

B-Engrossed
Senate Bill 1552

Ordered by the House March 5
Including Senate Amendments dated February 14 and House Amendments
dated March 5

Sponsored by Senators BEYER, BATES, BOQUIST, Representatives GARRETT, HOLVEY, KOTEK, WHISNANT; Senators ATKINSON, COURTNEY, DEVLIN, DINGFELDER, EDWARDS, HASS, JOHNSON, MONNES ANDERSON, PROZANSKI, ROSENBAUM, SHIELDS, STEINER HAYWARD, TELFER, VERGER, Representatives BAILEY, BARKER, BARNHART, BEYER, BOONE, BUCKLEY, CLEM, COWAN, DEMBROW, DOHERTY, FREDERICK, GELSER, GREENLICK, HARKER, HUNT, KENY-GUYER, KOMP, MATTHEWS, NATHANSON, PARRISH, READ, ROBLAN, SHEEHAN, J SMITH, TOMEI, WAND, WITT (Presession filed.)

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.

Requires beneficiary or beneficiary's agent under residential trust deed to send notice of mediation and enter into mediation with grantor for purpose of agreeing to foreclosure avoidance measure. **Requires beneficiary or beneficiary's agent to send notice to grantor if beneficiary determines that grantor is not eligible for any foreclosure avoidance measure or has not complied with terms of foreclosure avoidance measure.** Specifies form and content of notice of mediation, date by which notice must be sent and method of service. **Requires grantor entering into mediation to consult with housing counselor. Makes exception.**

Specifies duties of beneficiary or beneficiary's agent with respect to mediation. Requires beneficiary or beneficiary's agent to record certificate of compliance from mediation service provider in order to proceed with foreclosure of trust deed.

Permits grantor that is at risk of default to request mediation with beneficiary or beneficiary's agent.

Establishes Foreclosure Avoidance Mediation Fund. Continuously appropriates moneys in fund to Attorney General for purposes of paying expenses of coordinating mediation program and related expenses.

Requires trustee to notify certain persons if person postpones trustee's sale.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to foreclosures of residential trust deeds; creating new provisions; amending ORS 86.705,
3 86.735, 86.740, 86.742 and 86.755; appropriating money; and declaring an emergency.

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

5 **SECTION 1. Sections 2, 2a, 3, 4 and 4a of this 2012 Act are added to and made a part of**
6 **ORS 86.705 to 86.795.**

7 **SECTION 2. (1) As used in this section and sections 3 and 4a of this 2012 Act, "foreclo-**
8 **sure avoidance measure" means an agreement between a beneficiary and a grantor that uses**
9 **one or more of the following methods to modify an obligation that is secured by a trust deed:**

10 (a) **The beneficiary defers or forbears from collecting one or more payments due on the**
11 **obligation.**

12 (b) **The beneficiary modifies, temporarily or permanently, the payment terms or other**
13 **terms of the obligation.**

14 (c) **The beneficiary accepts a deed in lieu of foreclosure from the grantor.**

15 (d) **The grantor conducts a short sale.**

16 (e) **The beneficiary provides the grantor with other assistance that enables the grantor**

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 to avoid a foreclosure.

2 (2)(a) Except as provided in paragraph (d) of this subsection, a beneficiary that seeks to
3 foreclose a residential trust deed under ORS 86.735 shall enter into mediation with the
4 grantor for the purpose of negotiating a foreclosure avoidance measure in accordance with
5 the provisions of this section.

6 (b) The Attorney General shall:

7 (A) Appoint a mediation service provider to coordinate a mediation program and shall
8 enter into an agreement to pay the mediation service provider for the mediation service
9 provider's services from the Foreclosure Avoidance Mediation Fund established in section 4
10 of this 2012 Act. The appointment and the agreement are not subject to ORS chapter 279A
11 or 279B.

12 (B) Prescribe qualifications, training and experience requirements for mediators by rule.

13 (C) Set the schedule of fees for the mediation by rule.

14 (c) The beneficiary and the grantor shall share the cost of the mediation, except that the
15 grantor's portion of the cost may not exceed \$200. The mediator may waive the grantor's
16 portion of the fee in accordance with rules that the Attorney General adopts to describe
17 circumstances that permit a waiver.

18 (d) The requirement to enter into mediation with a grantor does not apply:

19 (A) To an individual, a financial institution, as defined in ORS 706.008, a mortgage banker,
20 as defined in ORS 86A.100, or a licensee, as defined in ORS 725.010, if the individual, financial
21 institution, mortgage banker or licensee provides to the Attorney General a sworn affidavit
22 that states that during the preceding calendar year the individual, financial institution,
23 mortgage banker or licensee did not commence or cause an affiliate or agent of the individ-
24 ual, financial institution, mortgage banker or licensee to commence more than a total of 250
25 actions to foreclose a residential trust deed by advertisement and sale under ORS 86.735 or
26 a residential mortgage by suit under ORS 88.010. An individual, financial institution, mort-
27 gage banker or licensee that intends to claim an exemption under this subparagraph shall
28 file the affidavit either:

29 (i) Within 30 days after the operative date specified in section 11 of this 2012 Act to claim
30 the exemption for calendar year 2012 and not later than January 31 in any subsequent cal-
31 endar year in which the individual, financial institution, mortgage banker or licensee intends
32 to claim the exemption; or

33 (ii) At the time the individual, financial institution, mortgage banker or licensee files a
34 notice of default under ORS 86.735.

35 (B) If the grantor fails to confirm that the grantor will enter into mediation by the date
36 specified under subsection (3)(c) of this section.

37 (3) Within 30 days after the date on which the beneficiary caused a notice of mediation
38 to be served or mailed as provided in ORS 86.740, the mediation service provider shall send
39 a notice to the grantor and the beneficiary that:

40 (a) Schedules a date, time and location for the mediation. The date must be not earlier
41 than 45 days and not later than 90 days after the date on which the notice of mediation was
42 served or mailed as provided in ORS 86.740.

43 (b) Identifies and provides contact information for the mediation service provider.

44 (c) Specifies a date at least 30 days before the scheduled date of the mediation by which
45 the grantor must contact the mediation service provider to confirm that the grantor will

1 enter into mediation. The notice must state that the mediation service provider will deem
2 the grantor to have declined to enter into mediation if the grantor fails to confirm by the
3 specified date.

4 (d) Lists the costs of the mediation and specifies the portion of the costs for which the
5 grantor is responsible.

6 (e) Provides any other information that the Attorney General requires by rule.

7 (4)(a) If the grantor confirms by the date specified under subsection (3)(c) of this section
8 that the grantor will enter into mediation, the beneficiary or the beneficiary's agent shall
9 appear at the time and the location identified in the mediation service provider's notice un-
10 der subsection (3) of this section with the documentation described in paragraph (b) of this
11 subsection.

12 (b) The beneficiary or the beneficiary's agent must appear in person at the location of
13 the mediation unless the mediator permits the beneficiary or the beneficiary's agent to ap-
14 pear in another manner for good cause shown. The fact that a beneficiary or beneficiary's
15 agent is located outside this state does not alone constitute good cause for the purposes of
16 this paragraph. The beneficiary or the beneficiary's agent must appear at the mediation
17 with:

18 (A) The grantor's complete payment history for the obligation that is secured by the
19 residential trust deed that the beneficiary seeks to foreclose;

20 (B) Evidence that the beneficiary is the real party in interest with respect to the obli-
21 gation, including but not limited to:

22 (i) A true copy of the original debt instrument that is the basis for the right the benefi-
23 ciary claims to foreclose the trust deed; and

24 (ii) Documents that show the chain of title for the property that is subject to the resi-
25 dential trust deed from the date of the original loan for which the beneficiary seeks fore-
26 closure to the date of the notices given under ORS 86.740, including conveyances,
27 endorsements and assignments of the residential trust deed, the note and the security in-
28 strument, whether recorded or unrecorded;

29 (C) A copy of the authorization from the beneficiary to the beneficiary's agent, if the
30 beneficiary's agent appears at the mediation;

31 (D) A copy of any of the following documents that apply to the note or obligation that is
32 secured by the trust deed:

33 (i) A servicing agreement the beneficiary entered into with another person; or

34 (ii) An agreement by means of which the beneficiary pledged as collateral for a security
35 the beneficiary issued or sold all or a portion of the ownership interest in the note or other
36 obligation; and

37 (E) Other documentation the Attorney General specifies by rule.

