the holder’s interest in the property as if the sale never took place. This right is temporary: a person can redeem only within 180 days (six months) after the sale.

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<sup>1</sup> See Federal Housing Finance Agency Report, released January 23, 2019:  
[https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/hpi\\_monthly1232019.pdf](https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/hpi_monthly1232019.pdf)

<sup>2</sup> See ORS 18.960-18.985.

The holder is also entitled to “surplus funds” from the sale. With rising house prices, more and more houses sell at auction for more money than is owed. The extra money is the “surplus funds.” Usually, this money would go to the homeowner.

## **The Problem**

Investors in real estate watch the foreclosure market very closely. Some investors have been approaching homeowners in foreclosure and offering to buy their “redemption rights.” But “selling the redemption rights” is a misnomer. In order to transfer the rights, investors are buying the home from the homeowner. Homeowners often do not understand that they are selling their entire interest in the property, including all the rights that the homeowner enjoys.

Based on county records, investors buy the homes through bargain and sale deeds, often paying only \$500 - \$2,000. But after the sale, those investors collect the surplus funds, sometimes \$10,000 or even more than \$50,000 that the homeowner would have received. Some investors rent out the home while the sale is pending to another person without sharing any part of the rent with the homeowner.

Some investors say they intend to bid on the property at auction, and will pay more money if they buy the property -- but then fail to bid or use shell companies to avoid paying what they agreed to pay. Homeowners often have difficulty in enforcing the promises the investors made.

## **The Solution**

The Oregon State Sheriff’s Association and the Department of Justice worked collaboratively to create House Bill 2477 and Senate Bill 11 to attempt to tackle this problem at the root. If homeowners have more knowledge, they can be empowered to take a stronger bargaining position. Homeowners do not understand what they are selling because this area is complex and because investors have been able to confuse and mislead homeowners. A plain language disclosure will help homeowners to stop, ask questions, and be more informed about their transactions. In very rare circumstances already, some homeowners realize the potential for the investors to gain a lot of money, and are able to bargain for much higher amounts for their property than the investor’s initial offer. With better disclosures, homeowners can hopefully increase their share of surplus funds and better protect themselves from fraud.

Placing a simple warning through the process – from foreclosure filing *through the end of the redemption period is important*. Signing away rights to surplus funds or other rights should be understood by those signing their rights away, no matter the stage of the foreclosure process. The burden of adding a paragraph is light, and the benefits outweigh the burden: providing illumination in an opaque process will allow for better-informed transactions.

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