

HOUSE AMENDMENTS TO HOUSE BILL 3630

By COMMITTEE ON CONSUMER PROTECTION

February 12

1 On page 1 of the printed bill, delete lines 5 through 18 and delete pages 2 through 21 and insert:

2 “**SECTION 1.** Sections 2 to 6 and 9 to 14 of this 2008 Act may be cited as the Mortgage
3 Rescue Fraud Protection Act.

4 “**SECTION 2.** As used in sections 2 to 6 of this 2008 Act:

5 “(1) ‘Default’ means having one or more homeowner obligations in arrears to an extent
6 that a notice of default could properly be recorded against the residence.

7 “(2) ‘Family’ means a spouse, domestic partner, parent, stepparent, grandparent, child,
8 stepchild, grandchild, sibling, aunt, uncle, cousin or in-law.

9 “(3) ‘Foreclosure consultant,’ except as provided in section 3 of this 2008 Act, means a
10 person that directly or through association with another makes a solicitation, representation
11 or offer to a homeowner to perform, for or with the intent to receive compensation from or
12 on behalf of the homeowner, a service that the solicitation, representation or offer indicates
13 will accomplish one or more of the following:

14 “(a) Prevent, postpone or stop a foreclosure sale.

15 “(b) Obtain a forbearance from a beneficiary or mortgagee.

16 “(c) Assist the homeowner in exercising a right of redemption.

17 “(d) Obtain an extension of the period within which the homeowner may reinstate the
18 homeowner’s obligation.

19 “(e) Obtain the waiver of an acceleration clause that is:

20 “(A) Contained in a promissory note or contract; and

21 “(B) Secured by or contained in a deed of trust for, or mortgage on, a residence in fore-
22 closure or in default.

23 “(f) Assist the homeowner in obtaining a loan or advance of funds.

24 “(g) Avoid or ameliorate an impairment of the homeowner’s credit resulting from a re-
25 corded notice of foreclosure or default.

26 “(4) ‘Foreclosure consulting contract’ means an agreement between a foreclosure con-
27 sultant and a homeowner for the provision of services by a foreclosure consultant in regard
28 to a residence in foreclosure or in default.

29 “(5) ‘Homeowner’ means the record owner of a residence.

30 “(6) ‘Residence in foreclosure’ means residential real property:

31 “(a) Consisting of one to four single-family dwelling units;

32 “(b) On which the owner occupies a dwelling unit; and

33 “(c) Against which a notice of default has been recorded.

34 “**SECTION 3.** The following are not foreclosure consultants for purposes of sections 2 to
35 6 of this 2008 Act:

1 “(1) An individual licensed to practice law in this state, if performing services within an
2 attorney-client relationship.

3 “(2) A person that holds or is owed an obligation that is secured by a lien on a residence
4 in foreclosure or default, if performing services in connection with the obligation or lien.

5 “(3) A person doing business under authority of an Oregon or federal law regulating
6 banks, trust companies, savings and loan associations, credit unions or insurance companies,
7 or as a licensee under ORS chapter 725, if performing business services within the scope of
8 that authority or license.

9 “(4) A subsidiary, affiliate or agent of a person described in subsection (3) of this section,
10 if performing business services within the scope of the person’s authority or license as the
11 person’s subsidiary, affiliate or agent.

12 “(5) The judgment creditor of a homeowner, if the creditor’s claim accrued before a no-
13 tice of sale was sent to the creditor under ORS 86.740.

14 “(6) A title insurer authorized to conduct business in Oregon or an insurance producer
15 licensed to conduct business in Oregon, if performing title insurance or settlement services
16 within the scope of that authority or license.

17 “(7) A mortgage broker or mortgage lender licensed under ORS chapter 59 to conduct
18 business in Oregon, if acting within the scope of that license.

19 “(8) A real estate licensee under ORS 696.022 or an escrow agent licensed under ORS
20 696.511, if acting within the scope of that license.

21 “(9) A tax-exempt organization that offers counseling or advice to homeowners in fore-
22 closure if the organization:

23 “(a) Is not directly or indirectly related to for-profit lenders or foreclosure purchasers;

24 “(b) Does not contract to provide services to or receive services from for-profit lenders
25 or foreclosure purchasers; and

26 “(c) Has provided counseling or advice to homeowners for five years or more.

27 “(10) A creditors’ committee, trustee or debtor in possession participating in a proceed-
28 ing under the jurisdiction of the United States Bankruptcy Court.

29 “(11) Any person whose employment with regard to a residential real property matter
30 under the jurisdiction of the United States Bankruptcy Court is approved by order of the
31 bankruptcy court.

32 “(12) A person that is a member of the homeowner’s family or is owned or controlled by
33 a member of the homeowner’s family.

34 “**SECTION 4.** (1) A written foreclosure consulting contract is required for any services
35 that a foreclosure consultant provides to a homeowner. A foreclosure consultant shall pro-
36 vide a homeowner with a copy of the foreclosure consulting contract at least 24 hours before
37 the homeowner signs the contract. The foreclosure consulting contract must:

38 “(a) Be written in a language that is spoken by the homeowner and that was used in
39 discussions between the homeowner and foreclosure consultant to describe the foreclosure
40 consultant’s services or to negotiate the contract and, except as provided in paragraph (f)
41 of this subsection, be printed in at least 12-point type.