38 (c) The beneficiary or the beneficiary's agent that enters into mediation with the grantor
39 must have or be able to obtain, before the initial mediation session concludes, authority to
40 accept or reject a proposal for a foreclosure avoidance measure and authority to enter with
41 the grantor into an agreement for a foreclosure avoidance measure.

42 (5)(a) The beneficiary or the beneficiary's agent must enter into mediation in accordance
43 with mediation guidelines the Attorney General establishes by rule.

44 (b) If the beneficiary or the beneficiary's agent agrees with the grantor on a foreclosure
45 avoidance measure, the beneficiary or beneficiary's agent and the grantor shall set forth the

1 terms of the foreclosure avoidance measure in a written agreement, a copy of which the
2 beneficiary or beneficiary's agent shall provide to the Attorney General. The beneficiary may
3 elect to pay the grantor's portion of the cost of the mediation or the grantor and the bene-
4 ficiary may agree to include the cost of the mediation as part of and in accordance with any
5 payment plan that is part of the foreclosure avoidance measure.

6 (c) If the beneficiary or the beneficiary's agent and the grantor do not agree on a fore-
7 closure avoidance measure, the mediation service provider shall notify the Attorney General
8 that the mediation did not result in an agreement.

9 (6)(a) At the conclusion of the mediation, if the beneficiary has complied with the re-
10 quirements of subsections (4) and (5) of this section, the mediation service provider shall
11 provide the beneficiary or the beneficiary's agent with a certificate of compliance in a form
12 and with contents that the Attorney General specifies by rule. The certificate must state
13 that the beneficiary has complied with the requirements of this section.

14 (b) If the grantor does not confirm by the date specified under subsection (3)(c) of this
15 section that the grantor will enter into mediation, the mediation service provider shall pro-
16 vide the beneficiary or the beneficiary's agent with a certificate of compliance in a form and
17 with contents that the Attorney General specifies by rule. The certificate must state that
18 the grantor declined to enter into mediation with the beneficiary.

19 (c) The mediation service provider shall provide a copy of the certificate the mediation
20 service provider issues under paragraph (a) or (b) of this subsection to the grantor and to
21 the Attorney General.

22 (7)(a) A grantor that is at risk of default before the beneficiary or the trustee has filed
23 a notice of default for recording under ORS 86.735 may notify the beneficiary or trustee in
24 the trust deed or the beneficiary's or trustee's agent that the grantor wants to enter into
25 mediation. Within 15 days after receiving the request, the beneficiary or trustee or the
26 beneficiary's or trustee's agent shall respond to the grantor's request and shall notify the
27 Attorney General and the mediation service provider identified in subsection (2)(b) of this
28 section. The response to the grantor must include contact information for the Attorney
29 General and the mediation service provider.

30 (b) A grantor that requests mediation under paragraph (a) of this subsection may also
31 notify the Attorney General and the mediation service provider of the request. The Attorney
32 General shall post on the Department of Justice website contact information for the medi-
33 ation service provider and an address or method by which the grantor may notify the At-
34 torney General.

35 (c) Within 10 days after receiving notice of the request under paragraph (a) of this sub-
36 section, the mediation service provider shall send a notice to the grantor and the beneficiary
37 that, except with respect to the date by which the mediation service provider must send the
38 notice, is otherwise in accordance with the provisions of subsection (3) of this section.

39 (d) A beneficiary or beneficiary's agent that receives a request under paragraph (a) of
40 this subsection is subject to the same duties as are described in subsections (2), (4) and (5)
41 of this section.

42 **SECTION 2a.** (1)(a) Except as provided in subsection (3) of this section, a grantor that
43 confirms under section 2 (3)(c) of this 2012 Act that the grantor will enter into mediation
44 shall consult a housing counselor approved by the United States Department of Housing and
45 Urban Development before the scheduled date of the mediation.

1 (b) If, after consulting with the housing counselor, the grantor decides not to enter into
2 mediation, the grantor shall notify the mediation service provider that sent the notice under
3 section 2 (3) of this 2012 Act that the grantor no longer intends to enter into mediation. The
4 housing counselor shall inform the grantor of the requirement under this paragraph to notify
5 the mediation service provider. The mediation service provider shall notify the beneficiary
6 or the beneficiary's agent of the grantor's decision.

7 (2) The notice of mediation described in section 3 of this 2012 Act must include a state-
8 ment that informs the grantor that the grantor must consult a housing counselor in ac-
9 cordance with subsection (1) of this section. The statement must also notify the grantor that
10 the requirement to consult a housing counselor is subject to the provisions of subsection (3)
11 of this section.

12 (3) The requirement under subsection (1) of this section to consult a housing counselor
13 does not apply to a grantor that could not obtain an appointment to consult a housing
14 counselor within 30 days after receiving the notice described in subsection (2) of this section.
15 A grantor that intends to claim the exemption provided under this subsection shall obtain
16 from the mediation service provider and sign an affidavit that attests that the grantor could
17 not obtain an appointment to consult a housing counselor within the 30-day period. The At-
18 torney General by rule shall prescribe the form and contents of the affidavit.

19 **SECTION 3.** The notice of mediation required under ORS 86.740 (1)(b) must be in a form
20 and with the contents the Attorney General specifies by rule and must:

21 (1) List the name, address, telephone number and other contact information for the
22 grantor or other person named in the residential trust deed.

23 (2) Specify the account number or other means by which the beneficiary or trustee or
24 an agent of the beneficiary or trustee identifies the obligation that is secured by the resi-
25 dential trust deed.

26 (3) Provide the address, telephone number and other contact information for:

27 (a) The beneficiary or an agent of the beneficiary that the beneficiary authorizes to ne-
28 gotiate on the beneficiary's behalf;

29 (b) The Oregon State Bar's Lawyer Referral Service;

30 (c) Service agencies or other providers that offer free or low-cost legal services from a
31 list of agencies or providers that the Attorney General adopts by rule; and

32 (d) A list of not-for-profit housing counselors approved by the United States Department
33 of Housing and Urban Development or an agency of this state.

34 (4) State that section 2 of this 2012 Act requires the beneficiary to enter into mediation
35 with the grantor for the purpose of negotiating a foreclosure avoidance measure.

36 (5) List the documents the grantor must bring to the mediation. The Attorney General
37 by rule shall specify the documents the grantor must bring.

38 (6) State that the grantor may choose to have an attorney or a housing counselor ap-
39 proved by the United States Department of Housing and Urban Development represent the
40 grantor at the mediation.

41 (7) State the costs of the mediation and specify the maximum cost for which the grantor
42 will be responsible.

43 (8) State that the mediation and mediation communications, as defined in ORS 36.110, are
44 confidential in accordance with and to the extent provided in ORS 36.220 to 36.238.

45 (9) State that within 30 days after the date of the notice a mediation service provider

1 will send another notice to the grantor with a date, time and location for the mediation and
2 with the other information specified in section 2 (3) of this 2012 Act.

3 **SECTION 4.** (1) The Foreclosure Avoidance Mediation Fund is established in the State
4 Treasury, separate and distinct from the General Fund. The fund consists of moneys the
5 Attorney General collects or receives for the purpose of paying the expenses of coordinating
6 a mediation program under section 2 of this 2012 Act and related expenses. The moneys in
7 the fund are continuously appropriated to the Attorney General for the purposes of paying
8 the expenses of coordinating the mediation program and related expenses.

9 (2) The Attorney General may receive moneys for the purposes set forth in subsection
10 (1) of this section from any public or private source.

11 (3)(a) Except as provided in paragraph (b) of this subsection, a trustee or beneficiary that
12 files a notice of default under ORS 86.735 shall pay to the county clerk that records the no-
13 tice \$100 in addition to and not in lieu of any fee that the county clerk charges for recording
14 the notice of default. The county clerk at the end of each month shall forward the proceeds
15 of the \$100 charge to the Attorney General for deposit into the fund described in subsection
16 (1) of this section.

