

Senate Bill 628

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 **as introduced**.

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

Sunset on January 2, 2014.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to residential property foreclosures; creating new provisions; amending ORS 86.740; and
3 declaring an emergency.

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

5 **SECTION 1.** ORS 86.740 is amended to read:

6 86.740. (1) Subsequent to recording notice of default as provided in ORS 86.735 and at least 120
7 days before the day the trustee conducts the sale, notice of the sale [*shall*] **must** be served pursuant
8 to ORCP 7 D(2) and 7 D(3) or mailed by both first class and certified mail with return receipt
9 requested[.]. **If the sale is for the purpose of foreclosing a residential trust deed, the notice**
10 **described in this subsection must be served as provided in this subsection at least 180 days**
11 **before the date of the sale. A separate notice in accordance with section 3 of this 2009 Act**
12 **that prescribes mandatory mediation in advance of the sale must also be served as provided**
13 **in this subsection if the sale is for the purpose of foreclosing a residential trust deed. The**
14 **notices described in this subsection must be served or mailed** to the last-known address of the
15 following persons or [*their*] **the** legal representatives **of the persons**, if any:

16 (a) The grantor in the trust deed.

17 (b) [*Any*] **A** successor in interest to the grantor whose interest appears of record, or of whose
18 interest the trustee or the beneficiary has actual notice.

19 (c) [*Any*] **A** person, including the Department of Revenue or any other state agency, [*having*]
20 **that has** a lien or interest subsequent to the trust deed if the lien or interest appears of record or
21 the beneficiary has actual notice of the lien or interest.

22 (d) [*Any*] **A** person [*requesting*] **that requests** notice as provided in ORS 86.785.

23 (e) **The Department of Consumer and Business Services.**

24 (2) A notice served by mail under subsection (1) of this section is effective when the notice is
25 mailed.

26 (3)(a) The disability, insanity or death of [*any*] **a** person to whom notice of sale must be given
27 under this section does not delay or impair in any way the trustee's right under a trust deed to
28 foreclose under the deed. If the disability, insanity or death occurs [*prior to the recording of*] **before**
29 **the** notice of default **is recorded**, the notice [*shall*] **must** be given instead to the guardian, the
30 conservator of the estate of the person or the administrator or personal representative of the person,

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 as the case may be, in the manner and by the time set forth in this section.

2 (b) If the disability, insanity or death of *[any]* a person to whom notice of sale must be given
3 under this section occurs on or after the *[recording of]* notice of default **is recorded**, the trustee
4 shall, if and when the trustee has knowledge of the disability, insanity or death, promptly give the
5 guardian, conservator of the estate or the administrator or personal representative, as the case may
6 be, the notice provided in ORS 86.745. This notice shall be given by first class and certified mail
7 with return receipt requested, to the last-known address of the guardian, conservator or adminis-
8 trator or personal representative.

9 (c) *[In the event]* **If** there is no administrator or personal representative of the estate of the
10 person to whom notice of sale must be given under this section, the notice may be given instead to
11 the heirs at law or devisees of the deceased person in the manner and by the time set forth in this
12 section.

13 **(4)(a) If the trustee knows or has reason to know that the grantor of a residential trust**
14 **deed primarily speaks or reads a language other than the English language, the trustee shall**
15 **cause the notices described in subsection (1) of this section to be served to the grantor in**
16 **both the English language and in the language the grantor primarily speaks or reads.**

17 **(b) For purposes of this subsection, a trustee has reason to know that a grantor prima-**
18 **riarily speaks or reads a language other than the English language if the trustee or an agent**
19 **or affiliate of the trustee has previously communicated with the grantor in the other lan-**
20 **guage in the course of a transaction related to the residential trust deed or in the course**
21 **of servicing a note or loan related to the residential trust deed.**

22 **SECTION 2. Sections 3 to 7 of this 2009 Act are added to and made a part of ORS 86.705**
23 **to 86.795.**

24 **SECTION 3. A notice prescribing mandatory mediation in advance of a trustee's sale to**
25 **foreclose a residential trust deed must:**

26 **(1) Set forth the name, address, telephone number and other contact information for the**
27 **grantor or other person named in the residential trust deed;**

28 **(2) Itemize the amount in default and past due on the obligation secured by the residen-**
29 **tial trust deed, the amount that must be paid to cure the default and all associated costs and**
30 **fees;**

31 **(3) Provide the account number or other information the trustee or beneficiary or an**
32 **agent of the trustee or beneficiary uses to identify the obligation the grantor owes to the**
33 **beneficiary;**

34 **(4) Provide the address, telephone number or other contact information for:**

35 **(a) The trustee, beneficiary and agent of the trustee or beneficiary that is authorized to**
36 **negotiate on the trustee's or beneficiary's behalf; and**

