

House Bill 3630

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES (at the request of House Interim Committee on Consumer Protection)

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 **as introduced**.

Imposes duties and restrictions on foreclosure consultants. Requires that provision of foreclosure consulting services to homeowners be pursuant to written contract. Makes violation of foreclosure consulting laws unfair trade practice. Makes violation of foreclosure consulting laws criminal offense with maximum penalty of one year's imprisonment, \$10,000 fine, or both. Creates private cause of action for damages arising from violation of foreclosure consulting laws. Applies to agreements for foreclosure services homeowner enters into 90 or more days after effective date of Act.

Imposes duties and restrictions on equity purchasers. Requires that conveyance of homeowner equity in residence in foreclosure be pursuant to written contract. Makes violation of equity conveyance laws unlawful practice. Makes violation of equity conveyance laws criminal offense with maximum penalty of one year's imprisonment, \$10,000 fine, or both. Applies to equity conveyance agreements equity seller enters into seven or more days after effective date of Act.

Requires trustee to provide grantor of residential trust deed with toll-free telephone access to certain loan information and consultant services. Makes violation subject to civil penalty, not to exceed \$500. Applies to trust deeds created on or after effective date of Act.

Requires trustee to send grantor of residential trust deed notice of pending foreclosure and possible ways to avoid foreclosure at or before time trustee sends grantor notice of sale. Makes violation subject to civil penalty, not to exceed \$500. Applies to residential trust deed properties for which trustee sends notice of sale 90 or more days after effective date of Act.

Requires Department of Consumer and Business Services to adopt rules specifying statewide telephone contact number and website address where grantors of residential trust deeds facing foreclosure may find possible sources of information and assistance.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to interests in residential real properties; creating new provisions; amending ORS 646.607
3 and 646.608; and declaring an emergency.

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

5 **SECTION 1. Sections 2 to 6 and 10 to 15 of this 2008 Act may be cited as the Mortgage**
6 **Rescue Fraud Protection Act.**

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

8 (1) **"Default" means having one or more homeowner obligations in arrears to an extent**
9 **that a notice of default could properly be recorded against the residence.**

10 (2) **"Family" means a spouse, domestic partner, parent, stepparent, grandparent, child,**
11 **stepchild, grandchild, sibling, aunt, uncle, cousin or in-law.**

12 (3) **"Foreclosure consultant," except as provided in section 3 of this 2008 Act, means a**
13 **person that directly or through association with another makes a solicitation, representation**
14 **or offer to a homeowner to perform, for compensation or with the intent to be compensated,**
15 **a service that the solicitation, representation or offer indicates will accomplish one or more**
16 **of the following:**

17 (a) **Prevent, postpone or stop a foreclosure sale.**

18 (b) **Obtain a forbearance from a beneficiary or mortgagee.**

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

2 (d) Obtain an extension of the period within which the homeowner may reinstate the
3 homeowner's obligation.

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

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

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

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

9 (g) Avoid or ameliorate an impairment of the homeowner's credit resulting from a re-
10 corded notice of default or foreclosure.

11 (4) "Foreclosure consulting contract" mean an agreement between a foreclosure con-
12 sultant and a homeowner for the provision of services by a foreclosure consultant in regard
13 to a residence in foreclosure or in default.

14 (5) "Homeowner" means the record owner of a residence.

15 (6) "Residence in foreclosure" means residential real property:

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

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

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

19 **SECTION 3.** The following are not foreclosure consultants for purposes of sections 2 to
20 6 of this 2008 Act:

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

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

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

29 (4) A subsidiary, affiliate or agent of a person described in subsection (3) of this section,
30 if performing business services within the scope of the person's authority or license as the
31 person's subsidiary, affiliate or agent.

32 (5) The judgment creditor of a homeowner, if the creditor's claim accrued before the
33 trustee sent the creditor a notice of sale under ORS 86.740.

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

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

39 (8) A real estate licensee under ORS 696.022 or an escrow agent licensed under ORS
40 696.511, if acting within the scope of that license and provided that any resulting transfer of
41 interest by a homeowner occurs after a settlement conference as defined in section 10 of this
42 2008 Act.

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

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

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

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

4 (10) A creditors' committee, trustee or debtor in possession participating in a proceeding
5 under the jurisdiction of the United States Bankruptcy Court.

6 (11) A person that is a member of the homeowner's family or is owned or controlled by
7 a member of the homeowner's family.

