

B-Engrossed
House Bill 3004

Ordered by the House June 2
Including House Amendments dated April 30 and June 2

Sponsored by Representatives CLEM, C EDWARDS (at the request of Jane Cummins)

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.

Provides that sale by trustee of foreclosed property or sale of residential property after judicial foreclosure precludes further action against mortgagor, *[or] grantor* **or other specified obligor** for deficiencies in amount secured by mortgage or trust deed. Creates exceptions.

Specifies to whom trustee must send amended notice of sale. Specifies means by which trustee must give notice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to sales of foreclosed property; creating new provisions; amending ORS 86.755, 86.770 and
3 88.070; and declaring an emergency.

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

5 **SECTION 1.** ORS 86.755 is amended to read:

6 86.755. (1) The **trustee shall hold the trustee's** sale *[shall be held]* on the date and at the time
7 and place designated in the notice of sale. The trustee may sell the property in one parcel or in
8 separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash. Any
9 person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the
10 trustee's sale. The attorney for the trustee, or *[any agent designated by]* **an agent that** the trustee
11 or the attorney **designates**, may conduct the sale and act in the sale as the **trustee's** auctioneer
12 *[of the trustee]*.

13 (2) The trustee or the attorney for the trustee, or *[any agent designated by]* **an agent that** the
14 trustee or the attorney conducting the sale **designates**, may postpone the sale for one or more pe-
15 riods totaling not more than 180 days from the original sale date, giving notice of each adjournment
16 by public proclamation made at the time and place set for sale. *[The proclamation may be made by]*
17 The trustee, the attorney, *[or any agent designated by]* **or an agent that** the trustee or the attorney
18 **designates may make the proclamation.**

19 (3) The purchaser shall pay at the time of sale the price bid, and, within 10 days following
20 payment, the trustee shall execute and deliver the trustee's deed to the purchaser.

21 (4) The trustee's deed shall convey to the purchaser the interest in the property *[which]* **that**
22 the grantor had, or had the power to convey, at the time *[of the execution by the grantor of]* **the**
23 **grantor executed** the trust deed, together with any interest the grantor or the grantor's successors
24 in interest acquire after the execution of the trust deed.

25 (5) The purchaser at the trustee's sale shall be entitled to possession of the property on the 10th
26 day following the sale, and any persons remaining in possession after that day under any interest,

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 except one prior to the trust deed or created voluntarily by the grantor or a successor of the
2 grantor, shall be deemed to be tenants at sufferance. All persons not holding under an interest prior
3 to the trust deed may be removed from possession by following the procedures set out in ORS
4 105.105 to 105.168 or other applicable judicial procedure, provided that a person holding under an
5 interest created voluntarily by the grantor or a successor of the grantor must first receive 30 days'
6 written notice of the intent to remove that person served no earlier than 30 days before the date
7 first set for the sale. Notices under this subsection shall be served by first class mail. "First class
8 mail" for purposes of this section does not include certified or registered mail, or any other form
9 of mail which may delay or hinder actual delivery of mail to the addressee.

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

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

18 **(A) By registered or certified mail to:**

19 (i) The address provided by each person who was present at the time and place set for the sale
20 *[which]* **that** was stayed[.]; **and**

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

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

28 (7) The amended notice of sale *[shall]* **must:**

29 (a) Be given at least 20 days prior to the amended date of sale;

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

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

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

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

36 *[(7)]* **(8)** If the publication of the notice of sale was not completed *[prior to]* **before** the date the
37 foreclosure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any
38 other lawful reason, after release from the stay, in addition to complying with the provisions of
39 *[subsection (6)]* **subsections (6) and (7)** of this section, the trustee shall complete the publication
40 by publishing an amended notice of sale *[which]* **that** states that the notice has been amended fol-
41 lowing release from the stay[, *and which*] **and that** contains the amended date of sale. The amended
42 notice *[shall]* **must** be published in a newspaper of general circulation in each of the counties in
43 which the property is situated once a week for four successive weeks, except that the required
44 number of publications *[shall]* **must** be reduced by the number of publications that were completed
45 *[prior to]* **before** the effective date of the stay. The last publication *[shall]* **must** be made more than

1 20 days [prior to] **before** the date the trustee conducts the sale.

2 **SECTION 2.** ORS 86.770 is amended to read:

3 86.770. [(1) A sale made by a trustee under ORS 86.705 to 86.795 shall foreclose and terminate all
4 interest in the property covered by the trust deed of all persons to whom notice is given under ORS
5 86.740 and 86.750 and of any other person claiming by, through or under such persons, and such per-
6 sons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to
7 give notice to any of these persons shall not affect the validity of the sale as to persons so notified.]

8 [(2) Except as provided in subsection (4) of this section, no other or further action shall be brought,
9 nor judgment entered for any deficiency, against the grantor, or the grantor's successor in interest, if
10 any, on the note, bond, or other obligation secured by the trust deed or against any other person obli-
11 gated on such note, bond or other obligation after a sale is made:]

12 [(a) By a trustee under ORS 86.705 to 86.795; or]

13 [(b) Under a judicial foreclosure of a residential trust deed.]