17 (b) An individual, a financial institution, as defined in ORS 706.008, a mortgage banker,
18 as defined in ORS 86A.100, or a licensee, as defined in ORS 725.010, is not subject to the \$100
19 charge described in paragraph (a) of this subsection if the individual, financial institution,
20 mortgage banker or licensee provides to the county clerk a sworn affidavit that states that
21 during the preceding calendar year the individual, financial institution, mortgage banker or
22 licensee did not commence or cause an affiliate or agent of the individual, financial institu-
23 tion, mortgage banker or licensee to commence more than a total of 250 actions to foreclose
24 a residential trust deed by advertisement and sale under ORS 86.735 or a residential mort-
25 gage by suit under ORS 88.010. An individual, financial institution, mortgage banker or
26 licensee that intends to claim an exemption under this paragraph shall provide the affidavit
27 either:

28 (A) Within 30 days after the operative date specified in section 11 of this 2012 Act to
29 claim the exemption for calendar year 2012 and not later than January 31 in any subsequent
30 calendar year in which the individual, financial institution, mortgage banker or licensee in-
31 tends to claim the exemption; or

32 (B) At the time the individual, financial institution, mortgage banker or licensee files a
33 notice of default under ORS 86.735.

34 **SECTION 4a.** (1)(a) If a beneficiary determines that a grantor is not eligible for any
35 foreclosure avoidance measure or that the grantor has not complied with the terms of a
36 foreclosure avoidance measure to which the grantor has agreed, the beneficiary or the
37 beneficiary's agent, at least 30 days before the date specified for the trustee's sale in a notice
38 served under ORS 86.740 or 86.755 (2)(b), shall notify the grantor in writing of the
39 beneficiary's determination and shall cause the notice to be served as provided in ORS 86.740
40 (1).

41 (b) The notice must in plain language explain the basis for the beneficiary's determi-
42 nation.

43 (2) The beneficiary or the beneficiary's agent shall mail a copy of the notice of the de-
44 termination described in subsection (1) of this section to the Department of Justice on the
45 same date on which the notice is served.

1 **(3)(a) At least 20 days before the date specified for the trustee’s sale in a notice served**
2 **under ORS 86.740 or 86.755 (2)(b), the beneficiary or the beneficiary’s agent shall:**

3 **(A) Record in the mortgage records for the property that is subject to the trustee’s sale,**
4 **in the county or in one of the counties in which the property is located, an affidavit that**
5 **states that the beneficiary has complied with the requirements set forth in subsections (1)**
6 **and (2) of this section; and**

7 **(B) Mail a copy of the affidavit to the department.**

8 **(b) The affidavit described in paragraph (a) of this subsection must:**

9 **(A) Identify the property that is the subject of the trustee’s sale;**

10 **(B) Identify the grantor and, as of the date of the affidavit, the trustee and the benefi-**
11 **ciary;**

12 **(C) State that the beneficiary or beneficiary’s agent has complied with the requirements**
13 **set forth in subsections (1) and (2) of this section; and**

14 **(D) Include proof of service on the grantor for the notice described in subsection (1) of**
15 **this section.**

16 **(4) The Attorney General by rule shall specify a form for and the contents of the notice**
17 **of the determination described in subsection (1) of this section and shall identify an address**
18 **to which the beneficiary or beneficiary’s agent must mail the copy of the notice under sub-**
19 **section (2) of this section and the affidavit under subsection (3) of this section.**

20 **(5)(a) A beneficiary or an agent of the beneficiary that fails to comply with the provisions**
21 **of this section is liable to the grantor in the amount of \$500 plus the amount of the grantor’s**
22 **actual damages for each failure to comply with a provision of this section.**

23 **(b) A grantor may bring an action against a beneficiary or an agent of the beneficiary in**
24 **a circuit court of this state to recover the amounts described in paragraph (a) of this sub-**
25 **section. The grantor shall commence the action within two years after the date on which**
26 **the beneficiary or the beneficiary’s agent should have complied, but did not comply, with the**
27 **provisions of this section.**

28 **(c) Notwithstanding an agreement to the contrary, a court may award reasonable attor-**
29 **ney fees, costs and disbursements to a grantor that obtains a final judgment in the grantor’s**
30 **favor.**

31 **SECTION 5.** ORS 86.705 is amended to read:

32 86.705. As used in ORS 86.705 to 86.795:

33 (1) “Affordable housing covenant” has the meaning given that term in ORS 456.270.

34 (2) “Beneficiary” means a person named or otherwise designated in a trust deed as the person
35 for whose benefit a trust deed is given, or the person’s successor in interest, and who is not the
36 trustee unless the beneficiary is qualified to be a trustee under ORS 86.790 (1)(d).

37 (3) “Eligible covenant holder” has the meaning given that term in ORS 456.270.

38 (4) “Grantor” means the person that conveys an interest in real property by a trust deed as
39 security for the performance of an obligation.

40 (5) “Residential trust deed” means a trust deed on property upon which are situated four or
41 fewer residential units, one of which the grantor, the grantor’s spouse or the grantor’s minor or
42 dependent child occupies as a principal residence at the time a [*trust deed foreclosure is*
43 *commenced*] **default that results in an action to foreclose the obligation secured by the trust**
44 **deed first occurs.**

45 (6) “Residential unit” means an improvement designed for residential use.

1 (7) "Trust deed" means a deed executed in conformity with ORS 86.705 to 86.795 that conveys
2 an interest in real property to a trustee in trust to secure the performance of an obligation the
3 grantor or other person named in the deed owes to a beneficiary.

4 (8) "Trustee" means a person, other than the beneficiary, to whom a trust deed conveys an in-
5 terest in real property, or the person's successor in interest, or an employee of the beneficiary, if
6 the employee is qualified to be a trustee under ORS 86.790.

7 **SECTION 6.** ORS 86.735 is amended to read:

8 86.735. *[The]* **A** trustee may foreclose a trust deed by advertisement and sale in the manner
9 provided in ORS 86.740 to 86.755 if:

10 (1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any
11 appointment of a successor trustee are recorded in the mortgage records in the counties in which
12 the property described in the deed is situated; *[and]*

13 (2) There is a default by the grantor or other person *[owing]* **that owes** an obligation, the per-
14 formance of which is secured by the trust deed, or by *[their]* **the grantor's or other person's** suc-
15 cessors in interest with respect to *[any]* **a** provision in the deed *[which]* **that** authorizes sale in the
16 event of default of *[such]* **the** provision; *[and]*

17 (3) The trustee or beneficiary has filed for record in the county clerk's office in each county
18 where the trust property, or some part of *[it]* **the trust property**, is situated, a notice of default
19 containing the information required by ORS 86.745 and containing the trustee's or beneficiary's
20 election to sell the property to satisfy the obligation; *[and]*

21 **(4) The beneficiary or the beneficiary's agent has filed for recording in the official records**
22 **of the county or counties in which the property that is subject to the residential trust deed**
23 **is located the certificate of compliance the beneficiary received under section 2 of this 2012**
24 **Act, if the beneficiary must enter into mediation with the grantor under section 2 (2)(a) of**
25 **this 2012 Act;**

26 **(5)(a) The beneficiary or the beneficiary's agent has complied with the provisions of sec-**
27 **tion 4a of this 2012 Act; and**

28 **(b) The grantor is not in compliance with the terms of a foreclosure avoidance measure**
29 **upon which the beneficiary and the grantor have agreed; and**

30 *[(4)]* **(6) [No] An action has not been [instituted] commenced** to recover the debt or any part
31 of *[it]* **the debt** then remaining secured by the trust deed, or, if *[such]* **an** action has been
32 *[instituted]* **commenced**, the action has been dismissed, except that:

33 (a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action may
34 be *[instituted]* **commenced** to appoint a receiver or to obtain a temporary restraining order during
35 foreclosure of a trust deed by advertisement and sale, except that a receiver *[shall]* **may** not be
36 appointed with respect to a single-family residence *[which is occupied as the principal residence of]*
37 **that** the grantor, the grantor's spouse or the grantor's minor or dependent child **occupies as a**
38 **principal residence.**

39 (b) An action may be commenced *[for the judicial or nonjudicial foreclosure of]* **to foreclose,**
40 **judicially or nonjudicially,** the same trust deed as to any other property covered *[thereby]* **by the**
41 **trust deed**, or any other trust deeds, mortgages, security agreements or other consensual or
42 nonconsensual security interests or liens *[securing]* **that secure** repayment of the debt.

