

B-Engrossed Senate Bill 628

Ordered by the Senate June 11
Including Senate Amendments dated May 4 and June 11

Sponsored by Senator BONAMICI, Representative HOLVEY

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.

[Requires mandatory mediation between trustee and grantor before sale to foreclose residential trust deed. Provides for notice and procedures for conducting mediation. Creates exception to notice requirement.]

[Specifies rights of person that has lien or subsequent interest to trust deed if trustee fails to give that person notice.]

[Sunsets on January 2, 2014.]

Changes contents of notice of default that lender must deliver to grantor before sale to foreclose residential trust deed. Requires lender to also deliver form by which grantor may request loan modification.

Specifies procedures by which sale to foreclose residential trust deed may occur if owner uses form to request loan modification. Modifies procedures one year after effective date of Act.

Sunsets on January 2, 2012.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to residential property foreclosures; creating new provisions; amending ORS 86.750 and
3 section 20, chapter 19, Oregon Laws 2008; and declaring an emergency.

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

5 **SECTION 1.** Section 20, chapter 19, Oregon Laws 2008, is amended to read:

6 **Sec. 20.** (1) If a notice of default is recorded for property that is subject to a residential trust
7 deed, the sender of a notice of sale under ORS 86.740 shall, on or before the date the notice of sale
8 is served or mailed, give notice under this section to the grantor by both first class and certified
9 mail with return receipt requested. Subject to any rules adopted under subsection (2) of this section,
10 the notice must be in substantially the following form and printed in at least 14-point type:

11
12
13 NOTICE:

14 YOU ARE IN DANGER OF LOSING
15 YOUR PROPERTY IF YOU DO NOT
16 TAKE ACTION IMMEDIATELY

17
18 This notice is about your mortgage loan on your property at _____ (address).

19
20 Your lender has decided to sell this property because the money due on your mortgage loan has not
21 been paid on time or because you have failed to fulfill some other obligation to your lender. This

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 is sometimes called "foreclosure."

2
3 The amount you would have had to pay as of _____ (date) to bring your mortgage loan current
4 was \$_____. The amount you must now pay to bring your loan current may have increased since
5 that date.

6
7 By law, your lender has to provide you with details about the amount you owe, if you ask. You may
8 call _____ (telephone number) to find out the exact amount you must pay to bring your
9 mortgage loan current and to get other details about the amount you owe. You may also get these
10 details by sending a request by certified mail to: _____.

11
12 THIS IS WHEN AND WHERE
13 YOUR PROPERTY WILL BE SOLD
14 IF YOU DO NOT TAKE ACTION:
15

16 Date and time: _____, 2_____ at _____

17
18 Place: _____

19
20 THIS IS WHAT YOU CAN DO
21 TO STOP THE SALE:
22

- 23 1. You can pay the amount past due or correct any other default, up to five days before the sale.
24 2. You can refinance or otherwise pay off the loan in full anytime before the sale.
25 3. You can [*call _____ (name) at _____ (telephone number) to find out if your*
26 *lender is willing to*] **request that your lender** give you more time or change the terms of your loan.
27 4. You can sell your home, provided the sale price is enough to pay what you owe.

28
29 There are government agencies and nonprofit organizations that can give you information about
30 foreclosure and help you decide what to do. For the name and telephone number of an organization
31 near you, please call the statewide telephone contact number at _____. You may also
32 wish to talk to a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar's
33 Lawyer Referral Service at _____ or toll-free in Oregon at _____ or you may
34 visit its website at: _____. Legal assistance may be available if you have a low income
35 and meet federal poverty guidelines. For more information and a directory of legal aid programs,
36 go to _____.

37
38 **Your lender may be willing to modify your loan to reduce the interest rate, reduce the**
39 **monthly payments or both. You can get information about possible loan modification pro-**
40 **grams by contacting your lender at _____. If you can't reach your lender, you may**
41 **contact the trustee at the telephone number at the bottom of this notice. If you have already**
42 **entered into a loan modification with your lender, it is possible that you will not be able to**
43 **modify your loan again unless your circumstances have changed. Your lender is not obligated**
44 **to modify your loan.**