14 [(3) Notwithstanding ORS 88.070, when there is a judicial foreclosure of a trust deed that is not
15 a residential trust deed, the judgment shall provide that if the sale proceeds are insufficient to satisfy
16 the judgment, execution may issue for any amount by which the unpaid balance of the obligation se-
17 cured by the trust deed exceeds the net sale proceeds payable to the beneficiary.]

18 [(4) Nothing in this section shall preclude an action judicially or nonjudicially foreclosing the same
19 trust deed as to any other property covered thereby, or any other trust deeds, mortgages, security
20 agreements, or other consensual or nonconsensual security interest or liens covering any other real or
21 personal property security for the note, bond or other obligation secured by the trust deed under which
22 a sale has been made or an action against a guarantor to the extent of any remaining deficiency fol-
23 lowing judicial foreclosure. A guarantor of an obligation secured by a residential trust deed shall not
24 have the right to recover any deficiency from the grantor or any successor in interest of the grantor.]

25 **(1) If, under ORS 86.705 to 86.795, a trustee sells property covered by a trust deed, the**
26 **trustee's sale forecloses and terminates the interest in the property that belongs to a person**
27 **entitled to notice of the sale under ORS 86.740 and 86.750 or to a person that claims an in-**
28 **terest by, through or under the person entitled to notice. A person whose interest the trust-**
29 **tee's sale foreclosed and terminated may not redeem the property from the purchaser at the**
30 **trustee's sale. A failure to give notice to a person entitled to notice does not affect the va-**
31 **lidity of the sale as to persons that were notified.**

32 **(2) Except in accordance with subsection (4) of this section, after a trustee's sale under**
33 **ORS 86.705 to 86.795 or after a judicial foreclosure of a residential trust deed, an action for**
34 **a deficiency may not be brought or a judgment entered against the grantor, the grantor's**
35 **successor in interest or another person obligated on:**

36 **(a) The note, bond or other obligation secured by the residential trust deed for the**
37 **property that was subject to the trustee's sale or the foreclosure;**

38 **(b) Any other note, bond or other obligation secured by a residential trust deed for or**
39 **mortgage on the property that was subject to the trustee's sale or the foreclosure when the**
40 **debt, of which the note, bond or other obligation is evidence, is owed to the beneficiary in**
41 **the residential trust deed that was subject to the trustee's sale or the foreclosure; or**

42 **(c) A note, bond or other obligation that is evidence of a debt that the grantor or the**
43 **grantor's successor in interest incurred to finance the unpaid portion of the purchase price**
44 **of the property that was subject to the trustee's sale or the foreclosure.**

45 **(3) Notwithstanding ORS 88.070, in a judicial foreclosure of a trust deed that is not a**

1 residential trust deed the judgment must provide that if the sale proceeds are insufficient
2 to satisfy the judgment, execution may issue for the amount by which the unpaid balance
3 of the obligation secured by the trust deed exceeds the net sale proceeds payable to the
4 beneficiary.

5 (4) This section does not preclude:

6 (a) An action that forecloses, judicially or nonjudicially:

7 (A) Other property covered by the trust deed that is the subject of the foreclosure; or

8 (B) Another trust deed, mortgage, security agreement, consensual or nonconsensual se-
9 curity interest or lien that covers other real or personal property that is also used as secu-
10 rity for the note, bond or other obligation that is secured by the trust deed for the property
11 that was sold.

12 (b) An action against a guarantor for a deficiency that remains after a judicial foreclo-
13 sure.

14 (5) A guarantor of an obligation secured by a residential trust deed may not recover a
15 deficiency from the grantor or a successor in interest of the grantor.

16 **SECTION 3.** ORS 88.070 is amended to read:

17 88.070. When real property is sold pursuant to a judgment foreclosing a mortgage **that was**
18 **given to secure an unpaid portion of the purchase price of the real property** and the proceeds
19 of the sale are not adequate to satisfy the amounts secured by the mortgage, all judgment remedies
20 for collection of the unsatisfied amounts expire when the sale is made. *[if:]*

21 *[(1) The mortgage was given to a seller to secure the unpaid balance of the purchase price of real*
22 *property; or]*

23 *[(2) The mortgage was given after September 13, 1975, to a person other than a seller to secure not*
24 *more than \$50,000 of the unpaid balance of the purchase price of real property used by the purchaser*
25 *as the primary or secondary single family residence of the purchaser.]*

26 **SECTION 4.** (1) The amendments to ORS 86.755 by section 1 this 2009 Act apply to sales
27 that occur on or after the effective date of this 2009 Act.

28 (2) The amendments to ORS 86.770 and 88.070 by sections 2 and 3 of this 2009 Act apply
29 to a trust deed or mortgage or a note, bond or other obligation secured by a trust deed or
30 mortgage that was executed before, on or after the effective date of this 2009 Act.

31 **SECTION 5.** This 2009 Act being necessary for the immediate preservation of the public
32 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
33 on its passage.

34