43 **SECTION 7.** ORS 86.740 is amended to read:

44 86.740. (1)(a) Subsequent to recording notice of default as provided in ORS 86.735 and at least
45 120 days before the day the trustee conducts the sale, notice of the sale *[shall]* **with the contents**

1 **described in ORS 86.745 must** be served pursuant to ORCP 7 D(2) and 7 D(3) or mailed by both
 2 first class and certified mail with return receipt requested[.].

3 **(b) If the sale is for the purpose of foreclosing a residential trust deed and the beneficiary**
 4 **in the trust deed must enter into mediation with the grantor under section 2 (2)(a) of this**
 5 **2012 Act, a separate notice of mediation, in the form and with the contents described in**
 6 **section 3 of this 2012 Act, must be served or mailed in the manner provided in paragraph (a)**
 7 **of this subsection at least 60 days before the notice of sale described in paragraph (a) of this**
 8 **subsection is served or mailed.**

9 **(2) The notices described in subsection (1) of this section must be served or mailed** to the
 10 last-known address of the following persons or *[their]* **the** legal representatives **of the persons**, if
 11 any:

12 (a) The grantor in the trust deed.

13 (b) Any successor in interest to the grantor whose interest appears of record, or of whose in-
 14 terest the trustee or the beneficiary has actual notice.

15 (c) Any person, including the Department of Revenue or *[any other]* **another** state agency,
 16 *[having]* **that has** a lien or interest subsequent to the trust deed if the lien or interest appears of
 17 record or the beneficiary has actual notice of the lien or interest.

18 (d) *[Any]* **A** person *[requesting]* **that requests** notice as provided in ORS 86.785.

19 **(e) The mediation service provider that the Attorney General appoints under section 2**
 20 **(2)(b) of this 2012 Act, if the notices are served or mailed under subsection (1)(b) of this**
 21 **section.**

22 *[(2)]* **(3)** A notice served by mail under subsection (1) of this section is effective when the notice
 23 is mailed.

24 *[(3)(a)]* **(4)(a)** The disability, insanity or death of *[any]* **a** person to whom *[notice of sale]* **the**
 25 **notices required under this section** must be given *[under this section]* does not delay or impair in
 26 any way the trustee's right under a trust deed to foreclose under the deed. If the disability, insanity
 27 or death occurs *[prior to the recording of]* **before the** notice of default **is recorded**, the *[notice*
 28 *shall]* **notices required under this section must** be given instead to the guardian, the conservator
 29 of the estate of the person or the administrator or personal representative of the person, *as the case*
 30 *may be,* in the manner and by the time set forth in this section.

31 (b) If the disability, insanity or death of *[any]* **a** person to whom *[notice of sale]* **the notices**
 32 **required under this section** must be given *[under this section]* occurs on or after the *[recording*
 33 *of]* notice of default **is recorded**, the trustee shall, if and when the trustee has knowledge of the
 34 disability, insanity or death, promptly give the guardian, **the** conservator of the estate or the ad-
 35 ministrator or personal representative, *as the case may be, the notice provided in ORS 86.745. This*
 36 *notice shall be given]* **required notices by sending the notices** by first class and certified mail with
 37 return receipt requested[,] to the last-known address of the guardian, conservator or administrator
 38 or personal representative.

39 (c) *[In the event]* **If** there is no administrator or personal representative of the estate of the
 40 person to whom *[notice of sale must be given]* **the notices required** under this section **must be**
 41 **given**, the *[notice]* **notices** may be given instead to the heirs at law or devisees of the deceased
 42 person in the manner and by the time set forth in this section.

43 *[(4)]* **(5)** If the owner of real property subject to foreclosure dies and the real property is also
 44 subject to a transfer on death deed, as provided by ORS 93.948 to 93.979, *[notice of sale]* **the notices**
 45 **required under this section** must be given *[under this section]* to the beneficiary designated under

1 the transfer on death deed.

2 **SECTION 8.** ORS 86.742 is amended to read:

3 86.742. (1) If the trustee fails to give notice of the sale to *[any]* a person entitled to notice under
 4 ORS 86.740 *[(1)(c)]* **(2)(c)**, and *[such]* **the** person did not have actual notice of the sale at least 25
 5 days *[prior to]* **before** the date **on which** the trustee conducted the sale, *[such]* **the** omitted person
 6 *[shall have]* **has** the same rights *[possessed by]* **that** the holder of a junior lien or interest who was
 7 omitted as a party defendant in a judicial foreclosure proceeding **possesses**, and the purchaser at
 8 the trustee's sale or the purchaser's heirs, assigns or transferees, *[shall have]* **have** the same rights
 9 *[possessed by]* **that** a purchaser at a sheriff's sale following a judicial foreclosure **possesses**.

10 (2) The omitted person may also commence an action against the trustee in the circuit court in
 11 the county where the real property is located. In an action against the trustee, the omitted person
 12 *[shall be]* **is** entitled to damages *[upon proof]* **if the omitted person proves** that:

13 (a) The trustee did not give notice of the sale to the omitted person in the manner required by
 14 ORS 86.740 *[(1)(c)]* **(2)(c)** and 86.750;

15 (b) A search of the record under the name of the grantor as *[it]* **the grantor's name** appears
 16 on the trust deed, or **as** the name of the grantor's successor in interest **appears**, would have re-
 17 vealed the omitted person's interest;

18 (c) The omitted person could and would have cured the default under ORS 86.753; and

19 (d) The omitted person sustained actual damages as a result of *[such]* **the** person's loss of the
 20 opportunity to cure the default under ORS 86.753 (1).

21 (3) In an action against the trustee under subsection (2) of this section, *[any]* a defendant or
 22 third party defendant may move for dismissal on the ground that the omitted person would not or
 23 could not have cured the default and reinstated the trust deed if the omitted person had received
 24 the notice required by ORS 86.740 *[(1)(c)]* **(2)(c)**. The court shall hold a hearing on *[such]* **the** motion
 25 *[prior to any]* **before** a hearing on *[any]* a motion for summary judgment, and *[prior to trial of]* **be-**
 26 **fore trying** the action. The court shall deny the motion only if the omitted person produces affida-
 27 vits or other evidence sufficient for a reasonable jury to find, applying a standard of clear and
 28 convincing evidence, that the omitted person had the financial ability to cure the default under ORS
 29 86.753 *[prior to]* **before** the date of the trustee's sale, and that the omitted person would have done
 30 so had the omitted person received the notice required by ORS 86.740 *[(1)(c)]* **(2)(c)**. If the court
 31 grants the motion to dismiss *[it]*, **the court** shall award attorney fees *[pursuant to]* **under** subsection
 32 (5) of this section.

33 (4) In *[any]* **an** action against the trustee or *[any other]* **another** party under this section the
 34 omitted person shall plead that the omitted person did not have actual knowledge of the sale at least
 35 25 days prior to the date the trustee conducted the sale, but thereafter the defendant *[shall have]*
 36 **has** the burden of proving that the omitted person did have *[such]* notice.

37 (5) In *[all suits]* **an action** brought under this section, the applicable court may, upon entering
 38 judgment, allow to the prevailing party as a part of the costs a reasonable amount for attorney fees
 39 at trial and on appeal.

40 (6) The remedies described in subsections (1) to (5) of this section *[shall be]* **are** the sole reme-
 41 dies available to a person entitled to notice of foreclosure by advertisement and sale under ORS
 42 86.740 *[(1)(c)]* **(2)(c)**, who failed to receive *[such]* notice. *[Such a]* **The** person's failure to redeem or
 43 to commence an action against the trustee within five years of the date of a trustee's sale under
 44 ORS 86.755 *[shall bar]* **bars** any action under this section or any other applicable law.

45 **SECTION 9.** ORS 86.755 is amended to read:

1 86.755. (1)(a) A trustee shall hold a trustee's sale on the date and at the time and place desig-
 2 nated in the notice of sale given under ORS 86.740. The designated time of the trustee's sale must
 3 be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the
 4 designated place of the trustee's sale must be in the county or one of the counties in which the
 5 property is situated. Except as provided in paragraph (b) of this subsection, the trustee may sell the
 6 property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the
 7 highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding
 8 the trustee, may bid at the trustee's sale. An attorney for the trustee, or an agent that the trustee
 9 or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

10 (b) If the trustee sells property upon which a single residential unit that is subject to an af-
 11 fordable housing covenant is situated, the eligible covenant holder may purchase the property from
 12 the trustee at the trustee's sale for cash or cash equivalent in an amount that is the lesser of:

13 (A) The sum of the amounts payable under ORS 86.765 (1) and (2); or

14 (B) The highest bid received for the property other than a bid from the eligible covenant holder.