1 **You may request to meet with your lender to discuss options for modifying your loan. During**
2 **discussions with your lender, you may have the assistance of a lawyer, a housing counselor**
3 **or another person of your choosing. To receive a referral to a housing counselor or other**
4 **assistance available in your community, call this toll-free consumer mortgage foreclosure**
5 **information number: _____.** Many lenders participate in new federal loan modifi-
6 **cation programs. You can obtain more information about these programs**
7 **at: _____.**

8
9 **IF YOU WANT TO APPLY TO MODIFY YOUR LOAN, YOU MUST FILL OUT AND MAIL**
10 **BACK THE ENCLOSED "MODIFICATION REQUEST FORM." YOUR LENDER MUST RE-**
11 **CEIVE THE FORM BY _____, WHICH IS 30 DAYS AFTER THE DATE SHOWN**
12 **BELOW.**

13
14 **WARNING:** You may get offers from people who tell you they can help you keep your property. You
15 should be careful about those offers. Make sure you understand any papers you are asked to sign.
16 If you have any questions, talk to a lawyer or one of the organizations mentioned above before
17 signing.

18
19 DATED: _____, 2_____

20
21 Trustee name: _____ (print)

22
23 Trustee signature: _____

24
25 Trustee telephone number: _____
26 _____

27
28 (2) The Department of Consumer and Business Services may adopt rules prescribing the format,
29 font size and other physical characteristics of the notice form set forth in subsection (1) of this
30 section. The department shall adopt rules specifying the [statewide] resource telephone contact
31 numbers and website addresses the sender is to insert in completing the notice.

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

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

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

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

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

42 (4) Telephone numbers described in subsection (3) of this section must be toll-free numbers un-
43 less the beneficiary:

44 (a) Made the loan with the beneficiary's own money;

45 (b) Made the loan for the beneficiary's own investment; and

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

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

5 (6) **The notice required under subsection (1) of this section must be accompanied by a**
6 **form to request a loan modification. The form must include the address to which and state**
7 **the date by which the grantor must return the form. The date must be 30 days after the date**
8 **on which the trustee signs the notice. The form may state that the grantor must disclose**
9 **current information about the grantor's income and expenses, the grantor's address, phone**
10 **number and electronic mail address and other facts that may affect the grantor's eligibility**
11 **for a loan modification.**

12 **SECTION 2.** Sections 3 and 3a of this 2009 Act are added to and made a part of ORS 86.705
13 to 86.795.

14 **SECTION 3.** (1) If a grantor returns the form identified in section 20 (6), chapter 19,
15 Oregon Laws 2008, to the lender by the date specified on the form, the beneficiary or an
16 agent of the beneficiary shall review the information the grantor provided in the form and,
17 in good faith, shall process the grantor's request. The beneficiary or the beneficiary's agent
18 within 30 days after receiving the form shall notify the grantor whether the beneficiary ap-
19 proves or denies the request or requires additional information. A trustee's sale for the
20 property subject to the loan may not occur until after the beneficiary or the beneficiary's
21 agent timely responds to the grantor. During the 30-day period, the beneficiary or the bene-
22 ficiary's agent may request the grantor to provide additional information required to deter-
23 mine whether the loan can be modified.

24 (2)(a) Except as provided in paragraph (b) of this subsection, if the grantor timely re-
25 quests a meeting with the beneficiary, the beneficiary or the beneficiary's agent shall meet
26 with the grantor in person or shall speak to the grantor by telephone before the beneficiary
27 or the beneficiary's agent responds to the grantor's request to modify the loan. If the
28 grantor requests the meeting, the beneficiary or the beneficiary's agent shall take reasonable
29 steps to schedule the meeting by contacting the grantor at the grantor's last known address
30 or telephone number or at the grantor's electronic mail address, if the grantor indicates on
31 the loan modification form that the beneficiary or the beneficiary's agent can contact the
32 grantor at the electronic mail address.

33 (b) A beneficiary or the beneficiary's agent complies with the provisions of paragraph (a)
34 of this subsection even if the beneficiary or beneficiary's agent does not speak to or meet
35 with the grantor if, within seven business days after the beneficiary or beneficiary's agent
36 attempts to contact the grantor, the grantor does not respond.

37 (c) The beneficiary or the beneficiary's agent that meets with the grantor shall have or
38 be able to obtain authority to modify the loan.

39 (3)(a) The beneficiary or the beneficiary's agent shall provide the trustee with the affi-
40 davit described in ORS 86.750 (5). In the affidavit, the beneficiary or the beneficiary's agent
41 shall describe how the beneficiary or the beneficiary's agent has complied with subsections
42 (1) and (2) of this section.