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

12 (a) Be written in a language that is spoken by the homeowner and that was used in dis-
13 cussions between the homeowner and foreclosure consultant to describe the foreclosure
14 consultant's services or to negotiate the contract and, except as provided in paragraph (f)
15 of this subsection, be printed in at least 12-point type.

16 (b) Fully disclose the nature and extent of the services the foreclosure consultant is to
17 provide.

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

20 (d) Be dated and personally signed by the homeowner and the foreclosure consultant.

21 (e) Contain on the first page the name of the foreclosure consultant and an address to
22 which a notice of cancellation may be mailed.

23 (f) Contain, in immediate proximity to the space reserved for the homeowner's signature,
24 a notice in substantially the following form and printed in at least 14-point boldfaced type:

25 _____

26 **NOTICE REQUIRED BY OREGON LAW**

27
28
29 **THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF**
30 **YOUR HOME. YOU SHOULD CONTACT AN ATTORNEY OR OTHER PROFESSIONAL AD-**
31 **VISOR BEFORE SIGNING.**

32
33 **YOU MAY CANCEL THIS CONTRACT AT ANY TIME.**

34
35 **If you cancel, you must repay any money spent on your behalf under this contract. You have**
36 **60 days to repay the money. You must also pay any interest allowed by this contract, which**
37 **may not exceed nine percent per year.**

38
39 _____ (name of foreclosure consultant) or any person working with

40 _____ (name of foreclosure consultant) CANNOT ask you to sign or have
41 you sign any lien, mortgage or deed that transfers an interest in your home or property to

42 _____ (name of foreclosure consultant) or any person working with

43 _____ (name of foreclosure consultant).

44
45 _____ (name of foreclosure consultant) or any person working with

1 _____ (name of foreclosure consultant) CANNOT guarantee you that they
2 will be able to refinance your home or arrange for you to keep your home.

3
4 The law requires that this contract contain the entire agreement. You should not rely on
5 any other written or oral agreement or promise.

6 _____
7
8 (2) A foreclosure consulting contract provision is void if the provision provides for the
9 homeowner to:

- 10 (a) Waive any rights of the homeowner under sections 2 to 6 of this 2008 Act;
- 11 (b) Consent to jurisdiction for litigation in a state other than Oregon;
- 12 (c) Consent to a choice of laws provision that applies the laws of a state other than
13 Oregon;
- 14 (d) Consent to venue in a county other than the county in which the residence in fore-
15 closure or default is located; or
- 16 (e) Pay any costs or fees incurred by the foreclosure consultant to enforce the contract,
17 other than court costs and filing fees incurred in a successful circuit court action.

18 **SECTION 5.** (1) In addition to any other cancellation or rescission right, a homeowner
19 may cancel a foreclosure consulting contract as provided under this section at any time.

20 (2) Cancellation under this section occurs when the homeowner gives written notice of
21 cancellation to the foreclosure consultant:

- 22 (a) At a physical address specified in the foreclosure consulting contract; or
- 23 (b) At a facsimile number or electronic mail address specified in the foreclosure con-
24 sulting contract.

25 (3)(a) If the homeowner gives written notice of cancellation under this section by mail,
26 the notice is effective when deposited in the United States mail with the proper address and
27 postage.

28 (b) If the homeowner gives written notice of cancellation under this section by facsimile
29 number or electronic mail, the notice is effective upon receipt. Proof of a transmission by
30 the homeowner to the facsimile number or electronic mail address specified in the foreclo-
31 sure consulting contract creates a rebuttable presumption that the foreclosure consultant
32 received the notice at the time of the transmission.

33 (4) A homeowner who cancels a foreclosure consulting contract under this section shall,
34 no later than 60 days after the cancellation is effective, repay any moneys paid or advanced
35 under the contract by or on behalf of the foreclosure consultant. The homeowner shall also
36 pay any interest allowed by the foreclosure consulting contract, not to exceed nine percent
37 per year.

38 (5) Failure of the homeowner to repay moneys as provided in subsection (4) of this sec-
39 tion does not invalidate the cancellation of the foreclosure consulting contract.