42 “(b) Fully disclose the nature and extent of the services the foreclosure consultant is to
43 provide.

44 “(c) Fully disclose the terms and total amount of any compensation the foreclosure con-
45 sultant or a person working in association with the foreclosure consultant is to receive.

1 or any cancellation by e-mail to _____.

2
3 If you cancel, you must pay for any services that were provided under the contract before
4 the cancellation and repay any money spent on your behalf under the contract. You have 60
5 days after cancellation to pay for services and to repay any money spent on your behalf. You
6 must also pay any interest allowed under the contract, which may not exceed nine percent
7 per year.

8
9 **NOTICE OF CANCELLATION**

10
11 **TO:** _____ (name of foreclosure consultant)

12
13 _____ (address, fax or e-mail of foreclosure consultant)

14
15 **I cancel this contract.**

16
17 **Date:** _____

18
19 **Your (homeowner's) printed name and address:** _____

20
21 **Your (homeowner's) signature:** _____

22 " _____

23
24 "(7) A written notice of cancellation under this section is sufficient, however expressed,
25 if the notice indicates the intent of the homeowner to cancel the foreclosure consulting
26 contract. The contract may not require the homeowner to use the notice of cancellation
27 form set forth in subsection (6) of this section.

28 "SECTION 6. A foreclosure consultant may not:

29 "(1) Claim, demand, charge, collect or receive any compensation from a homeowner un-
30 less the foreclosure consultant has performed in good faith under the contract:

31 "(a) Each service the foreclosure consultant contracted to perform for the homeowner;
32 or

33 "(b) Each service to be compensated, prior to the homeowner canceling or breaching the
34 contract.

35 "(2) Claim, demand, charge, collect or receive interest or other compensation that ex-
36 ceeds nine percent per year on any services performed, any loan by the foreclosure consult-
37 ant to the homeowner or any moneys paid or advanced to the homeowner under the
38 foreclosure consulting contract.

39 "(3) Take a wage assignment, lien on real or personal property or other security for the
40 payment of compensation.

41 "(4) Receive consideration from a third party in connection with services provided by a
42 foreclosure consultant to a homeowner, unless the consideration is first fully disclosed in
43 writing to the homeowner.

44 "(5) Directly or indirectly acquire an interest in a residence in foreclosure or default
45 transferred by a homeowner with whom the foreclosure consultant has contracted, including

1 any interest transferred to or through a member of the foreclosure consultant's family or
2 to or through a subsidiary, affiliate or related entity in which the foreclosure consultant or
3 a member of the foreclosure consultant's family is a primary member, shareholder or owner.

4 "(6) Receive compensation from a third party for facilitating or arranging for entry into
5 an equity conveyance as defined in section 9 of this 2008 Act by a homeowner with whom the
6 foreclosure consultant has contracted.

7 "(7) Facilitate or arrange for entry into an equity conveyance as defined in section 9 of
8 this 2008 Act by a homeowner with whom the foreclosure consultant has contracted, if the
9 foreclosure consultant knows or should know that the equity purchaser has failed to comply
10 with section 11 (1) of this 2008 Act.

11 "(8) Take a power of attorney from a homeowner except for the purpose of obtaining or
12 inspecting documents.

13 "(9) Induce or attempt to induce any homeowner to enter into a foreclosure consulting
14 contract that does not comply in all respects with sections 2 to 6 of this 2008 Act.

15 "SECTION 7. ORS 646.608, as operative until July 1, 2008, is amended to read:

16 "646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
17 ness, vocation or occupation the person does any of the following:

18 "(a) Passes off real estate, goods or services as those of another.

19 "(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
20 proval, or certification of real estate, goods or services.

21 "(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
22 ciation with, or certification by, another.

23 "(d) Uses deceptive representations or designations of geographic origin in connection with real
24 estate, goods or services.

25 "(e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
26 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
27 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

28 "(f) Represents that real estate or goods are original or new if they are deteriorated, altered,
29 reconditioned, reclaimed, used or secondhand.

30 "(g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
31 or that real estate or goods are of a particular style or model, if they are of another.

32 "(h) Disparages the real estate, goods, services, property or business of a customer or another
33 by false or misleading representations of fact.

34 "(i) Advertises real estate, goods or services with intent not to provide them as advertised, or
35 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
36 a limitation of quantity.

37 "(j) Makes false or misleading representations of fact concerning the reasons for, existence of,
38 or amounts of price reductions.

39 "(k) Makes false or misleading representations concerning credit availability or the nature of
40 the transaction or obligation incurred.

41 "(L) Makes false or misleading representations relating to commissions or other compensation
42 to be paid in exchange for permitting real estate, goods or services to be used for model or demon-
43 stration purposes or in exchange for submitting names of potential customers.

44 "(m) Performs service on or dismantles any goods or real estate when not authorized by the
45 owner or apparent owner thereof.

1 “(n) Solicits potential customers by telephone or door to door as a seller unless the person
2 provides the information required under ORS 646.611.

3 “(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
4 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
5 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
6 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
7 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
8 tomer enters into the transaction.