43 (b) The trustee shall record the affidavit described in paragraph (a) of this subsection and
44 send a copy of the affidavit to the Director of the Department of Consumer and Business
45 Services before conducting a trustee's sale. If the trustee fails to send a copy of the affidavit

1 to the director, the failure does not affect title to the property subject to the loan.

2 (4) Subsections (1) and (2) of this section do not apply to a beneficiary that determines
3 in good faith, after considering the most current financial information the grantor provides,
4 that the grantor is not eligible for a loan modification.

5 **SECTION 3a.** (1) If a grantor returns the form identified in section 20 (6), chapter 19,
6 Oregon Laws 2008, to the lender by the date specified on the form, the beneficiary or an
7 agent of the beneficiary shall review the information the grantor provided in the form and,
8 in good faith, shall process the grantor's request. The beneficiary or the beneficiary's agent
9 within 30 days after receiving the form shall notify the grantor whether the beneficiary ap-
10 proves or denies the request or requires additional information. A trustee's sale for the
11 property subject to the loan may not occur until after the beneficiary or the beneficiary's
12 agent timely responds to the grantor. During the 30-day period, the beneficiary or the bene-
13 ficiary's agent may request the grantor to provide additional information required to deter-
14 mine whether the loan can be modified.

15 (2)(a) Except as provided in paragraph (b) of this subsection, if the grantor timely re-
16 quests a meeting with the beneficiary, the beneficiary or the beneficiary's agent shall meet
17 with the grantor in person or shall speak to the grantor by telephone before the beneficiary
18 or the beneficiary's agent responds to the grantor's request to modify the loan. If the
19 grantor requests the meeting, the beneficiary or the beneficiary's agent shall take reasonable
20 steps to schedule the meeting by contacting the grantor at the grantor's last known address
21 or telephone number or at the grantor's electronic mail address, if the grantor indicates on
22 the loan modification form that the beneficiary or the beneficiary's agent can contact the
23 grantor at the electronic mail address.

24 (b) A beneficiary or the beneficiary's agent complies with the provisions of paragraph (a)
25 of this subsection even if the beneficiary or beneficiary's agent does not speak to or meet
26 with the grantor if, within seven business days after the beneficiary or beneficiary's agent
27 attempts to contact the grantor, the grantor does not respond.

28 (c) The beneficiary or the beneficiary's agent that meets with the grantor shall have or
29 be able to obtain authority to modify the loan.

30 (3)(a) The beneficiary or the beneficiary's agent shall provide the trustee with the affi-
31 davit described in ORS 86.750 (5). In the affidavit, the beneficiary or the beneficiary's agent
32 shall describe how the beneficiary or the beneficiary's agent has complied with subsections
33 (1) and (2) of this section.

34 (b) The trustee shall record the affidavit described in paragraph (a) of this subsection.

35 (4) Subsections (1) and (2) of this section do not apply to a beneficiary that determines
36 in good faith, after considering the most current financial information the grantor provides,
37 that the grantor is not eligible for a loan modification.

38 **SECTION 4.** Section 20, chapter 19, Oregon Laws 2008, as amended by section 1 of this 2009
39 Act, is amended to read:

40 **Sec. 20.** (1) If a notice of default is recorded for property that is subject to a residential trust
41 deed, the sender of a notice of sale under ORS 86.740 shall, on or before the date the notice of sale
42 is served or mailed, give notice under this section to the grantor by both first class and certified
43 mail with return receipt requested. Subject to any rules adopted under subsection (2) of this section,
44 the notice must be in substantially the following form and printed in at least 14-point type:
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NOTICE:
YOU ARE IN DANGER OF LOSING
YOUR PROPERTY IF YOU DO NOT
TAKE ACTION IMMEDIATELY

This notice is about your mortgage loan on your property at _____ (address).

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

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

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

THIS IS WHEN AND WHERE
YOUR PROPERTY WILL BE SOLD
IF YOU DO NOT TAKE ACTION:

Date and time: _____, 2_____ at _____

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 [*request that your lender*] **call _____ (name) at _____ (telephone number) 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

1 and meet federal poverty guidelines. For more information and a directory of legal aid programs,
2 go to _____.