15 (c)(A) Except as provided in subparagraph (B) of this paragraph, if an eligible covenant holder
 16 purchases the property in accordance with paragraph (b) of this subsection, the sale forecloses and
 17 terminates all other interests in the property as provided in ORS 86.770 (1).

18 (B) If an interest in the property exists that is prior to the eligible covenant holder's interest,
 19 other than the interest set forth in the trust deed that was the subject of the foreclosure proceeding
 20 under ORS 86.735, notwithstanding the provisions of ORS 86.770 (1) the sale does not foreclose and
 21 terminate the prior interest and the eligible covenant holder's title to the property is subject to the
 22 prior interest.

23 (2)(a) The trustee or the attorney for the trustee, or an agent that the trustee or the attorney
 24 conducting the sale designates, may postpone the sale for one or more periods that total not more
 25 than 180 days from the original sale date, giving notice of each [*adjournment*] **postponement** by
 26 public proclamation made at the time and place set for sale. The trustee, the attorney or an agent
 27 that the trustee or the attorney designates may make the proclamation.

28 **(b) If a person postpones the sale date as provided in paragraph (a) of this subsection,**
 29 **the trustee, in the manner provided for service of the notice of sale under ORS 86.740 (1),**
 30 **shall cause written notice of the new time, date and place for the sale to be served on the**
 31 **grantor and on any person to whom notice of the sale was given under ORS 86.745. The no-**
 32 **tice must be given at least 15 days before the new sale date. The person may postpone the**
 33 **sale once, for not more than two calendar days, without giving notice as provided in this**
 34 **paragraph. The person may not postpone the sale for more than two calendar days or more**
 35 **than once without giving notice as provided in this paragraph.**

36 (3) The purchaser shall pay at the time of sale the price bid or the price determined in accord-
 37 ance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee shall
 38 execute and deliver the trustee's deed to the purchaser.

39 (4) The trustee's deed shall convey to the purchaser the interest in the property that the grantor
 40 had, or had the power to convey, at the time the grantor executed the trust deed, together with any
 41 interest the grantor or the grantor's successors in interest acquire after the execution of the trust
 42 deed.

43 (5)(a) If property purchased at the trustee's sale includes one or more dwelling units that are
 44 subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the
 45 occupants of each unit within 30 days after the date of sale and before or concurrently with service

1 of a written termination notice authorized by subsection (6)(c)(B) of this section.

2 (b) The notice required by this subsection must:

3 (A) Explain that the dwelling unit has been sold at a foreclosure sale and that the purchaser
4 at that sale is the new owner.

5 (B) Include the date on which the foreclosure sale took place.

6 (C) Include the name, contact address and contact telephone number of the purchaser or the
7 purchaser's representative.

8 (D) Provide information about the rights of bona fide residential tenants as provided in sub-
9 sections (6)(c) and (e) and (9)(a) of this section.

10 (E) Include contact information for the Oregon State Bar and a person or organization that
11 provides legal help to individuals at no charge to the individual.

12 (c) The notice must be served by one or more of the following methods:

13 (A) Personal delivery to the tenant.

14 (B) First class mail to the tenant at the dwelling unit.

15 (C) First class mail to the tenant at the dwelling unit and attachment of a second notice copy.
16 The second notice copy must be attached in a secure manner to the main entrance to the portion
17 of the premises in the possession of the tenant.

18 (D) If the names of the tenants are not known to the purchaser, the notice may be addressed
19 to "occupants."

20 (d) A notice that contains the information required under paragraph (b)(B) and (C) of this sub-
21 section meets the requirements of paragraph (b) of this subsection if the notice is in substantially
22 the following form:

23
24
25 NOTICE TO RESIDENTIAL TENANTS OF
26 CHANGE IN OWNERSHIP

27 The property in which you are living has gone through foreclosure and was sold to a new owner
28 on _____ (date). The contact information for the new owner or the owner's representative is
29 _____ (name, address, telephone number).

30 IF YOU ARE A BONA FIDE TENANT RENTING THIS PROPERTY AS A RESIDENTIAL
31 DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE
32 FORECLOSURE SALE FOR:

- 33 • THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED TERM
34 LEASE; OR
35 • AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION
36 NOTICE.

37 If the new owner wants to move in and use this property as a primary residence, the new owner
38 can give you written notice and require you to move out after 90 days, even though you have a fixed
39 term lease with more than 90 days left.

40 You must be provided with at least 90 days' written notice after the foreclosure sale before you
41 can be required to move.

42 A bona fide tenant is a residential tenant who is not the borrower (property owner), or a child,
43 spouse or parent of the borrower, and whose rental agreement:

- 44 • Is the result of an arm's-length transaction;
45 • Requires the payment of rent that is not substantially less than fair market rent for the

1 property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and

- 2 • Was entered into prior to the date of the foreclosure sale.

3 IMPORTANT:

4 YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S REPRESENTATIVE AT
5 THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER
6 KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE
7 OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED
8 TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 90 DAYS LEFT. Written evidence
9 of your rental agreement can be a copy of your lease or rental agreement, or other documentation
10 of the existence of your rental agreement. Keep your original documents and a record of any infor-
11 mation you give to the new owner.

12 YOUR TENANCY
13 BETWEEN NOW
14 AND THE MOVE-OUT DATE

15 The new owner may be willing to allow you to stay as a tenant instead of requiring you to move
16 out after 90 days or at the end of your fixed term lease. You should contact the new owner if you
17 would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement
18 with you or does not notify you in writing within 30 days after the date of the foreclosure sale that
19 you must move out, the new owner becomes your new landlord and must maintain the property.
20 Otherwise:

- 21 • You do not owe rent;
- 22 • The new owner is not your landlord and is not responsible for maintaining the property; and
- 23 • You must move out by the date the new owner specifies in a notice to you.

24 The new owner may offer to pay your moving expenses and any other costs or amounts you and
25 the new owner agree on in exchange for your agreement to leave the premises in less than 90 days
26 or before your fixed term lease expires. You should speak with a lawyer to fully understand your
27 rights before making any decisions regarding your tenancy.

28 IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR
29 DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT
30 TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT
31 A LAWYER. If you believe you need legal assistance, contact the Oregon State Bar and ask for the
32 lawyer referral service. Contact information for the Oregon State Bar is included with this notice.
33 If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to
34 receive legal assistance for free. Information about whom to contact for free legal assistance is in-
35 cluded with this notice.

36
37
38 (6)(a) Except as provided in paragraph (b) or (c) of this subsection, the purchaser at the trustee's
39 sale is entitled to possession of the property on the 10th day after the sale. A person that remains
40 in possession after the 10th day under any interest, except an interest prior to the trust deed, or
41 an interest the grantor or a successor of the grantor created voluntarily, is a tenant at sufferance.
42 The purchaser may obtain possession of the property from a tenant at sufferance by following the
43 procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

44 (b) Except as provided in paragraph (c) of this subsection, at any time after the trustee's sale
45 the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable

1 judicial procedure to obtain possession of the property from a person that holds possession under
2 an interest that the grantor or a successor of the grantor created voluntarily if, not earlier than 30
3 days before the date first set for the sale, the person was served with not less than 30 days' written
4 notice of the requirement to surrender or deliver possession of the property.

5 (c) If the property purchased at the trustee's sale includes a dwelling unit that is subject to ORS
6 chapter 90 and an individual occupies the unit under a bona fide tenancy, the purchaser may obtain
7 possession by following the procedures set forth in ORS 105.105 to 105.168 and by using the com-
8 plaint form provided in ORS 105.124 or 105.126:

9 (A) Upon expiration of the fixed term of the tenancy, if the bona fide tenancy is a fixed term
10 tenancy as defined in ORS 90.100; or

11 (B) At least 90 days after service of a written termination notice if the bona fide tenancy is:

12 (i) A fixed term tenancy and the purchaser intends to occupy, as the purchaser's primary resi-
13 dence, the dwelling unit that is subject to the fixed term tenancy; or

14 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS
15 90.100.