9 “(p) Makes any false or misleading statement about a prize, contest or promotion used to pub-
10 licize a product, business or service.

11 “(q) Promises to deliver real estate, goods or services within a certain period of time with intent
12 not to deliver them as promised.

13 “(r) Organizes or induces or attempts to induce membership in a pyramid club.

14 “(s) Makes false or misleading representations of fact concerning the offering price of, or the
15 person’s cost for real estate, goods or services.

16 “(t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
17 known material defect or material nonconformity.

18 “(u) Engages in any other unfair or deceptive conduct in trade or commerce.

19 “(v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
20 ORS 698.640, whether in a commercial or noncommercial situation.

21 “(w) Manufactures mercury fever thermometers.

22 “(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
23 law, or is:

24 “(A) Prescribed by a person licensed under ORS chapter 677; and
25 “(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage
26 and on the proper cleanup of mercury should breakage occur.

27 “(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
28 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
29 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
30 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
31 graph, ‘thermostat’ means a device commonly used to sense and, through electrical communication
32 with heating, cooling or ventilation equipment, control room temperature.

33 “(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
34 mercury light switches.

35 “(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

36 “(bb) Violates ORS 646A.070 (1).

37 “(cc) Violates any requirement of ORS 646A.030 to 646A.040.

38 “(dd) Violates the provisions of ORS 128.801 to 128.898.

39 “(ee) Violates ORS 646.883 or 646.885.

40 “(ff) Violates any provision of ORS 646A.020.

41 “(gg) Violates ORS 646.569.

42 “(hh) Violates the provisions of ORS 646A.142.

43 “(ii) Violates ORS 646A.360.

44 “(jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

45 “(kk) Violates ORS 646.563.

1 “(ll) Violates ORS 759.690 or any rule adopted pursuant thereto.
2 “(mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
3 thereto.
4 “(nn) Violates ORS 646A.210 or 646A.214.
5 “(oo) Violates any provision of ORS 646A.124 to 646A.134.
6 “(pp) Violates ORS 646A.254.
7 “(qq) Violates ORS 646A.095.
8 “(rr) Violates ORS 822.046.
9 “(ss) Violates ORS 128.001.
10 “(tt) Violates ORS 646.649 (2) to (4).
11 “(uu) Violates ORS 646A.090 (2) to (4).
12 “(vv) Violates ORS 87.686.
13 “(ww) Violates ORS 646.651.
14 “(xx) Violates ORS 646A.362.
15 “(yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
16 “(zz) Violates ORS 180.440 (1).
17 “(aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
18 “(bbb) Violates ORS 87.007 (2) or (3).
19 “(ccc) Violates ORS 92.405 (1), (2) or (3).
20 “(ddd) Engages in an unlawful practice under ORS 646.648.
21 “(eee) Violates ORS 646A.365.
22 “(fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
23 “(ggg) Sells a gift card in violation of ORS 646A.276.
24 “(hhh) Violates ORS 646A.102, 646A.106 or 646A.108.
25 “(iii) Violates a provision of sections 2 to 6 of this 2008 Act.
26 “(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifes-
27 tation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
28 “(3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
29 need not prove competition between the parties or actual confusion or misunderstanding.
30 “(4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
31 torney General has first established a rule in accordance with the provisions of ORS chapter 183
32 declaring the conduct to be unfair or deceptive in trade or commerce.
33 “(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is
34 brought under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief
35 is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.
36 “**SECTION 8.** ORS 646.608 is amended to read:
37 “646.608. (1) A person engages in an unlawful practice when in the course of the person’s busi-
38 ness, vocation or occupation the person does any of the following:
39 “(a) Passes off real estate, goods or services as those of another.
40 “(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
41 proval, or certification of real estate, goods or services.
42 “(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
43 ciation with, or certification by, another.
44 “(d) Uses deceptive representations or designations of geographic origin in connection with real
45 estate, goods or services.

1 “(e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
2 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
3 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

4 “(f) Represents that real estate or goods are original or new if they are deteriorated, altered,
5 reconditioned, reclaimed, used or secondhand.

6 “(g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
7 or that real estate or goods are of a particular style or model, if they are of another.

8 “(h) Disparages the real estate, goods, services, property or business of a customer or another
9 by false or misleading representations of fact.

10 “(i) Advertises real estate, goods or services with intent not to provide them as advertised, or
11 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
12 a limitation of quantity.

13 “(j) Makes false or misleading representations of fact concerning the reasons for, existence of,
14 or amounts of price reductions.

15 “(k) Makes false or misleading representations concerning credit availability or the nature of
16 the transaction or obligation incurred.

17 “(L) Makes false or misleading representations relating to commissions or other compensation
18 to be paid in exchange for permitting real estate, goods or services to be used for model or demon-
19 stration purposes or in exchange for submitting names of potential customers.

20 “(m) Performs service on or dismantles any goods or real estate when not authorized by the
21 owner or apparent owner thereof.

22 “(n) Solicits potential customers by telephone or door to door as a seller unless the person
23 provides the information required under ORS 646.611.

24 “(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
25 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
26 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
27 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
28 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
29 tomer enters into the transaction.

30 “(p) Makes any false or misleading statement about a prize, contest or promotion used to pub-
31 licize a product, business or service.

