

# Senate Bill 239

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## 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**.

Requires trustee foreclosing trust deed to record affidavits of mailing of notice required to be sent to grantor.

Requires grantor to assert that grantor did not receive notice and did not have actual notice of trustee's sale in order to obtain rights equivalent to those of omitted party defendant in judicial foreclosure proceeding.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to notices required for foreclosures of trust deeds; creating new provisions; amending ORS  
3 86.750 and 86.780 and section 21, chapter 19, Oregon Laws 2008; and declaring an emergency.

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

5 **SECTION 1.** ORS 86.750 is amended to read:

6 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in  
7 ORS 86.745 shall be served upon an occupant of the property described in the trust deed in the  
8 manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before  
9 the day the trustee conducts the sale.

10 (b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this sub-  
11 section on the first attempt, the person attempting service shall post a copy of the notice in a con-  
12 spicuous place on the property on the date of the first attempt. The person attempting service shall  
13 make a second attempt to effect service on a day that is at least two days after the first attempt.

14 (B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection  
15 on the second attempt, the person attempting service shall post a copy of the notice in a conspicu-  
16 ous place on the property on the date of the second attempt. The person attempting service shall  
17 make a third attempt to effect service on a day that is at least two days after the second attempt.

18 (C) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection  
19 on the third attempt, the person attempting service shall send a copy of the notice, bearing the word  
20 "occupant" as the addressee, to the property address by first class mail with postage prepaid.

21 (c) Service on an occupant is deemed effected on the earlier of the date that notice is served  
22 as provided in paragraph (a) of this subsection or the first date on which notice is posted as de-  
23 scribed in paragraph (b)(A) of this subsection.

24 (2) A copy of the notice of sale shall be published in a newspaper of general circulation in each  
25 of the counties in which the property is situated once a week for four successive weeks. The last  
26 publication shall be made more than 20 days prior to the date the trustee conducts the sale.

27 [(3) *On or before the date the trustee conducts the sale, the trustee shall file the following with*  
28 *respect to the notice of sale for recording in the official record of the county or counties in which the*

**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 *property described in the deed is situated:]*

2 **(3) On or before the date the trustee conducts the sale, the trustee shall file for record-**  
 3 **ing in the official record of the county or counties in which the property described in the**  
 4 **deed is situated the following affidavits with respect to the notice of sale:**

- 5 (a) An affidavit of mailing, if any;
- 6 (b) An affidavit of service, if any;
- 7 (c) An affidavit of service attempts and posting, if any; and
- 8 (d) An affidavit of publication.

9 **(4) On or before the date the trustee conducts the sale, the trustee shall file for record-**  
 10 **ing in the official record of the county or counties in which the property described in the**  
 11 **deed is situated an affidavit of mailing with respect to the notice to the grantor required**  
 12 **under section 20, chapter 19, Oregon Laws 2008.**

13 **SECTION 2.** ORS 86.780 is amended to read:

14 86.780. When the trustee’s deed is recorded in the deed records of the county or counties where  
 15 the property described in the deed is situated, the recitals contained in the deed and in the affidavits  
 16 required under ORS 86.750 (3) **and (4)** shall be prima facie evidence in any court of the truth of the  
 17 matters set forth therein, but the recitals shall be conclusive in favor of a purchaser for value in  
 18 good faith relying upon them.

19 **SECTION 3.** Section 21, chapter 19, Oregon Laws 2008, is amended to read:

20 **Sec 21. (1)** *[If a notice required by section 20 of this 2008 Act is not sent to a grantor, and the*  
 21 *grantor does not actually receive a copy of the notice at least 25 days prior to the date the trustee*  
 22 *conducts the sale, the]* **A** grantor shall have the same rights possessed by the holder of a junior lien  
 23 or interest who was omitted as a party defendant in a judicial foreclosure proceeding.] **if:**

- 24 **(a) The notice required by section 20, chapter 19, Oregon Laws 2008, is not sent to the**  
 25 **grantor;**
- 26 **(b) The grantor does not actually receive a copy of the notice at least 25 days before the**  
 27 **date on which the trustee conducts the sale; and**
- 28 **(c) The grantor asserts not later than 30 days after the trustee’s sale that the grantor**  
 29 **did not receive the notice and did not have actual notice of the sale.**

30 **(2)** The purchaser at the trustee’s sale, or the purchaser’s heirs, assigns or transferees, shall  
 31 have the same rights possessed by a purchaser at a sheriff’s sale following a judicial foreclosure.

32 **SECTION 4.** **The amendments to ORS 86.750 and 86.780 and section 21, chapter 19, Oregon**  
 33 **Laws 2008, by sections 1, 2 and 3 of this 2009 Act apply to trustees’ sales under ORS 86.705**  
 34 **to 86.795 that occur on or after the effective date of this 2009 Act.**

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