16 (d) If a purchaser gives a 90-day written termination notice pursuant to paragraph (c) of this
17 subsection, the purchaser may include in the notice a request that a tenant with a fixed term
18 tenancy provide written evidence of the existence of the tenancy to the purchaser at an address
19 described in the notice. Written evidence includes a copy of the rental agreement or another docu-
20 ment that shows the existence of the fixed term tenancy. Failure of the tenant to provide the re-
21 quested written evidence before the purchaser files an action for possession based on a 90-day
22 notice:

23 (A) Does not prevent the tenant from asserting the existence of the fixed term tenancy as a
24 defense to the action.

25 (B) Prevents the tenant from recovering prevailing party attorney fees or costs and disburse-
26 ments pursuant to subsection (11)(b) of this section. The 90-day notice must describe the provisions
27 of this paragraph.

28 (e) A purchaser may not commence a proceeding under ORS 105.105 to 105.168 that is authorized
29 under this subsection before the later of:

30 (A) The 10th day after the trustee's sale;

31 (B) The date specified in a written notice of the requirement to surrender or deliver possession
32 of the property if the notice is required by and is given to the person in accordance with paragraph
33 (b) of this subsection;

34 (C) The date specified in a written notice of the purchaser's intent to terminate a tenancy if the
35 notice is required by and is given to the person in accordance with paragraph (c) of this subsection;
36 or

37 (D) The date on which the term of a fixed term tenancy ends, if the property is a dwelling unit
38 and the purchaser has not terminated the tenancy in accordance with paragraph (c) of this sub-
39 section.

40 (f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to 105.168 must attach
41 proof of service of a written termination notice required by paragraph (c) of this subsection to the
42 pleadings.

43 (g) In an action to obtain possession, violation of the procedures required by subsection (5) of
44 this section or paragraph (c) of this subsection is a defense for a bona fide tenant seeking to retain
45 possession.

1 (h) As used in this subsection, “bona fide tenancy” means tenancy of a dwelling unit that is
2 subject to ORS chapter 90 that results from an arm’s-length transaction that occurred before the
3 date of a foreclosure sale in which:

4 (A) The mortgagor or the child, spouse or parent of the mortgagor under the contract is not the
5 tenant; and

6 (B) The rent required is not substantially less than fair market rent for the dwelling unit, unless
7 the rent is reduced or subsidized due to a federal, state or local subsidy.

8 (7) A purchaser shall serve a notice under subsection (6) of this section by one or more of the
9 following methods:

10 (a) Personal delivery to the tenant.

11 (b) First class mail to the tenant at the dwelling unit.

12 (c) First class mail to the tenant at the dwelling unit and attachment of a second notice copy.
13 The second notice copy must be attached in a secure manner to the main entrance to the portion
14 of the premises in the possession of the tenant.

15 (8) If the notice under subsection (6) of this section is served by mail pursuant to subsection
16 (7)(b) of this section, the minimum period for compliance must be extended by three days and the
17 notice must include the extension in the period stated in the notice.

18 (9)(a) Notwithstanding the provisions of subsection (6)(c) of this section and except as provided
19 in paragraph (b) of this subsection, the purchaser is not a landlord subject to the provisions of ORS
20 chapter 90 unless the purchaser:

21 (A) Accepts rent from the individual who possesses the property under a tenancy described in
22 subsection (6)(c) of this section;

23 (B) Enters into a new rental agreement with the individual who possesses the property under
24 a tenancy described in subsection (6)(c) of this section; or

25 (C) Fails to terminate the tenancy as provided in subsection (6)(c) of this section within 30 days
26 after the date of the sale.

27 (b) The purchaser may act as a landlord for purposes of terminating a tenancy in accordance
28 with the provisions of ORS 90.396.

29 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and
30 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not
31 impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to
32 this paragraph, “rent” refers to the amount paid by the tenant to the landlord for the right to oc-
33 cupy the unit before the foreclosure.

34 (10)(a) Except as provided in paragraph (b) of this subsection, the purchaser is not liable to the
35 individual who possesses the property under a tenancy described in subsection (6)(c) of this section
36 for:

37 (A) Damage to the property or diminution in rental value; or

38 (B) Returning a security deposit.

39 (b) A purchaser that is a landlord under the provisions of subsection (9)(a) of this section is li-
40 able to the individual who possesses the property under a tenancy described in subsection (6)(c) of
41 this section for:

42 (A) Damage to the property or diminution in rental value that occurs after the date of the
43 trustee’s sale; or

44 (B) Returning a security deposit the individual pays after the date of the trustee’s sale.

45 (11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement

1 to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or
2 (9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the pre-
3 vailing party together with costs and disbursements.

4 (b) If a tenant asserts a successful defense to an action for possession pursuant to subsection
5 (6)(c), (d), (f) or (g) of this section, the tenant is not entitled to prevailing party fees, attorney fees
6 or costs and disbursements if the purchaser:

7 (A) Did not know, and did not have reasonable cause to know, of the existence of a fixed term
8 tenancy when commencing the action for possession; and

9 (B) Promptly dismissed the action upon becoming aware of the existence of a fixed term tenancy.

10 (c) As used in this subsection, "prevailing party" means the party in whose favor final judgment
11 is rendered.

12 (12)(a) Notwithstanding subsection (2) of this section, except when a beneficiary has participated
13 in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by proceedings
14 in bankruptcy or for any other lawful reason shall, after release from the stay, continue as if unin-
15 terrupted, if within 30 days after release the trustee sends amended notice of sale by registered or
16 certified mail to the last-known address of the persons listed in ORS 86.740 and 86.750 (1).

17 (b) In addition to the notice required under paragraph (a) of this subsection, the trustee shall
18 send amended notice of sale:

19 (A) By registered or certified mail to:

20 (i) The address provided by each person who was present at the time and place set for the sale
21 that was stayed; and

22 (ii) The address provided by each member of the Oregon State Bar who by registered or certified
23 mail requests the amended notice of sale and includes with the request the notice of default or an
24 identification number for the trustee's sale that would assist the trustee in identifying the property
25 subject to the trustee's sale and a self-addressed, stamped envelope measuring at least 8.5 by 11
26 inches in size; or

27 (B) By posting a true copy or a link to a true copy of the amended notice of sale on the trustee's
28 Internet website.

29 (13) The amended notice of sale must:

30 (a) Be given at least 20 days before the amended date of sale;

31 (b) Set an amended date of sale that may be the same as the original sale date, or date to which
32 the sale was postponed, provided the requirements of this subsection and ORS 86.740 and 86.750 are
33 satisfied;

34 (c) Specify the time and place for sale;

35 (d) Conform to the requirements of ORS 86.745; and

36 (e) State that the original sale proceedings were stayed and the date the stay terminated.

37 (14) If the publication of the notice of sale was not completed before the date the foreclosure
38 proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other lawful
39 reason, after release from the stay, in addition to complying with the provisions of subsections (12)
40 and (13) of this section, the trustee shall complete the publication by publishing an amended notice
41 of sale that states that the notice has been amended following release from the stay and that con-
42 tains the amended date of sale. The amended notice must be published in a newspaper of general
43 circulation in each of the counties in which the property is situated once a week for four successive
44 weeks, except that the required number of publications must be reduced by the number of publica-
45 tions that were completed before the effective date of the stay. The last publication must be made

1 more than 20 days before the date the trustee conducts the sale.

2 **SECTION 10.** ORS 86.755, as amended by section 7, chapter 510, Oregon Laws 2011, is amended
3 to read:

4 86.755. (1)(a) A trustee shall hold a trustee's sale on the date and at the time and place desig-
5 nated in the notice of sale given under ORS 86.740. The designated time of the trustee's sale must
6 be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the
7 designated place of the trustee's sale must be in the county or one of the counties in which the
8 property is situated. Except as provided in paragraph (b) of this subsection, the trustee may sell the
9 property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the
10 highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding
11 the trustee, may bid at the trustee's sale. An attorney for the trustee, or an agent that the trustee
12 or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

13 (b) If the trustee sells property upon which a single residential unit that is subject to an af-
14 fordable housing covenant is situated, the eligible covenant holder may purchase the property from
15 the trustee at the trustee's sale for cash or cash equivalent in an amount that is the lesser of:

16 (A) The sum of the amounts payable under ORS 86.765 (1) and (2); or

17 (B) The highest bid received for the property other than a bid from the eligible covenant holder.