32 “(q) Promises to deliver real estate, goods or services within a certain period of time with intent
33 not to deliver them as promised.

34 “(r) Organizes or induces or attempts to induce membership in a pyramid club.

35 “(s) Makes false or misleading representations of fact concerning the offering price of, or the
36 person’s cost for real estate, goods or services.

37 “(t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
38 known material defect or material nonconformity.

39 “(u) Engages in any other unfair or deceptive conduct in trade or commerce.

40 “(v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
41 ORS 698.640, whether in a commercial or noncommercial situation.

42 “(w) Manufactures mercury fever thermometers.

43 “(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
44 law, or is:

45 “(A) Prescribed by a person licensed under ORS chapter 677; and

1 “(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage
2 and on the proper cleanup of mercury should breakage occur.

3 “(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
4 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
5 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
6 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
7 graph, ‘thermostat’ means a device commonly used to sense and, through electrical communication
8 with heating, cooling or ventilation equipment, control room temperature.

9 “(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
10 mercury light switches.

11 “(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

12 “(bb) Violates ORS 646A.070 (1).

13 “(cc) Violates any requirement of ORS 646A.030 to 646A.040.

14 “(dd) Violates the provisions of ORS 128.801 to 128.898.

15 “(ee) Violates ORS 646.883 or 646.885.

16 “(ff) Violates any provision of ORS 646A.020.

17 “(gg) Violates ORS 646.569.

18 “(hh) Violates the provisions of ORS 646A.142.

19 “(ii) Violates ORS 646A.360.

20 “(jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

21 “(kk) Violates ORS 646.563.

22 “(LL) Violates ORS 759.690 or any rule adopted pursuant thereto.

23 “(mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
24 thereto.

25 “(nn) Violates ORS 646A.210 or 646A.214.

26 “(oo) Violates any provision of ORS 646A.124 to 646A.134.

27 “(pp) Violates ORS 646A.254.

28 “(qq) Violates ORS 646A.095.

29 “(rr) Violates ORS 822.046.

30 “(ss) Violates ORS 128.001.

31 “(tt) Violates ORS 646.649 (2) to (4).

32 “(uu) Violates ORS 646A.090 (2) to (4).

33 “(vv) Violates ORS 87.686.

34 “(ww) Violates ORS 646.651.

35 “(xx) Violates ORS 646A.362.

36 “(yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

37 “(zz) Violates ORS 180.440 (1).

38 “(aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

39 “(bbb) Violates ORS 87.007 (2) or (3).

40 “(ccc) Violates ORS 92.405 (1), (2) or (3).

41 “(ddd) Engages in an unlawful practice under ORS 646.648.

42 “(eee) Violates ORS 646A.365.

43 “(fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

44 “(ggg) Sells a gift card in violation of ORS 646A.276.

45 “(hhh) Violates ORS 646A.102, 646A.106 or 646A.108.

1 “(iii) Violates ORS 646A.430 to 646A.450.

2 **“(jjj) Violates a provision of sections 2 to 6 of this 2008 Act.**

3 “(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifes-
4 tation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

5 “(3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
6 need not prove competition between the parties or actual confusion or misunderstanding.

7 “(4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
8 torney General has first established a rule in accordance with the provisions of ORS chapter 183
9 declaring the conduct to be unfair or deceptive in trade or commerce.

10 “(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is
11 brought under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief
12 is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

13 **“SECTION 9. As used in sections 9 to 14 of this 2008 Act:**

14 **“(1) ‘Bona fide purchaser’ means a person that purchases a residential real property from
15 an equity purchaser:**

16 **“(a) For valuable consideration;**

17 **“(b) In good faith;**

18 **“(c) Without knowledge of any continuing right to, or equity in, the property by the eq-
19 uity seller; and**

20 **“(d) Without knowledge of any violation of sections 9 to 14 of this 2008 Act by the equity
21 purchaser regarding the property.**

22 **“(2) ‘Business day’ does not mean a Saturday or a legal holiday described in ORS 187.010
23 or 187.020.**

24 **“(3) ‘Equity conveyance’:**

25 **“(a) Means a transaction that involves:**

26 **“(A) The transfer of an interest in a residence in foreclosure by an equity seller to an
27 equity purchaser, or to another person acting in association with the equity purchaser, that
28 allows the equity purchaser or other person to obtain legal or equitable title to all or part
29 of the residential real property; and**

30 **“(B) A subsequent conveyance, or agreement for a subsequent conveyance, of an interest
31 in the residential real property from the equity purchaser or person acting in association
32 with the equity purchaser to the equity seller to allow the equity seller to possess the prop-
33 erty during, or after termination of, the foreclosure process.**

34 **(b) Does not mean a transfer of interest by means of a nonjudicial foreclosure sale or
35 by means of a sheriff’s sale or other judicial foreclosure action.**

36 **“(4) ‘Equity conveyance contract’ means a written contract between an equity seller and
37 an equity purchaser that contains an agreement for an equity conveyance.**

38 **“(5) ‘Equity purchaser,’ except as provided in section 10 of this 2008 Act, means a person
39 that enters into an equity conveyance that transfers to the person, or to another acting in
40 association with the person, an interest in residential real property sufficient to allow ob-
41 taining legal or equitable title to all or part of the property.**

42 **“(6) ‘Equity recapture payment’ means the resale price for a property, less the following:**

43 **“(a) Amounts owing as of the closing of the resale for liens or other encumbrances cre-
44 ated or suffered by the equity seller.**

45 **“(b) Amounts paid after the transfer of interest in the property by the equity seller and**

1 before the closing of the resale on liens or other encumbrances created or suffered by the
2 equity seller.