40 (6) When both parties have signed the foreclosure consulting contract, the foreclosure
41 consultant shall immediately provide the homeowner with a signed and dated copy of the
42 contract and a cancellation form. The cancellation form must:

- 43 (a) Be in duplicate;
- 44 (b) Be on a separate sheet of paper attached to the foreclosure consulting contract;
- 45 (c) Be easily detachable; and

1 (d) Contain a statement in substantially the following form and printed in at least
2 14-point boldfaced type:

3 _____
4
5 **HOW TO CANCEL**

6
7 _____ (Date of Contract)

8
9 **YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY AT ANY TIME.**

10
11 **To cancel the contract, mail or deliver a signed and dated copy of this Notice of Cancellation,**
12 **or write something saying you want to cancel, and send it to _____ (name**
13 **of foreclosure consultant) at _____ (address of foreclosure consultant).**
14 **You can cancel by fax or e-mail. Send any cancellation by fax to _____**
15 **or any cancellation by e-mail to _____.**

16
17 **If you cancel, you must repay any money spent on your behalf under this contract. You have**
18 **60 days to repay the money. Your repayment must include any interest allowed under the**
19 **contract, which may not exceed nine percent per year.**

20
21 **NOTICE OF CANCELLATION**

22
23 **TO: _____ (name of foreclosure consultant)**

24
25 _____ (address, fax or e-mail of foreclosure consultant)

26
27 **I cancel this contract.**

28
29 **Date: _____**

30
31 **Your (homeowner's) signature: _____**
32 _____

33
34 **(7) A written notice of cancellation under this section is sufficient, however expressed,**
35 **if the notice indicates the intent of the homeowner to cancel the foreclosure consulting**
36 **contract. The contract may not require the homeowner to use the notice of cancellation**
37 **form set forth in subsection (6) of this section.**

38 **SECTION 6. A foreclosure consultant may not:**

39 **(1) Claim, demand, charge, collect or receive any compensation from a homeowner unless**
40 **the foreclosure consultant has fully performed each service the foreclosure consultant con-**
41 **tracted to perform for the homeowner.**

42 **(2) Claim, demand, charge, collect or receive interest or other compensation that exceeds**
43 **nine percent per year on any loan by the foreclosure consultant to the homeowner or on any**
44 **moneys paid or advanced to the homeowner under the foreclosure consulting contract.**

45 **(3) Take a wage assignment, lien on real or personal property or other security for the**

1 **payment of compensation.**

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

5 (5) **Acquire an interest in a residence in foreclosure or default transferred by a home-**
 6 **owner with whom the foreclosure consultant has contracted, whether directly, indirectly or**
 7 **through a subsidiary, affiliate or related entity in which the foreclosure consultant or a**
 8 **member of the foreclosure consultant’s family is a primary member, shareholder or owner.**

9 (6) **Acquire an interest in a residence in foreclosure or default from a third party for**
 10 **facilitating or arranging for entry into an equity conveyance as defined in section 10 of this**
 11 **2008 Act by a homeowner with whom the foreclosure consultant has contracted, whether**
 12 **directly, indirectly or through a subsidiary, affiliate or related entity in which the foreclosure**
 13 **consultant or a member of the foreclosure consultant’s family is a primary member, share-**
 14 **holder or owner.**

15 (7) **Take a power of attorney from a homeowner except for the purpose of obtaining or**
 16 **inspecting documents.**

17 (8) **Induce or attempt to induce any homeowner to enter into a foreclosure consulting**
 18 **contract that does not comply in all respects with sections 2 to 6 of this 2008 Act.**

19 **SECTION 7.** (1) **As used in this section, “homeowner” has the meaning given that term**
 20 **in section 2 of this 2008 Act.**

21 (2) **In addition to any action by the Attorney General under ORS 646.608 or other cause**
 22 **of action, a homeowner may bring an action for damages incurred by the homeowner re-**
 23 **sulting from a violation of sections 2 to 6 of this 2008 Act.**

24 (3) **If a court finds that a defendant in an action under this section committed a violation**
 25 **of sections 2 to 6 of this 2008 Act knowingly, in addition to any award of damages for other**
 26 **violations of sections 2 to 6 of this 2008 Act, the court shall award the homeowner treble the**
 27 **amount of the actual damages sustained by the homeowner as a result of the knowing vio-**
 28 **lation.**

29 (4) **The court may award a homeowner prevailing in an action under this section rea-**
 30 **sonable attorney fees, costs and expenses. If a court finds that a homeowner brought an**
 31 **action under this section in bad faith or solely for purposes of harassment, the court may**
 32 **award a prevailing defendant reasonable attorney fees.**