18 (c)(A) Except as provided in subparagraph (B) of this paragraph, if an eligible covenant holder
19 purchases the property in accordance with paragraph (b) of this subsection, the sale forecloses and
20 terminates all other interests in the property as provided in ORS 86.770 (1).

21 (B) If an interest in the property exists that is prior to the eligible covenant holder's interest,
22 other than the interest set forth in the trust deed that was the subject of the foreclosure proceeding
23 under ORS 86.735, notwithstanding the provisions of ORS 86.770 (1) the sale does not foreclose and
24 terminate the prior interest and the eligible covenant holder's title to the property is subject to the
25 prior interest.

26 (2)(a) The trustee or the attorney for the trustee, or an agent that the trustee or the attorney
27 conducting the sale designates, may postpone the sale for one or more periods that total not more
28 than 180 days from the original sale date, giving notice of each *[adjournment]* **postponement** by
29 public proclamation made at the time and place set for sale. The trustee, the attorney or an agent
30 that the trustee or the attorney designates may make the proclamation.

31 **(b) If a person postpones the sale date as provided in paragraph (a) of this subsection,**
32 **the trustee, in the manner provided for service of the notice of sale under ORS 86.740 (1),**
33 **shall cause written notice of the new time, date and place for the sale to be served on the**
34 **grantor and on any person to whom notice of the sale was given under ORS 86.745. The no-**
35 **tice must be given at least 15 days before the new sale date. The person may postpone the**
36 **sale once, for not more than two calendar days, without giving notice as provided in this**
37 **paragraph. The person may not postpone the sale for more than two calendar days or more**
38 **than once without giving notice as provided in this paragraph.**

39 (3) The purchaser shall pay at the time of sale the price bid or the price determined in accord-
40 ance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee shall
41 execute and deliver the trustee's deed to the purchaser.

42 (4) The trustee's deed shall convey to the purchaser the interest in the property that the grantor
43 had, or had the power to convey, at the time the grantor executed the trust deed, together with any
44 interest the grantor or the grantor's successors in interest acquire after the execution of the trust
45 deed.

1 (5)(a) If property purchased at the trustee's sale includes one or more dwelling units that are
2 subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the
3 occupants of each unit within 30 days after the date of sale and before or concurrently with service
4 of a written termination notice authorized by subsection (6)(c)(B) of this section.

5 (b) The notice required by this subsection must:

6 (A) Explain that the dwelling unit has been sold at a foreclosure sale and that the purchaser
7 at that sale is the new owner.

8 (B) Include the date on which the foreclosure sale took place.

9 (C) Include the name, contact address and contact telephone number of the purchaser or the
10 purchaser's representative.

11 (D) Provide information about the rights of bona fide residential tenants as provided in sub-
12 sections (6)(c) and (e) and (9)(a) of this section.

13 (E) Include contact information for the Oregon State Bar and a person or organization that
14 provides legal help to individuals at no charge to the individual.

15 (c) The notice must be served by one or more of the following methods:

16 (A) Personal delivery to the tenant.

17 (B) First class mail to the tenant at the dwelling unit.

18 (C) First class mail to the tenant at the dwelling unit and attachment of a second notice copy.
19 The second notice copy must be attached in a secure manner to the main entrance to the portion
20 of the premises in the possession of the tenant.

21 (D) If the names of the tenants are not known to the purchaser, the notice may be addressed
22 to "occupants."

23 (d) A notice that contains the information required under paragraph (b)(B) and (C) of this sub-
24 section meets the requirements of paragraph (b) of this subsection if the notice is in substantially
25 the following form:

26
27
28 **NOTICE TO RESIDENTIAL TENANTS OF**
29 **CHANGE IN OWNERSHIP**

30 The property in which you are living has gone through foreclosure and was sold to a new owner
31 on _____ (date). The contact information for the new owner or the owner's representative is
32 _____ (name, address, telephone number).

33 **IF YOU ARE A BONA FIDE TENANT RENTING THIS PROPERTY AS A RESIDENTIAL**
34 **DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE**
35 **FORECLOSURE SALE FOR:**

36 • **60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF**
37 **YOU HAVE A FIXED TERM LEASE; OR**

38 • **AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION**
39 **NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO- WEEK RENTAL AGREEMENT.**

40 If the new owner wants to move in and use this property as a primary residence, the new owner
41 can give you written notice and require you to move out after 30 days, even though you have a fixed
42 term lease with more than 30 days left.

43 You must be provided with at least 30 days' written notice after the foreclosure sale before you
44 can be required to move.

45 A bona fide tenant is a residential tenant who is not the borrower (property owner), or a child,

1 spouse or parent of the borrower, and whose rental agreement:

- 2 • Is the result of an arm's-length transaction;
- 3 • Requires the payment of rent that is not substantially less than fair market rent for the
4 property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
- 5 • Was entered into prior to the date of the foreclosure sale.

6 **IMPORTANT:**

7 YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S REPRESENTATIVE AT
8 THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER
9 KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE
10 OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED
11 TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 30 DAYS LEFT. Written evidence
12 of your rental agreement can be a copy of your lease or rental agreement, or other documentation
13 of the existence of your rental agreement. Keep your original documents and a record of any infor-
14 mation you give to the new owner.

15 **YOUR TENANCY**
16 **BETWEEN NOW**
17 **AND THE MOVE-OUT DATE**

18 The new owner may be willing to allow you to stay as a tenant instead of requiring you to move
19 out after 30 or 60 days. You should contact the new owner if you would like to stay. If the new
20 owner accepts rent from you, signs a new residential rental agreement with you or does not notify
21 you in writing within 30 days after the date of the foreclosure sale that you must move out, the new
22 owner becomes your new landlord and must maintain the property. Otherwise:

- 23 • You do not owe rent;
- 24 • The new owner is not your landlord and is not responsible for maintaining the property; and
- 25 • You must move out by the date the new owner specifies in a notice to you.

26 The new owner may offer to pay your moving expenses and any other costs or amounts you and
27 the new owner agree on in exchange for your agreement to leave the premises in less than 30 or
28 60 days. You should speak with a lawyer to fully understand your rights before making any decisions
29 regarding your tenancy.

30 **IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR**
31 **DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT**
32 **TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT**
33 **A LAWYER.** If you believe you need legal assistance, contact the Oregon State Bar and ask for the
34 lawyer referral service. Contact information for the Oregon State Bar is included with this notice.
35 If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to
36 receive legal assistance for free. Information about whom to contact for free legal assistance is in-
37 cluded with this notice.

38 _____
39
40 (6)(a) Except as provided in paragraph (b) or (c) of this subsection, the purchaser at the trustee's
41 sale is entitled to possession of the property on the 10th day after the sale. A person that remains
42 in possession after the 10th day under any interest, except an interest prior to the trust deed, or
43 an interest the grantor or a successor of the grantor created voluntarily, is a tenant at sufferance.
44 The purchaser may obtain possession of the property from a tenant at sufferance by following the
45 procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

1 (b) Except as provided in paragraph (c) of this subsection, at any time after the trustee's sale
2 the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable
3 judicial procedure to obtain possession of the property from a person that holds possession under
4 an interest that the grantor or a successor of the grantor created voluntarily if, not earlier than 30
5 days before the date first set for the sale, the person was served with not less than 30 days' written
6 notice of the requirement to surrender or deliver possession of the property.

7 (c) If the property purchased at the trustee's sale includes a dwelling unit that is subject to ORS
8 chapter 90 and an individual occupies the unit under a bona fide tenancy, the purchaser may obtain
9 possession by following the procedures set forth in ORS 105.105 to 105.168 and by using the com-
10 plaint form provided in ORS 105.124 or 105.126:

11 (A) At least 60 days after service of a written termination notice, if the bona fide tenancy is a
12 fixed term tenancy as defined in ORS 90.100; or

13 (B) At least 30 days after service of a written termination notice if the bona fide tenancy is:

14 (i) A fixed term tenancy and the purchaser intends to occupy, as the purchaser's primary resi-
15 dence, the dwelling unit that is subject to the fixed term tenancy; or

16 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS
17 90.100.

18 (d) If a purchaser gives a 30-day written termination notice pursuant to paragraph (c) of this
19 subsection, the purchaser may include in the notice a request that a tenant with a fixed term
20 tenancy provide written evidence of the existence of the tenancy to the purchaser at an address
21 described in the notice. Written evidence includes a copy of the rental agreement or another docu-
22 ment that shows the existence of the fixed term tenancy. Failure of the tenant to provide the re-
23 quested written evidence before the purchaser files an action for possession based on a 30-day
24 notice:

25 (A) Does not prevent the tenant from asserting the existence of the fixed term tenancy as a
26 defense to the action.