3
4 *[Your lender may be willing to modify your loan to reduce the interest rate, reduce the monthly pay-
5 ments or both. You can get information about possible loan modification programs by contacting your
6 lender at _____. If you can't reach your lender, you may contact the trustee at the telephone
7 number at the bottom of this notice. If you have already entered into a loan modification with your
8 lender, it is possible that you will not be able to modify your loan again unless your circumstances have
9 changed. Your lender is not obligated to modify your loan.]*

10
11 *[You may request to meet with your lender to discuss options for modifying your loan. During dis-
12 cussions with your lender, you may have the assistance of a lawyer, a housing counselor or another
13 person of your choosing. To receive a referral to a housing counselor or other assistance available in
14 your community, call this toll-free consumer mortgage foreclosure information
15 number: _____. Many lenders participate in new federal loan modification programs. You
16 can obtain more information about these programs at: _____.]*

17
18 ***[IF YOU WANT TO APPLY TO MODIFY YOUR LOAN, YOU MUST FILL OUT AND MAIL
19 BACK THE ENCLOSED "MODIFICATION REQUEST FORM." YOUR LENDER MUST RE-
20 CEIVE THE FORM BY _____, WHICH IS 30 DAYS AFTER THE DATE SHOWN BE-
21 LOW.]***

22
23 **WARNING:** You may get offers from people who tell you they can help you keep your property. You
24 should be careful about those offers. Make sure you understand any papers you are asked to sign.
25 If you have any questions, talk to a lawyer or one of the organizations mentioned above before
26 signing.

27
28 **DATED:** _____, 2_____

29
30 **Trustee name:** _____ (print)

31
32 **Trustee signature:** _____

33
34 **Trustee telephone number:** _____

35 _____

36
37 (2) The Department of Consumer and Business Services may adopt rules prescribing the format,
38 font size and other physical characteristics of the notice form set forth in subsection (1) of this
39 section. The department shall adopt rules specifying the resource telephone contact numbers and
40 website addresses the sender is to insert in completing the notice.

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

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

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

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

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

6 (4) Telephone numbers described in subsection (3) of this section must be toll-free numbers un-
7 less the beneficiary:

8 (a) Made the loan with the beneficiary's own money;

9 (b) Made the loan for the beneficiary's own investment; and

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

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

14 *[(6) The notice required under subsection (1) of this section must be accompanied by a form to re-*
15 *quest a loan modification. The form must include the address to which and state the date by which the*
16 *grantor must return the form. The date must be 30 days after the date on which the trustee signs the*
17 *notice. The form may state that the grantor must disclose current information about the grantor's in-*
18 *come and expenses, the grantor's address, phone number and electronic mail address and other facts*
19 *that may affect the grantor's eligibility for a loan modification.]*

20 **SECTION 5.** ORS 86.750, as amended by section 1, chapter _____, Oregon Laws 2009 (En-
21 rolled Senate Bill 239), is amended to read:

22 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in
23 ORS 86.745 shall be served upon an occupant of the property described in the trust deed in the
24 manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before
25 the day the trustee conducts the sale.

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

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

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

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

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

43 (3) On or before the date the trustee conducts the sale, the trustee shall file for recording in the
44 official record of the county or counties in which the property described in the deed is situated the
45 following affidavits with respect to the notice of sale:

- 1 (a) An affidavit of mailing, if any;
- 2 (b) An affidavit of service, if any;
- 3 (c) An affidavit of service attempts and posting, if any; and
- 4 (d) An affidavit of publication.

5 (4) On or before the date the trustee conducts the sale, the trustee shall file for recording in the
6 official record of the county or counties in which the property described in the deed is situated an
7 affidavit of mailing with respect to the notice to the grantor required under section 20, chapter 19,
8 Oregon Laws 2008.

9 **(5) 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 is located an affi-**
11 **davit from the beneficiary or the beneficiary's agent that states how the beneficiary or the**
12 **beneficiary's agent has complied with the provisions of section 3 (1) and (2) of this 2009 Act.**

13 **SECTION 5a.** ORS 86.750, as amended by section 1, chapter _____, Oregon Laws 2009 (En-
14 rolled Senate Bill 239), and section 5 of this 2009 Act, is amended to read:

15 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in
16 ORS 86.745 shall be served upon an occupant of the property described in the trust deed in the
17 manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before
18 the day the trustee conducts the sale.