33 (5) **An action under this section must be commenced within six years.**

34 **SECTION 8.** ORS 646.608, as operative until July 1, 2008, is amended to read:

35 (1) **A person engages in an unlawful practice when in the course of the person’s business, vo-**
 36 **cation or occupation the person does any of the following:**

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

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

40 (c) **Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-**
 41 **ciation with, or certification by, another.**

42 (d) **Uses deceptive representations or designations of geographic origin in connection with real**
 43 **estate, goods or services.**

44 (e) **Represents that real estate, goods or services have sponsorship, approval, characteristics,**
 45 **ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a**

1 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

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

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

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

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

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

13 (k) Makes false or misleading representations concerning credit availability or the nature of the
14 transaction or obligation incurred.

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

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

20 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
21 vides the information required under ORS 646.611.

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

28 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
29 cize a product, business or service.

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

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

33 (s) Makes false or misleading representations of fact concerning the offering price of, or the
34 person's cost for real estate, goods or services.

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

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

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

40 (w) Manufactures mercury fever thermometers.

41 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
42 law, or is:

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

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

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

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

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

10 (bb) Violates ORS 646A.070 (1).

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

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

13 (ee) Violates ORS 646.883 or 646.885.

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

15 (gg) Violates ORS 646.569.

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

17 (ii) Violates ORS 646A.360.

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

19 (kk) Violates ORS 646.563.

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

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

23 (nn) Violates ORS 646A.210 or 646A.214.

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

25 (pp) Violates ORS 646A.254.

26 (qq) Violates ORS 646A.095.

27 (rr) Violates ORS 822.046.

28 (ss) Violates ORS 128.001.

29 (tt) Violates ORS 646.649 (2) to (4).

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

31 (vv) Violates ORS 87.686.

32 (ww) Violates ORS 646.651.

33 (xx) Violates ORS 646A.362.

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

35 (zz) Violates ORS 180.440 (1).

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

37 (bbb) Violates ORS 87.007 (2) or (3).

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

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

40 (eee) Violates ORS 646A.365.

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

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

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

44 **(iii) Violates a provision of sections 2 to 6 of this 2008 Act.**

45 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-

1 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

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

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

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

10 **SECTION 9.** ORS 646.608 is amended to read:

11 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
12 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

34 (k) Makes false or misleading representations concerning credit availability or the nature of the
35 transaction or obligation incurred.

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

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

41 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
42 vides the information required under ORS 646.611.

43 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
44 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
45 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or

1 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
 2 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
 3 tomer enters into the transaction.

4 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
 5 cize a product, business or service.

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

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

9 (s) Makes false or misleading representations of fact concerning the offering price of, or the
 10 person's cost for real estate, goods or services.

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

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

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

16 (w) Manufactures mercury fever thermometers.

17 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
 18 law, or is:

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

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

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

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

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

31 (bb) Violates ORS 646A.070 (1).

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

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

34 (ee) Violates ORS 646.883 or 646.885.

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

36 (gg) Violates ORS 646.569.

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

38 (ii) Violates ORS 646A.360.

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

40 (kk) Violates ORS 646.563.

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

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

44 (nn) Violates ORS 646A.210 or 646A.214.

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

- 1 (pp) Violates ORS 646A.254.
- 2 (qq) Violates ORS 646A.095.
- 3 (rr) Violates ORS 822.046.
- 4 (ss) Violates ORS 128.001.
- 5 (tt) Violates ORS 646.649 (2) to (4).
- 6 (uu) Violates ORS 646A.090 (2) to (4).
- 7 (vv) Violates ORS 87.686.
- 8 (ww) Violates ORS 646.651.
- 9 (xx) Violates ORS 646A.362.
- 10 (yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 11 (zz) Violates ORS 180.440 (1).
- 12 (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 13 (bbb) Violates ORS 87.007 (2) or (3).
- 14 (ccc) Violates ORS 92.405 (1), (2) or (3).
- 15 (ddd) Engages in an unlawful practice under ORS 646.648.
- 16 (eee) Violates ORS 646A.365.
- 17 (fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 18 (ggg) Sells a gift card in violation of ORS 646A.276.
- 19 (hhh) Violates ORS 646A.102, 646A.106 or 646A.108.
- 20 (iii) Violates ORS 646A.430 to 646A.450.