27 (B) Prevents the tenant from recovering prevailing party attorney fees or costs and disburse-
28 ments pursuant to subsection (11)(b) of this section. The 30-day notice must describe the provisions
29 of this paragraph.

30 (e) A purchaser may not commence a proceeding under ORS 105.105 to 105.168 that is authorized
31 under this subsection before the later of:

32 (A) The 10th day after the trustee's sale;

33 (B) The date specified in a written notice of the requirement to surrender or deliver possession
34 of the property if the notice is required by and is given to the person in accordance with paragraph
35 (b) of this subsection;

36 (C) The date specified in a written notice of the purchaser's intent to terminate a tenancy if the
37 notice is required by and is given to the person in accordance with paragraph (c) of this subsection;
38 or

39 (D) The date on which the term of a fixed term tenancy ends, if the property is a dwelling unit
40 and the purchaser has not terminated the tenancy in accordance with paragraph (c) of this sub-
41 section.

42 (f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to 105.168 must attach
43 proof of service of a written termination notice required by paragraph (c) of this subsection to the
44 pleadings.

45 (g) In an action to obtain possession, violation of the procedures required by subsection (5) of

1 this section or paragraph (c) of this subsection is a defense for a bona fide tenant seeking to retain
2 possession.

3 (h) As used in this subsection, “bona fide tenancy” means tenancy of a dwelling unit that is
4 subject to ORS chapter 90 that results from an arm’s-length transaction that occurred before the
5 date of a foreclosure sale in which:

6 (A) The mortgagor or the child, spouse or parent of the mortgagor under the contract is not the
7 tenant; and

8 (B) The rent required is not substantially less than fair market rent for the dwelling unit, unless
9 the rent is reduced or subsidized due to a federal, state or local subsidy.

10 (7) A purchaser shall serve a notice under subsection (6) of this section by one or more of the
11 following methods:

12 (a) Personal delivery to the tenant.

13 (b) First class mail to the tenant at the dwelling unit.

14 (c) First class mail to the tenant at the dwelling unit and attachment of a second notice copy.
15 The second notice copy must be attached in a secure manner to the main entrance to the portion
16 of the premises in the possession of the tenant.

17 (8) If the notice under subsection (6) of this section is served by mail pursuant to subsection
18 (7)(b) of this section, the minimum period for compliance must be extended by three days and the
19 notice must include the extension in the period stated in the notice.

20 (9)(a) Notwithstanding the provisions of subsection (6)(c) of this section and except as provided
21 in paragraph (b) of this subsection, the purchaser is not a landlord subject to the provisions of ORS
22 chapter 90 unless the purchaser:

23 (A) Accepts rent from the individual who possesses the property under a tenancy described in
24 subsection (6)(c) of this section;

25 (B) Enters into a new rental agreement with the individual who possesses the property under
26 a tenancy described in subsection (6)(c) of this section; or

27 (C) Fails to terminate the tenancy as provided in subsection (6)(c) of this section within 30 days
28 after the date of the sale.

29 (b) The purchaser may act as a landlord for purposes of terminating a tenancy in accordance
30 with the provisions of ORS 90.396.

31 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and
32 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not
33 impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to
34 this paragraph, “rent” refers to the amount paid by the tenant to the landlord for the right to oc-
35 cupy the unit before the foreclosure.

36 (10)(a) Except as provided in paragraph (b) of this subsection, the purchaser is not liable to the
37 individual who possesses the property under a tenancy described in subsection (6)(c) of this section
38 for:

39 (A) Damage to the property or diminution in rental value; or

40 (B) Returning a security deposit.

41 (b) A purchaser that is a landlord under the provisions of subsection (9)(a) of this section is li-
42 able to the individual who possesses the property under a tenancy described in subsection (6)(c) of
43 this section for:

44 (A) Damage to the property or diminution in rental value that occurs after the date of the
45 trustee’s sale; or

1 (B) Returning a security deposit the individual pays after the date of the trustee's sale.

2 (11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement
3 to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or
4 (9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the pre-
5 vailing party together with costs and disbursements.

6 (b) If a tenant asserts a successful defense to an action for possession pursuant to subsection
7 (6)(c), (d), (f) or (g) of this section, the tenant is not entitled to prevailing party fees, attorney fees
8 or costs and disbursements if the purchaser:

9 (A) Did not know, and did not have reasonable cause to know, of the existence of a fixed term
10 tenancy when commencing the action for possession; and

11 (B) Promptly dismissed the action upon becoming aware of the existence of a fixed term tenancy.

12 (c) As used in this subsection, "prevailing party" means the party in whose favor final judgment
13 is rendered.

14 (12)(a) Notwithstanding subsection (2) of this section, except when a beneficiary has participated
15 in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by proceedings
16 in bankruptcy or for any other lawful reason shall, after release from the stay, continue as if unin-
17 terrupted, if within 30 days after release the trustee sends amended notice of sale by registered or
18 certified mail to the last-known address of the persons listed in ORS 86.740 and 86.750 (1).

19 (b) In addition to the notice required under paragraph (a) of this subsection, the trustee shall
20 send amended notice of sale:

21 (A) By registered or certified mail to:

22 (i) The address provided by each person who was present at the time and place set for the sale
23 that was stayed; and

24 (ii) The address provided by each member of the Oregon State Bar who by registered or certified
25 mail requests the amended notice of sale and includes with the request the notice of default or an
26 identification number for the trustee's sale that would assist the trustee in identifying the property
27 subject to the trustee's sale and a self-addressed, stamped envelope measuring at least 8.5 by 11
28 inches in size; or

29 (B) By posting a true copy or a link to a true copy of the amended notice of sale on the trustee's
30 Internet website.

31 (13) The amended notice of sale must:

32 (a) Be given at least 20 days before the amended date of sale;

33 (b) Set an amended date of sale that may be the same as the original sale date, or date to which
34 the sale was postponed, provided the requirements of this subsection and ORS 86.740 and 86.750 are
35 satisfied;

36 (c) Specify the time and place for sale;

37 (d) Conform to the requirements of ORS 86.745; and

38 (e) State that the original sale proceedings were stayed and the date the stay terminated.

39 (14) If the publication of the notice of sale was not completed before the date the foreclosure
40 proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other lawful
41 reason, after release from the stay, in addition to complying with the provisions of subsections (12)
42 and (13) of this section, the trustee shall complete the publication by publishing an amended notice
43 of sale that states that the notice has been amended following release from the stay and that con-
44 tains the amended date of sale. The amended notice must be published in a newspaper of general
45 circulation in each of the counties in which the property is situated once a week for four successive

1 weeks, except that the required number of publications must be reduced by the number of publica-
2 tions that were completed before the effective date of the stay. The last publication must be made
3 more than 20 days before the date the trustee conducts the sale.

4 **SECTION 11.** (1) Sections 2, 2a, 3, 4 and 4a of this 2012 Act and the amendments to ORS
5 86.705, 86.735, 86.740, 86.742 and 86.755 by sections 5 to 9 of this 2012 Act become operative
6 91 days after the effective date of this 2012 Act.

7 (2) The Attorney General may take any action before the operative date specified in
8 subsection (1) of this section that is necessary to enable the Attorney General to exercise,
9 on and after the operative date specified in subsection (1) of this section, all of the duties,
10 functions and powers conferred on the Attorney General by sections 2, 2a, 3, 4 and 4a of this
11 2012 Act and the amendments to ORS 86.740 by section 7 of this 2012 Act.

12 **SECTION 12.** Sections 2, 2a, 3, 4 and 4a of this 2012 Act and the amendments to ORS
13 86.705, 86.735, 86.740, 86.742 and 86.755 by sections 5 to 10 of this 2012 Act apply to requests
14 for mediation that a grantor sends and notices of sale and mediation that a trustee or ben-
15 eficiary or an agent of the trustee or beneficiary sends on or after the operative date speci-
16 fied in section 11 of this 2012 Act.

17 **SECTION 13.** This 2012 Act being necessary for the immediate preservation of the public
18 peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect
19 on its passage.

20 _____