3 “(c) Cash received by the equity seller from the equity purchaser under the equity
4 conveyance contract.

5 “(d) Title, escrow and other customary closing costs incurred by the equity purchaser
6 under the equity conveyance contract or because of the resale.

7 “(e) Real estate commissions and charges incurred by the equity purchaser under the
8 equity conveyance contract or because of the resale.

9 “(f) Charges for prorated taxes and homeowner association dues.

10 “(g) Attorney fees incurred by the equity purchaser under the equity conveyance con-
11 tract or because of the resale.

12 “(h) Reimbursement of actual repair and maintenance expenses.

13 “(i) Reimbursement for the construction of improvements to the property.

14 “(7) ‘Equity seller’ means a natural person who is the record owner of a residence in
15 foreclosure at the time an interest in the residence is transferred under an equity
16 conveyance to an equity purchaser or to a person acting in association with an equity pur-
17 chaser.

18 “(8) ‘Primary housing expenses’ means the total amount required to pay regular princi-
19 pal, interest, rent, utilities, hazard insurance, real estate taxes and association dues on a
20 residential real property.

21 “(9) ‘Resale’ means a sale by an equity purchaser to a bona fide purchaser of residential
22 real property that is the subject of an equity conveyance contract.

23 “(10) ‘Resale price’ means the gross sale price of a residential real property upon resale.

24 “(11) ‘Residence in foreclosure’ means residential real property:

25 “(a) Consisting of one to four single-family dwelling units;

26 “(b) On which the owner occupies a dwelling unit; and

27 “(c) Against which a notice of default has been recorded.

28 “(12) ‘Settlement agent’ means a provider of settlement services who:

29 “(a) Is a licensed escrow agent, title insurance agent or attorney; and

30 “(b) Is not the equity purchaser or an employee or associate of the equity purchaser.

31 “(13) ‘Settlement conference’ means an in-person meeting between an equity seller and
32 a settlement agent:

33 “(a) For the purpose of completing documents incident to the transfer of an interest as
34 part of an equity conveyance; and

35 “(b) During which the settlement agent provides the equity seller with the HUD-1
36 settlement statement used by the United States Department of Housing and Urban Develop-
37 ment.

38 “SECTION 10. The following are not equity purchasers for purposes of sections 9 to 14
39 of this 2008 Act:

40 “(1) A party to a deed in lieu of foreclosure.

41 “(2) A creditors’ committee, trustee or debtor in possession participating in a proceeding
42 under the jurisdiction of the United States Bankruptcy Court.

43 “(3) A family or living trust in which the equity seller is the beneficiary or a member of
44 the beneficiary.

45 “SECTION 11. (1) A written contract is required for every equity conveyance. An equity

1 purchaser shall provide an equity seller with a copy of the equity conveyance contract at
2 least 24 hours before the equity seller signs the contract. The equity conveyance contract
3 must:

4 “(a) Be written in a language that is spoken by the equity seller and that was used in
5 discussions between the equity seller and equity purchaser to describe the equity purchaser’s
6 services or to negotiate the terms of the contract and, except as provided in paragraph (f)
7 of this subsection, be printed in at least 12-point type;

8 “(b) Contain the entire agreement of the parties;

9 “(c) Be dated and personally signed by the equity seller and the equity purchaser and
10 witnessed by a notary public;

11 “(d) Contain on the first page the name and address, facsimile number and electronic
12 mail address of the settlement agent to which a notice of cancellation may be delivered;

13 “(e) Describe in detail the terms of the equity conveyance including:

14 “(A) The name and business address, and any telephone number, facsimile number and
15 electronic mail address, of the person to whom the equity seller will transfer an interest in
16 the residence in foreclosure;

17 “(B) The address of the residence in foreclosure;

18 “(C) The total consideration the equity purchaser and any other party are to give as a
19 result of the transfer of interest;

20 “(D) The time at which the interest is to be transferred to the equity purchaser or other
21 person and the terms of the transfer;

22 “(E) Any financial or legal obligations that the equity seller may remain subject to, in-
23 cluding a description of any mortgages, liens or other obligations that will remain in place;

24 “(F) Any services the equity purchaser will perform for the equity seller before or after
25 the transfer of interest;

26 “(G)(i) The terms of any post-transfer conveyance or agreement for a conveyance to the
27 equity seller to allow the equity seller to remain in the home, including but not limited to
28 the terms of any rental agreement, repurchase agreement, contract for deed, land install-
29 ment contract or option to buy; and

30 “(ii) Any provisions for eviction or removal of the equity seller in the case of late pay-
31 ment;

32 “(H) An explanation of how any repurchase price or fee associated with any conveyance
33 of title or deed back to the equity seller will be calculated; and