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

22 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
23 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

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

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

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

32 **SECTION 10. As used in sections 10 to 15 of this 2008 Act:**

33 (1) **“Bona fide purchaser” means a person that purchases a residential real property from**
34 **an equity purchaser:**

35 (a) **For valuable consideration;**

36 (b) **In good faith;**

37 (c) **Without knowledge of any continuing right to, or equity in, the property by the equity**
38 **seller; and**

39 (d) **Without knowledge of any violation of sections 10 to 15 of this 2008 Act by the equity**
40 **purchaser regarding the property.**

41 (2) **“Business day” does not mean a Saturday or a legal holiday described in ORS 187.010**
42 **or 187.020.**

43 (3) **“Equity conveyance” means a transaction that involves:**

44 (a) **The transfer of an interest in a residence in foreclosure by an equity seller to an eq-**
45 **uity purchaser, or to another person acting in association with the equity purchaser, that**

1 allows the equity purchaser or other person to obtain legal or equitable title to all or part
 2 of the residential real property; and

3 (b) A subsequent conveyance, or agreement for a subsequent conveyance, of an interest
 4 in the residential real property from the equity purchaser or other person to the equity seller
 5 to allow the equity seller to possess the property during, or after termination of, the fore-
 6 closure process.

7 (4) "Equity conveyance contract" means a written contract between an equity seller and
 8 an equity purchaser that contains an agreement for an equity conveyance.

9 (5) "Equity purchaser," except as provided in section 11 of this 2008 Act, means a person
 10 that enters into an equity conveyance that transfers to the person, or to another acting in
 11 association with the person, an interest in residential real property sufficient to allow ob-
 12 taining legal or equitable title to all or part of the property.

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

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

20 (8) "Resale" means a sale by an equity purchaser to a bona fide purchaser of residential
 21 real property that is the subject of an equity conveyance contract.

22 (9) "Resale price" means the gross sale price of a residential real property upon resale.

23 (10) "Residence in foreclosure" means residential real property:

- 24 (a) Consisting of one to four single-family dwelling units;
- 25 (b) On which the owner occupies a dwelling unit; and
- 26 (c) Against which a notice of default has been recorded.

27 (11) "Settlement agent" means a provider of settlement services who:

- 28 (a) Is a licensed escrow agent, title insurance agent or attorney; and
- 29 (b) Is not the equity purchaser or an employee or associate of the equity purchaser.

30 (12) "Settlement conference" means an in-person meeting between an equity seller and
 31 a settlement agent:

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

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

36 **SECTION 11.** The following are not equity purchasers for purposes of sections 10 to 15
 37 of this 2008 Act:

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

39 (2) A creditors' committee, trustee or debtor in possession participating in a proceeding
 40 under the jurisdiction of the United States Bankruptcy Court.

41 (3) A family or living trust in which the equity seller is the beneficiary or a member of
 42 the beneficiary.

43 **SECTION 12.** (1) A written contract is required for every equity conveyance. An equity
 44 purchaser shall provide an equity seller with a copy of the equity conveyance contract at
 45 least 24 hours before the equity seller signs the contract. The equity conveyance contract

1 **must:**

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

6 (b) Contain the entire agreement of the parties;

7 (c) Be dated and personally signed by the equity seller and the equity purchaser and
8 witnessed by a notary public;

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

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

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

15 (B) The address of the residence in foreclosure;

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

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

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

22 (F) A description of any services the equity purchaser will perform for the equity seller
23 before or after the transfer of interest;

24 (G) A complete description:

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

29 (ii) Of any provisions for eviction or removal of the equity seller in the case of late pay-
30 ment;

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

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

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

41 **NOTICE REQUIRED BY OREGON LAW**

42
43 **THIS IS AN IMPORTANT LEGAL CONTRACT.**
44 **YOU ARE TRANSFERRING YOUR DEED OR TITLE**
45 **AND THIS COULD RESULT IN THE PERMANENT**

**LOSS OF YOUR HOME. CONTACT AN ATTORNEY
OR OTHER PROFESSIONAL ADVISOR BEFORE SIGNING.**

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

If you cancel, you must repay money spent on your behalf under this contract. You have 60 days to repay the money. You must also pay any interest allowed by this contract, which may not exceed nine percent per year.

