

HOUSE AMENDMENTS TO A-ENGROSSED HOUSE BILL 3004

By COMMITTEE ON RULES

June 2

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” insert “86.755.”

2 After line 4, insert:

3 “**SECTION 1.** ORS 86.755 is amended to read:

4 “86.755. (1) The **trustee shall hold the trustee’s** sale [*shall be held*] on the date and at the time
5 and place designated in the notice of sale. The trustee may sell the property in one parcel or in
6 separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash. Any
7 person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the
8 trustee’s sale. The attorney for the trustee, or [*any agent designated by*] **an agent that** the trustee
9 or the attorney **designates**, may conduct the sale and act in the sale as the **trustee’s** auctioneer
10 [*of the trustee*].

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

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

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

23 “(5) The purchaser at the trustee’s sale shall be entitled to possession of the property on the
24 10th day following the sale, and any persons remaining in possession after that day under any in-
25 terest, except one prior to the trust deed or created voluntarily by the grantor or a successor of the
26 grantor, shall be deemed to be tenants at sufferance. All persons not holding under an interest prior
27 to the trust deed may be removed from possession by following the procedures set out in ORS
28 105.105 to 105.168 or other applicable judicial procedure, provided that a person holding under an
29 interest created voluntarily by the grantor or a successor of the grantor must first receive 30 days’
30 written notice of the intent to remove that person served no earlier than 30 days before the date
31 first set for the sale. Notices under this subsection shall be served by first class mail. ‘First class
32 mail’ for purposes of this section does not include certified or registered mail, or any other form of
33 mail which may delay or hinder actual delivery of mail to the addressee.

34 “(6)(a) Notwithstanding subsection (2) of this section, except when a beneficiary has participated
35 in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by proceedings

1 in bankruptcy or for any other lawful reason shall, after release from the stay, continue as if unin-
2 terrupted, if within 30 days after release the trustee [gives] **sends** amended notice of sale by regis-
3 tered or certified mail to the last-known address of [those] **the** persons listed in ORS 86.740 and
4 86.750 (1). [and to]

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

7 “(A) **By registered or certified mail to:**

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

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

15 “(B) **By posting a true copy or a link to a true copy of the amended notice of sale on the**
16 **trustee’s Internet website.**

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

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

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

22 “(c) Specify the time and place for sale;

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

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

25 “[~~(7)~~ (8) If the publication of the notice of sale was not completed [prior to] **before** the date the
26 foreclosure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any
27 other lawful reason, after release from the stay, in addition to complying with the provisions of
28 [subsection (6)] **subsections (6) and (7)** of this section, the trustee shall complete the publication
29 by publishing an amended notice of sale [which] **that** states that the notice has been amended fol-
30 lowing release from the stay[, and which] **and that** contains the amended date of sale. The amended
31 notice [shall] **must** be published in a newspaper of general circulation in each of the counties in
32 which the property is situated once a week for four successive weeks, except that the required
33 number of publications [shall] **must** be reduced by the number of publications that were completed
34 [prior to] **before** the effective date of the stay. The last publication [shall] **must** be made more than
35 20 days [prior to] **before** the date the trustee conducts the sale.”.

36 In line 5, delete “1” and insert “2”.

37 On page 2, delete lines 8 through 12 and insert:

38 “(2) Except in accordance with subsection (4) of this section, after a trustee’s sale under ORS
39 86.705 to 86.795 or after a judicial foreclosure of a residential trust deed, an action for a deficiency
40 may not be brought or a judgment entered against the grantor, the grantor’s successor in interest
41 or another person obligated on:

42 “(a) The note, bond or other obligation secured by the residential trust deed for the property
43 that was subject to the trustee’s sale or the foreclosure;

44 “(b) Any other note, bond or other obligation secured by a residential trust deed for or mortgage
45 on the property that was subject to the trustee’s sale or the foreclosure when the debt, of which the

1 note, bond or other obligation is evidence, is owed to the beneficiary in the residential trust deed
2 that was subject to the trustee's sale or the foreclosure; or

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

6 Delete lines 27 through 33.

7 Delete lines 36 through 38.

8 In line 39, delete "2" and insert "3".

9 On page 3, delete lines 4 through 6 and insert:

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

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

15 In line 7, delete "4" and insert "5".

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