37 **(b) The Oregon State Bar's lawyer referral service;**

38 **(5) State that the trustee and the grantor must participate in a mandatory process of**
39 **mediation for the purpose of avoiding a trustee's sale;**

40 **(6) State that the trustee and the grantor will each bear half of the cost of the mediation;**

41 **(7) List the documents and other information the grantor must bring to the mediation;**

42 **(8) List the names of at least three persons qualified under section 6 of this 2009 Act to**
43 **serve as mediators and provide for each an address, telephone number and other contact**
44 **information; and**

45 **(9) State that the grantor is entitled to be represented at the mediation by an attorney.**

1 **SECTION 4.** (1) Within 30 days after the date on which the trustee caused a notice that
2 prescribes mandatory mediation to be served or mailed as described in ORS 86.740 (1), the
3 trustee shall send a second notice by first-class mail to the grantor that:

4 (a) Schedules a time and location for the mediation on a date that is not later than 90
5 days after the date on which the notice that prescribes mandatory mediation was served or
6 mailed as described in ORS 86.740 (1); and

7 (b) Proposes a mediator from the list in the notice of mandatory mediation and informs
8 the grantor that the grantor may object in writing to the trustee's nomination and propose
9 another mediator from the list within 10 business days after the mailing date for the second
10 notice.

11 (2) If the grantor objects to the trustee's proposed mediator, the trustee will schedule
12 the mediation with the mediator that the grantor proposes unless the trustee objects. If the
13 trustee and the grantor each object to the other's proposed mediator, the trustee will
14 schedule the mediation with the remaining mediator.

15 (3) The trustee shall pay the initial expenses of the mediation and is entitled to receive
16 the grantor's portion of the expenses of the mediation in accordance with the provisions of
17 section 5 of this 2009 Act.

18 (4) During the period that begins on the date the notice of mandatory mediation de-
19 scribed in ORS 86.740 (1) was served or mailed and ending on the date on which a mediation
20 conducted under this section concludes, a trustee or an agent or affiliate of the trustee may
21 not add fees or charges to the obligation the grantor owes the trustee. This subsection does
22 not affect:

23 (a) Interest charged under the terms of the loan agreement or other evidence of the ob-
24 ligation; or

25 (b) Service fees or charges that the grantor paid as part of the obligation before the date
26 on which the notice described in ORS 86.740 (1) was served or mailed.

27 **SECTION 5.** (1) If a grantor is represented at a mediation conducted to avoid a sale of
28 real property described in a residential trust deed, the mediator, the trustee or the grantor
29 may offer a reasonable settlement proposal to avoid the sale, including a proposal generated
30 by an automated loan modification formula developed by the Federal Deposit Insurance
31 Corporation. With the consent of both parties, the mediator may adopt rules to facilitate a
32 settlement and may, with the parties' consent, have authority to suspend or continue the
33 mediation, provided that the mediation may not be continued later than 120 days after the
34 date on which the initial notice that prescribed mandatory mediation was served.

35 (2) If the grantor is not represented, the mediator shall use the automated loan modifi-
36 cation formula developed by the Federal Deposit Insurance Corporation to generate a
37 settlement proposal.

38 (3) If the trustee and grantor reach a settlement, the mediator shall witness and sign a
39 document that sets forth the terms of the settlement. The mediator shall report to the De-
40 partment of Consumer and Business Services that the parties have reached a settlement.
41 The trustee within two business days after signing a settlement document under this sub-
42 section shall dismiss all proceedings under ORS 86.705 to 86.795, reinstate the residential
43 trust deed and continue the obligation under the terms of the settlement document.

44 (4) If the parties do not reach a settlement, the mediator shall report to the department
45 that the parties have not reached a settlement. Unless the trustee and the grantor agree,

1 the mediator may not in the mediator's report recommend a resolution to the dispute. The
 2 trustee may proceed with the sale scheduled according to the notice required under ORS
 3 86.740 (1) to foreclose a residential trust deed.

4 (5) If the trustee and grantor reach a settlement, the grantor may elect to include the
 5 grantor's portion of the cost of the mediation in the payment plan described in the settle-
 6 ment document. If the trustee and grantor do not reach a settlement, the grantor shall bear
 7 the grantor's portion of the cost of the mediation.

8 **SECTION 6.** To qualify as a mediator for the purposes of the mediation described in
 9 section 5 of this 2009 Act, a person must be trained in the use of the automated loan mod-
 10 ification formula developed by the Federal Deposit Insurance Corporation and be:

11 (1) A member of the Oregon State Bar or otherwise qualified as a mediator as provided
 12 in rules adopted under ORS 1.002; or

13 (2) A housing counselor approved by the United States Department of Housing and Urban
 14 Development in accordance with the department's Housing Counseling Program Handbook
 15 7610.1.