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

(2) An equity conveyance contract provision is void if the provision provides for an equity seller to:

- (a) Waive any rights of the equity seller under sections 10 to 15 of this 2008 Act;**
- (b) Consent to jurisdiction for litigation in a state other than Oregon;**
- (c) Consent to a choice of laws provision that applies the laws of a state other than Oregon;**
- (d) Consent to venue in a county other than the county in which the residential real property is located; or**
- (e) Pay any costs or fees that the equity purchaser or a person acting in association with the equity purchaser incurred to enforce the contract, other than court costs and filing fees incurred in a successful circuit court action.**

(3) An equity conveyance may not be carried out using a power of attorney from the equity seller.

SECTION 13. (1) In addition to any other cancellation or rescission right, an equity seller may cancel an equity conveyance contract as provided under this section before the earlier of:

- (a) Midnight of the third business day after the equity seller signs a document purporting to transfer an interest in the residence in foreclosure; or**
- (b) A foreclosure sale of the residence in foreclosure.**

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

- (a) Delivery to the physical address of the equity purchaser or settlement agent; or**
- (b) Actual receipt by the equity purchaser or settlement agent.**

(3) If the equity seller gives a written notice of cancellation under this section by facsimile number or electronic mail, the notice is effective upon the earlier of:

- (a) Delivery to the facsimile number or electronic mail address of the equity purchaser or the settlement agent; or**
- (b) Actual receipt by the equity purchaser or settlement agent.**

(4) Proof of a transmission by the equity seller to the facsimile number or electronic mail address of the equity purchaser or of the settlement agent creates a rebuttable presumption that the notice of cancellation was delivered to the facsimile number or electronic mail address of the equity purchaser or settlement agent at the time of transmission.

1 (5) An equity seller who cancels an equity conveyance contract under this section shall,
2 no later than 60 days after the cancellation is effective, repay any moneys paid or advanced
3 under the contract by or on behalf of the equity purchaser. The equity seller shall also pay
4 any interest stated in the equity conveyance contract, not to exceed nine percent per year.

5 (6) Failure of the equity seller to repay moneys as provided in subsection (5) of this sec-
6 tion does not invalidate the cancellation of the equity conveyance contract.

7 (7) When both parties have signed the equity conveyance contract, the equity purchaser
8 shall immediately provide the equity seller with a signed and dated copy of the contract and
9 a cancellation form. The cancellation form must:

10 (a) Be in duplicate;

11 (b) Be on a separate sheet of paper attached to the contract;

12 (c) Be easily detachable; and

13 (d) Contain a statement in substantially the following form and be printed in at least
14 14-point boldfaced type:

15 _____
16
17 **HOW TO CANCEL**

18
19 **IF YOU DECIDE NOT TO TRANSFER YOUR DEED OR TITLE, YOU MAY CANCEL THIS**
20 **CONTRACT.**

21
22 **YOU MUST DELIVER THE NOTICE OF CANCELLATION WITHIN THREE (3) BUSINESS**
23 **DAYS OF WHEN YOU SIGNED THE CONTRACT.**

24
25 **Date of Contract:** _____

26
27 **To cancel, you must deliver a notice of cancellation before midnight on:** _____ **(date).**

28
29 **To cancel the contract, mail or deliver a signed and dated copy of this Notice of Cancellation,**
30 **or write something saying you want to cancel, and send it to** _____ **(name**
31 **of settlement agent) at** _____ **(address of settlement agent). You can**
32 **cancel by fax or e-mail. Send any cancellation by fax to** _____ **or any**
33 **cancellation by e-mail to** _____.

34
35 **If you cancel, you must repay any money spent on your behalf under this contract. You have**
36 **60 days to repay the money. Your repayment must include any interest allowed under the**
37 **contract, which may not exceed nine percent per year.**

38
39 **NOTICE OF CANCELLATION**

40
41 **TO:** _____ **(name of settlement agent)**

42
43 _____ **(address, fax and e-mail of settlement agent)**

44
45 **I cancel the contract. Please return all signed documents to me.**

1 **Date:** _____

2
3 **Your (homeowner's) signature:** _____

4
5
6 **(8) The period during which the equity seller may cancel the equity conveyance contract**
7 **does not commence until the equity purchaser has complied with subsection (7) of this sec-**
8 **tion.**

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

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

16 **SECTION 14. (1) An equity purchaser shall:**

17 **(a) Prior to providing a copy of the equity conveyance contract to the equity seller under**
18 **section 12 (1) of this 2008 Act:**

19 **(A) Verify and be able to demonstrate that the equity seller has or will have a reasonable**
20 **ability to pay for the subsequent reconveyance of the residential real property interest back**
21 **to the equity seller as provided under the equity conveyance contract; or**