34 “(I) An explanation of the percentage of any equity recapture payment the equity seller
35 is to receive if the equity seller does not exercise a right to receive back a conveyance of title
36 or deed; and

37 “(f) Contain, in immediate proximity to the space reserved for the equity seller’s signa-
38 ture, a notice in substantially the following form and printed in at least 14-point boldfaced
39 type:

40 “

41
42 **NOTICE REQUIRED BY OREGON LAW**

43
44 **THIS IS AN IMPORTANT LEGAL CONTRACT.**
45 **YOU ARE TRANSFERRING YOUR DEED OR TITLE**

1 **AND THIS COULD RESULT IN THE PERMANENT**
2 **LOSS OF YOUR HOME. CONTACT AN ATTORNEY**
3 **OR OTHER PROFESSIONAL ADVISER BEFORE SIGNING.**

4
5 **YOU MAY CANCEL THIS CONTRACT WITHIN THREE (3) BUSINESS DAYS.**

6
7 **If you cancel, you must pay for services that were provided under this contract before can-**
8 **cellation and repay any money spent on your behalf under this contract. You have 60 days**
9 **after cancellation to pay for the services and repay any money spent on your behalf. You**
10 **must also pay any interest allowed by this contract, which may not exceed nine percent per**
11 **year.**

12
13 **The law requires that this contract contain the entire agreement. You should not rely on**
14 **any other written or oral agreement or promise.**

15 **“**

16
17 **“(2) An equity conveyance contract provision is void if the provision provides for an eq-**
18 **uity seller to:**

19 **“(a) Waive any rights of the equity seller under sections 9 to 14 of this 2008 Act;**

20 **“(b) Consent to jurisdiction for litigation or dispute resolution in a state other than**
21 **Oregon;**

22 **“(c) Consent to a choice of laws provision that applies the laws of a state other than**
23 **Oregon;**

24 **“(d) Consent to venue in a county other than the county in which the residential real**
25 **property is located; or**

26 **“(e) Pay any costs or fees that the equity purchaser or a person acting in association**
27 **with the equity purchaser incurred to enforce the contract, other than court costs and filing**
28 **fees incurred in a successful circuit court action.**

29 **“(3) An equity conveyance may not be carried out using a power of attorney from the**
30 **equity seller to the equity purchaser or a person acting in association with the equity pur-**
31 **chaser.**

32 **“SECTION 12. (1) In addition to any other cancellation or rescission right, an equity**
33 **seller may cancel an equity conveyance contract as provided under this section before the**
34 **earlier of:**

35 **“(a) Midnight of the third business day after the equity seller signs a document pur-**
36 **porting to transfer an interest in the residence in foreclosure; or**

37 **“(b) A foreclosure sale of the residence in foreclosure.**

38 **“(2) If the equity seller gives a written notice of cancellation under this section by mail,**
39 **the notice is effective upon the earlier of:**

40 **“(a) Delivery to the physical address of the equity purchaser or settlement agent; or**

41 **“(b) Actual receipt by the equity purchaser or settlement agent.**

42 **“(3) If the equity seller gives a written notice of cancellation under this section by fac-**
43 **simile number or electronic mail, the notice is effective upon the earlier of:**

44 **“(a) Delivery to the facsimile or electronic mail address of the equity purchaser or the**
45 **settlement agent; or**

1 cent per year.

2
3 NOTICE OF CANCELLATION

4
5 TO: _____ (name of settlement agent)

6
7 _____ (address, fax and e-mail of settlement agent)

8
9 I cancel the contract. Please return all signed documents to me.

10
11 Date: _____

12
13 Your (homeowner's) printed name and address: _____

14
15 Your (homeowner's) signature: _____

16 " _____

17
18 "(8) Notwithstanding subsection (1)(a) of this section, the period during which the equity
19 seller may cancel the equity conveyance contract does not commence until the equity pur-
20 chaser has complied with subsection (7) of this section.

21 "(9) A notice of cancellation under this section is sufficient, however expressed, if the
22 notice indicates the intent of the equity seller to cancel the equity conveyance contract. The
23 equity conveyance contract may not require the equity seller to use the notice of cancella-
24 tion form described in subsection (7) of this section.

25 "(10) No later than 10 days after receipt of a notice of cancellation given in accordance
26 with this section, the equity purchaser shall return, without condition, any original deed,
27 title and contract, and any other document of transfer signed by the equity seller.

28 "SECTION 13. (1) An equity purchaser shall:

29 "(a) Prior to providing a copy of the equity conveyance contract to the equity seller un-
30 der section 11 (1) of this 2008 Act:

31 "(A) Verify and be able to demonstrate that the equity seller has or will have a reason-
32 able ability to pay for the subsequent reconveyance of the residential real property interest
33 back to the equity seller as provided under the equity conveyance contract; or

34 "(B) If the equity conveyance contract provides for a lease with an option to repurchase
35 the residential real property, verify and be able to demonstrate that the equity seller has or
36 will have a reasonable ability to make the lease payments and repurchase the property within
37 the term of the option to repurchase.

38 "(b) Arrange for the equity seller and the settlement agent to complete a settlement
39 conference before the equity seller transfers any interest under the equity conveyance con-
40 tract.