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

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

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

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

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

36 (3) On or before the date the trustee conducts the sale, the trustee shall file for recording in the
37 official record of the county or counties in which the property described in the deed is situated the
38 following affidavits with respect to the notice of sale:

- 39 (a) An affidavit of mailing, if any;
- 40 (b) An affidavit of service, if any;
- 41 (c) An affidavit of service attempts and posting, if any; and
- 42 (d) An affidavit of publication.

43 (4) On or before the date the trustee conducts the sale, the trustee shall file for recording in the
44 official record of the county or counties in which the property described in the deed is situated an
45 affidavit of mailing with respect to the notice to the grantor required under section 20, chapter 19,

1 Oregon Laws 2008.

2 (5) On or before the date the trustee conducts the sale, the trustee shall file for recording in the
3 official record of the county or counties in which the property is located an affidavit from the ben-
4 eficiary or the beneficiary's agent that states how the beneficiary or the beneficiary's agent has
5 complied with the provisions of section [3] **3a** (1) and (2) of this 2009 Act.

6 **SECTION 6.** ORS 86.750, as amended by section 1, chapter _____, Oregon Laws 2009 (En-
7 rolled Senate Bill 239), and sections 5 and 5a of this 2009 Act, is amended to read:

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

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

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

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

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

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

29 (3) On or before the date the trustee conducts the sale, the trustee shall file for recording in the
30 official record of the county or counties in which the property described in the deed is situated the
31 following affidavits with respect to the notice of sale:

- 32 (a) An affidavit of mailing, if any;
- 33 (b) An affidavit of service, if any;
- 34 (c) An affidavit of service attempts and posting, if any; and
- 35 (d) An affidavit of publication.

36 (4) On or before the date the trustee conducts the sale, the trustee shall file for recording in the
37 official record of the county or counties in which the property described in the deed is situated an
38 affidavit of mailing with respect to the notice to the grantor required under section 20, chapter 19,
39 Oregon Laws 2008.

40 *[(5) On or before the date the trustee conducts the sale, the trustee shall file for recording in the*
41 *official record of the county or counties in which the property is located an affidavit from the benefi-*
42 *ciary or the beneficiary's agent that states how the beneficiary or the beneficiary's agent has complied*
43 *with the provisions of section 3a (1) and (2) of this 2009 Act.]*

44 **SECTION 7. (1) Notwithstanding the purposes set forth in ORS 180.095, and except as**
45 **provided in subsection (2) of this section, the Department of Justice shall use the proceeds**

1 of the State of Oregon's settlement with Countrywide Financial Corporation that are depos-
2 ited into the Consumer Protection and Education Revolving Account to make grants, in
3 consultation with the Housing and Community Services Department, to nonprofit entities to
4 provide foreclosure relief services.

5 (2) The Department of Justice need not use the proceeds identified in subsection (1) of
6 this section if sufficient funding for the purposes identified in subsection (1) of this section
7 is available from another source.

8 **SECTION 8.** (1) Sections 3 and 3a of this 2009 Act and the amendments to ORS 86.750 and
9 section 20, chapter 19, Oregon Laws 2008, by sections 1, 5 and 5a of this 2009 Act apply to a
10 notice of sale sent on or after the 60th day following the effective date of this 2009 Act.

11 (2) Sections 3 and 3a of this 2009 Act and the amendments to ORS 86.750 and section 20,
12 chapter 19, Oregon Laws 2008, by sections 1, 5 and 5a of this 2009 Act do not apply to prop-
13 erty secured by a trust deed that a government agency holds for a loan the government
14 agency funded through a government program.

15 **SECTION 9.** (1) Section 3a of this 2009 Act and the amendments to ORS 86.750 by section
16 5a of this 2009 Act become operative one year after the effective date of this 2009 Act.

17 (2) The amendments to ORS 86.750 and section 20, chapter 19, Oregon Laws 2008, by
18 sections 4 and 6 of this 2009 Act become operative on January 2, 2012.

19 **SECTION 10.** (1) Section 3 of this 2009 Act is repealed one year after the effective date
20 of this 2009 Act.

21 (2) Section 3a of this 2009 Act is repealed on January 2, 2012.

22 **SECTION 11.** This 2009 Act being necessary for the immediate preservation of the public
23 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
24 on its passage.

25 _____