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

26 **(b) Arrange for the equity seller and the settlement agent to complete a settlement**
27 **conference before the equity seller transfers any interest under the equity conveyance con-**
28 **tract.**

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

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

34 **(e) If a residential real property is resold within 24 months after the equity seller enters**
35 **into an equity conveyance contract, pay the equity seller cash or consideration in an amount**
36 **equal to at least 82 percent of the net proceeds from the resale no later than 15 days after**
37 **the receipt of cash or consideration from or on behalf of the purchasers of the property.**

38 **(f) Timely record the memorandum of agreement required by section 15 of this 2008 Act.**

39 **(2) An equity purchaser may not:**

40 **(a) As part of an equity conveyance contract, enter into repurchase or lease terms that**
41 **are commercially unreasonable or unfair to an equity seller, or engage in any other unfair**
42 **conduct.**

43 **(b) Represent, directly or indirectly, that the equity purchaser is acting as a financial**
44 **advisor or foreclosure consultant to the equity seller or otherwise is acting on behalf of the**
45 **equity seller.**

1 (c) Make a false representation regarding the equity purchaser's possession of profes-
2 sional credentials that indicate knowledge or expertise regarding real property transactions.

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

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

9 (A) The value of a residence in foreclosure;

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

11 (C) An equity conveyance contract term; or

12 (D) The equity seller's rights or obligations incident to or arising out of the equity
13 conveyance.

14 (f) Before the equity seller's right to cancel an equity conveyance contract has expired:

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

17 (B) Transfer or purport to transfer any interest in the residential real property to any
18 third party; or

19 (C) Encumber or purport to encumber any interest in the residential real property with
20 any third party.

21 **SECTION 15.** (1) For purposes of determining whether an equity purchaser has violated
22 section 14 (1)(a) of this 2008 Act, there is a rebuttable presumption that:

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

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

31 (2) If a property is resold within 24 months after an equity seller enters into an equity
32 conveyance contract, at the time of making payment to the equity seller under section 14
33 (1)(e) of this 2008 Act, the equity purchaser shall provide the equity seller with a detailed
34 accounting of the basis for the payment amount. The accounting shall include detailed doc-
35 umentation of expenses and other consideration paid by the equity purchaser and deducted
36 from the resale price.

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

39 (a) The rights of the parties to an equity conveyance contract or a memorandum of
40 agreement; or

41 (b) Any cancellation of the equity conveyance contract.

42 (4) Sections 10 to 15 of this 2008 Act do not impose a duty on a property purchaser, title
43 insurer or title insurance producer regarding the application of the proceeds of a resale of
44 property by an equity purchaser.

45 (5) At the time of presenting an equity conveyance for recording, the equity purchaser

1 shall present a memorandum of agreement for recording in the county where the residential
2 real property is located. The memorandum of agreement must be signed by the equity pur-
3 chaser and the equity seller, witnessed by a notary and in substantially the following form:

4 _____

5
6 **MEMORANDUM OF AGREEMENT**

7
8 **DATED:** _____

9
10 **SELLER NAME (print):** _____

11
12 **PURCHASER NAME (print):** _____

13
14 **EXPIRATION DATE:** _____, unless otherwise extended by written agreement between
15 the parties.

16
17 **PROPERTY ADDRESS: (legal description)** _____

18
19 **TERMS OF AGREEMENT:** _____

20
21 **TRUE AND ACTUAL CONSIDERATION IS:** _____

22
23 **SELLER SIGNATURE:** _____

24
25 **PURCHASER SIGNATURE:** _____

26 _____

27
28 **SECTION 16. Sections 10 to 15 of this 2008 Act do not preclude an equity seller from:**

29 **(1) Seeking to have a transfer of interest under an equity conveyance declared to be an**
30 **equitable mortgage; or**

31 **(2) Asserting any claim against an equity purchaser for an equitable mortgage.**

32 **SECTION 17. ORS 646.607 is amended to read:**

33 646.607. A person engages in an unlawful practice when in the course of the person's business,
34 vocation or occupation the person:

35 (1) Employs any unconscionable tactic in connection with the sale, rental or other disposition
36 of real estate, goods or services, or collection or enforcement of an obligation;

37 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and upon
38 request of the customer, fails to refund any money that has been received from the customer that
39 was for the purchase of the undelivered real estate, goods or services and that is not retained by
40 the seller pursuant to any right, claim or defense asserted in good faith. This subsection does not
41 create a warranty obligation and does not apply to a dispute over the quality of real estate, goods
42 or services delivered to a customer; [or]

43 (3) Violates ORS 401.107 (1) to (4); or

44 (4) Violates a provision of sections 10 to 15 of this 2008 Act.