41 "(c) Comply with the requirements of the federal Home Ownership and Equity Protection
42 Act (15 U.S.C. 1639) and its implementing regulations for any equity conveyance in which the
43 equity seller obtains a vendee interest in a contract for deed.

44 "(d) Ensure that title to, or other interest in, the residential real property is timely re-
45 conveyed to the equity seller as provided under the terms of the equity conveyance contract.

1 “(e) If a residential real property is resold within 24 months after the equity seller enters
2 into an equity conveyance contract, pay the equity seller cash or consideration in an amount
3 equal to at least 82 percent of the equity recapture payment from the resale no later than
4 15 days after the receipt of cash or consideration from or on behalf of the purchasers of the
5 property.

6 “(f) Timely record the memorandum of agreement required by section 14 of this 2008 Act.

7 “(2) An equity purchaser may not:

8 “(a) As part of an equity conveyance contract, enter into repurchase or lease terms that
9 are commercially unreasonable or unfair to an equity seller, or engage in any other unfair
10 conduct.

11 “(b) Represent, directly or indirectly, that the equity purchaser is acting as a financial
12 adviser or foreclosure consultant to the equity seller or otherwise is acting on behalf of the
13 equity seller.

14 “(c) Make a false representation regarding the equity purchaser’s possession of profes-
15 sional credentials that indicate knowledge or expertise regarding real property transactions.

16 “(d) Represent, directly or indirectly, that the equity purchaser is assisting the equity
17 seller in preventing a foreclosure, if the equity conveyance contract does not provide for the
18 equity seller to completely redeem the residential real property and regain title.

19 “(e) Directly or by implication make a statement or engage in conduct that is false, de-
20 ceptive, misleading or likely to cause confusion or misunderstanding regarding an equity
21 conveyance, including but not limited to a statement or conduct with regard to:

22 “(A) The value of a residence in foreclosure;

23 “(B) The amount of proceeds the equity seller would receive after a foreclosure sale;

24 “(C) An equity conveyance contract term; or

25 “(D) The equity seller’s rights or obligations incident to or arising out of the equity
26 conveyance.

27 “(f) Before the equity seller’s right to cancel an equity conveyance contract has expired:

28 “(A) Record or cause to be recorded an instrument of conveyance or other document the
29 equity seller signed;

30 “(B) Transfer or purport to transfer any interest in the residential real property to any
31 third party; or

32 “(C) Encumber or purport to encumber any interest in the residential real property with
33 any third party.

34 “SECTION 14. (1) For purposes of determining whether an equity purchaser has violated
35 section 13 (1)(a) of this 2008 Act, there is a rebuttable presumption that:

36 “(a) An equity seller has or will have a reasonable ability to pay for a subsequent
37 reconveyance of a residential real property if the equity seller’s payments for primary
38 housing expenses and regular principal and interest payments on other personal debt, on a
39 monthly basis, do not exceed 60 percent of the equity seller’s monthly gross income.

40 “(b) The equity purchaser has failed to verify that the equity seller has a reasonable
41 ability to pay for a subsequent reconveyance of a property if the equity purchaser has not
42 obtained supporting documents other than a statement by the equity seller of assets, liabil-
43 ities and income.

44 “(2) If a property is resold within 24 months after an equity seller enters into an equity
45 conveyance contract, at the time of making the equity recapture payment to the equity seller

1 under section 13 (1)(e) of this 2008 Act, the equity purchaser shall provide the equity seller
2 with a detailed accounting of the basis for the payment amount. The accounting shall include
3 detailed documentation of the amounts subtracted by the equity purchaser from the resale
4 price to determine the amount of the equity recapture payment.

5 “(3) A bona fide purchaser that enters into a transaction with an equity seller or equity
6 purchaser receives good title to the property, free and clear of:

7 “(a) The rights of the parties to an equity conveyance contract or a memorandum of
8 agreement; or

9 “(b) Any cancellation of the equity conveyance contract.

10 “(4) Sections 9 to 14 of this 2008 Act do not impose a duty on a property purchaser,
11 settlement agent, title insurer or title insurance producer regarding the application of the
12 proceeds of a resale of property by an equity purchaser.

13 “(5) At the time of presenting an equity conveyance for recording, the equity purchaser
14 shall present a memorandum of agreement for recording in the county where the residential
15 real property is located. The memorandum of agreement must be signed by the equity pur-
16 chaser and the equity seller, witnessed by a notary public and in substantially the following
17 form:

18 “

19 _____
20 **MEMORANDUM OF AGREEMENT**

21
22 **DATED:** _____

23
24 **SELLER NAME (print):** _____

25
26 **PURCHASER NAME (print):** _____

27
28 **EXPIRATION DATE:** _____, unless otherwise extended by written agreement between
29 the parties.

30
31 **LEGAL DESCRIPTION AND PROPERTY ADDRESS:** _____

32
33 **TERMS OF AGREEMENT:** _____

34
35 **TRUE AND ACTUAL CONSIDERATION IS:** _____

36
37 **SELLER SIGNATURE:** _____

38
39 **PURCHASER SIGNATURE:** _____

40 “

41
42 **“SECTION 15.** Sections 9 to 14 of this 2008 Act do not preclude an equity seller from:

43 “(1) Seeking to have a transfer of interest under an equity conveyance declared to be an
44 equitable mortgage; or

45 “(2) Asserting any claim against an equity purchaser for an equitable mortgage.