45 **SECTION 18. Violation of a provision of sections 2 to 6 or 10 to 15 of this 2008 Act is a**

1 misdemeanor punishable by not more than one year’s imprisonment, a fine of not more than
2 \$10,000, or both.

3 **SECTION 19.** Sections 20 and 21 of this 2008 Act are added to and made a part of ORS
4 86.705 to 86.795.

5 **SECTION 20.** The trustee of a residential trust deed shall maintain a toll-free telephone
6 number during regular business hours that will provide the grantor of the trust deed with
7 access to:

8 (1) Details regarding the grantor’s loan delinquency and repayment information; and

9 (2) Person-to-person consultation regarding the grantor’s payment and loan term nego-
10 tiation options.

11 **SECTION 21.** (1) If the trustee of a residential trust deed records a notice of default for
12 the residential real property, on or before the date that the trustee serves or mails the no-
13 tice of sale required under ORS 86.740, the trustee shall give a notice to the grantor of the
14 residential trust deed by first class mail with return receipt requested. Subject to any rules
15 adopted under subsection (2) of this section, the notice must be in substantially the following
16 form and printed in at least 14-point type:

17 _____

18
19 **NOTICE:**

20 **YOU ARE IN DANGER OF LOSING**
21 **YOUR PROPERTY IF YOU DO NOT**
22 **TAKE ACTION IMMEDIATELY**

23
24 **This notice is about your mortgage loan on your property at _____ (ad-
25 dress).**

26
27 **Your lender has decided to sell this property because the money due on your mortgage loan
28 has not been paid on time or because you have failed to fulfill some other obligation to your
29 lender. This is sometimes called “foreclosure.”**

30
31 **In order to bring your mortgage loan current, the amount you need to pay as of
32 _____ (date) is \$_____.**

33
34 **By law, your lender has to provide you with details about the amount you owe, if you ask.
35 If you want these details, you can call your lender or the trustee toll-free at _____.
36 You may also get these details by sending a request by certified mail
37 to: _____.**

38
39 **THIS IS WHEN AND WHERE**
40 **YOUR PROPERTY WILL BE SOLD**
41 **IF YOU DO NOT TAKE ACTION:**

42
43 **Date and time: _____, 2_____ at _____**

44
45 **Place: _____**

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

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

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

WARNING: You may get offers from people who tell you they can help you keep your property. 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 trustee is to insert in completing the notice.

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

(a) The amount of payment that is needed to bring the mortgage loan current as of the date the trustee mails the notice; and

(b) A telephone number that is toll-free from the location of the residential property that will provide the grantor with information about the amount owed, including but not limited to information of the type described in section 20 (1) of this 2008 Act.

1 (4) If the notice required by subsection (1) of this section is mailed in the same envelope
2 as other materials, the trustee shall place the notice required by subsection (1) of this sec-
3 tion on top of all other materials in the envelope.

4 (5) If the trustee knows that the grantor is not the occupant of the residential real
5 property, in addition to sending the notice required by subsection (1) of this section to the
6 grantor, the trustee shall send a copy of the notice to the occupant of the property by first
7 class mail with return receipt requested.

8 **SECTION 22.** The Department of Consumer and Business Services may assess a civil
9 penalty, not to exceed \$500, for a violation of section 20 or 21 of this 2008 Act.

10 **SECTION 23.** (1) Sections 2 to 6 of this 2008 Act apply to agreements for services by a
11 foreclosure consultant entered into by homeowners 90 or more days after the effective date
12 of this 2008 Act.

13 (2) Sections 10 to 15 of this 2008 Act apply to agreements for equity conveyances entered
14 into by equity sellers seven or more days after the effective date of this 2008 Act.

15 (3) Section 20 of this 2008 Act applies to residential trust deeds created on or after the
16 effective date of this 2008 Act.

17 (4) Section 21 of this 2008 Act applies to residential trust deed properties for which a
18 notice of sale under ORS 86.740 is sent by the trustee 90 or more days after the effective date
19 of this 2008 Act.

20 **SECTION 24.** This 2008 Act being necessary for the immediate preservation of the public
21 peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect
22 on its passage.
23