1 This notice is about your mortgage loan on your property at _____ (ad-
2 dress).

3
4 Your lender has decided to sell this property because the money due on your mortgage loan
5 has not been paid on time or because you have failed to fulfill some other obligation to your
6 lender. This is sometimes called 'foreclosure.'

7
8 The amount you would have had to pay as of _____ (date) to bring your mortgage loan
9 current was \$_____. The amount you must now pay to bring your loan current may
10 have increased since that date.

11
12 By law, your lender has to provide you with details about the amount you owe, if you ask.
13 You may call _____ (telephone number) to find out the exact amount you must pay
14 to bring your mortgage loan current and to get other details about the amount you owe.
15 You may also get these details by sending a request by certified mail
16 to: _____.

17
18 **THIS IS WHEN AND WHERE**
19 **YOUR PROPERTY WILL BE SOLD**
20 **IF YOU DO NOT TAKE ACTION:**

21
22 **Date and time:** _____, 2_____ at _____

23
24 **Place:** _____

25
26 **THIS IS WHAT YOU CAN DO**
27 **TO STOP THE SALE:**

- 28
29 **1. You can pay the amount past due or correct any other default, up to five days before the**
30 **sale.**
31 **2. You can refinance or otherwise pay off the loan in full anytime before the sale.**
32 **3. You can call _____ (name) at _____ (telephone number) to find out if your**
33 **lender is willing to give you more time or change the terms of your loan.**
34 **4. You can sell your home, provided the sale price is enough to pay what you owe.**

35
36 **There are government agencies and nonprofit organizations that can give you information**
37 **about foreclosure and help you decide what to do. For the name and telephone number of**
38 **an organization near you, please call the statewide telephone contact number at**
39 **_____. You may also wish to talk to a lawyer. If you need help finding a lawyer, you**
40 **may call the Oregon State Bar's Lawyer Referral Service at _____ or toll-free in**
41 **Oregon at _____ or you may visit its website at: _____.** Legal as-
42 **sistance may be available if you have a low income and meet federal poverty guidelines. For**
43 **more information and a directory of legal aid programs, go to _____.**

44
45 **WARNING: You may get offers from people who tell you they can help you keep your prop-**

erty. You should be careful about those offers. Make sure you understand any papers you are asked to sign. If you have any questions, talk to a lawyer or one of the organizations mentioned above before signing.

DATED: _____, 2_____

Trustee name: _____ (print)

Trustee signature: _____

Trustee telephone number: _____

“ _____

“(2) The Department of Consumer and Business Services may adopt rules prescribing the format, font size and other physical characteristics of the notice form set forth in subsection (1) of this section. The department shall adopt rules specifying the statewide resource telephone contact numbers and website addresses the sender is to insert in completing the notice.

“(3) When filling blanks in the notice form set forth in subsection (1) of this section, the sender of the notice shall include, stated in plain language:

“(a) The amount of payment that was needed to bring the mortgage loan current as of the date stated in the notice; and

“(b) One or more telephone numbers consisting of:

“(A) A telephone number that will allow the grantor access during regular business hours to details regarding the grantor’s loan delinquency and repayment information; and

“(B) A telephone number that will allow the grantor access during regular business hours to person-to-person consultation with an individual authorized by the grantee to discuss the grantor’s payment and loan term negotiation and modification options.

“(4) Telephone numbers described in subsection (3) of this section must be toll-free numbers unless the grantee:

“(a) Made the loan with the grantee’s own money;

“(b) Made the loan for the grantee’s own investment; and

“(c) Is not in the business of making loans secured by an interest in real estate.

“(5) If the sender giving notice under subsection (1) of this section has actual knowledge that the grantor is not the occupant of the residential real property, the sender shall also give notice to the occupant of the property by first class mail with return receipt requested.

“SECTION 21. If a notice required by section 20 of this 2008 Act is not sent to a grantor, and the grantor does not actually receive a copy of the notice at least 25 days prior to the date the trustee conducts the sale, the grantor shall have the same rights possessed by the holder of a junior lien or interest who was omitted as a party defendant in a judicial foreclosure proceeding. The purchaser at the trustee’s sale, or the purchaser’s heirs, assigns or transferees, shall have the same rights possessed by a purchaser at a sheriff’s sale following a judicial foreclosure.

“SECTION 22. (1) Sections 2 to 6 of this 2008 Act apply to agreements for services by a foreclosure consultant entered into by homeowners beginning 90 or more days after the ef-

1 **fective date of this 2008 Act.**

2 **“(2) Sections 9 to 14 of this 2008 Act apply to agreements for equity conveyances entered**
3 **into by equity sellers beginning seven or more days after the effective date of this 2008 Act.**

4 **“(3) Section 20 of this 2008 Act applies to residential trust deed properties for which a**
5 **notice of sale under ORS 86.740 is sent beginning 90 or more days after the effective date of**
6 **this 2008 Act.**

7 **“SECTION 23. This 2008 Act being necessary for the immediate preservation of the public**
8 **peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect**
9 **on its passage.”.**

10