16 **SECTION 7.** (1) A grantor that did not receive a notice that prescribes mandatory medi-
 17 ation as provided under ORS 86.740 (1) 180 days before the date of a sale to foreclose a resi-
 18 dential trust deed may apply to the Department of Consumer and Business Services for an
 19 order to suspend the sale. If the department finds that a notice required under ORS 86.740
 20 (1) was not served or mailed to the department, the department may issue the requested
 21 order.

22 (2) An order issued under subsection (1) of this section shall extend the scheduled date
 23 of the sale for a period of 60 days, pending the completion of a mediation conducted in ac-
 24 cordance with section 5 of this 2009 Act, and shall notify the trustee in accordance with ORS
 25 183.415 that the trustee is entitled to a hearing under ORS 183.413 to 183.470. If the trustee
 26 by clear and convincing evidence demonstrates that the grantor received the required notice,
 27 the department shall rescind the order.

28 (3) If the mediation concludes without a settlement before the 60-day period expires, the
 29 department shall rescind the order and allow the sale to proceed as if the department had
 30 not issued the order.

31 **SECTION 8.** Sections 2 to 7 of this 2009 Act are repealed on January 2, 2014.

32 **SECTION 9.** ORS 86.740, as amended by section 1 of this 2009 Act, is amended to read:

33 86.740. (1) Subsequent to recording notice of default as provided in ORS 86.735 and at least 120
 34 days before the day the trustee conducts the sale, notice of the sale must be served pursuant to
 35 ORCP 7 D(2) and 7 D(3) or mailed by both first class and certified mail with return receipt
 36 requested. *If the sale is for the purpose of foreclosing a residential trust deed, the notice described in*
 37 *this subsection must be served as provided in this subsection at least 180 days before the date of the*
 38 *sale. A separate notice in accordance with section 3 of this 2009 Act that prescribes mandatory medi-*
 39 *ation in advance of the sale must also be served as provided in this subsection if the sale is for the*
 40 *purpose of foreclosing a residential trust deed. The notices described in this subsection must be served*
 41 *or mailed] to the last-known address of the following persons or the legal representatives of the*
 42 *persons, if any:*

43 (a) The grantor in the trust deed.

44 (b) A successor in interest to the grantor whose interest appears of record, or of whose interest
 45 the trustee or the beneficiary has actual notice.

1 (c) A person, including the Department of Revenue or any other state agency, that has a lien
 2 or interest subsequent to the trust deed if the lien or interest appears of record or the beneficiary
 3 has actual notice of the lien or interest.

4 (d) A person that requests notice as provided in ORS 86.785.

5 *[(e) The Department of Consumer and Business Services.]*

6 (2) A notice served by mail under subsection (1) of this section is effective when the notice is
 7 mailed.

8 (3)(a) The disability, insanity or death of a person to whom notice of sale must be given under
 9 this section does not delay or impair in any way the trustee's right under a trust deed to foreclose
 10 under the deed. If the disability, insanity or death occurs before the notice of default is recorded,
 11 the notice must be given instead to the guardian, the conservator of the estate of the person or the
 12 administrator or personal representative of the person, as the case may be, in the manner and by
 13 the time set forth in this section.

14 (b) If the disability, insanity or death of a person to whom notice of sale must be given under
 15 this section occurs on or after the notice of default is recorded, the trustee shall, if and when the
 16 trustee has knowledge of the disability, insanity or death, promptly give the guardian, conservator
 17 of the estate or the administrator or personal representative, as the case may be, the notice pro-
 18 vided in ORS 86.745. This notice shall be given by first class and certified mail with return receipt
 19 requested, to the last-known address of the guardian, conservator or administrator or personal rep-
 20 resentative.

21 (c) If there is no administrator or personal representative of the estate of the person to whom
 22 notice of sale must be given under this section, the notice may be given instead to the heirs at law
 23 or devisees of the deceased person in the manner and by the time set forth in this section.

24 *[(4)(a) If the trustee knows or has reason to know that the grantor of a residential trust deed pri-
 25 marily speaks or reads a language other than the English language, the trustee shall cause the notices
 26 described in subsection (1) of this section to be served to the grantor in both the English language and
 27 in the language the grantor primarily speaks or reads.]*

28 *[(b) For purposes of this subsection, a trustee has reason to know that a grantor primarily speaks
 29 or reads a language other than the English language if the trustee or an agent or affiliate of the trustee
 30 has previously communicated with the grantor in the other language in the course of a transaction re-
 31 lated to the residential trust deed or in the course of servicing a note or loan related to the residential
 32 trust deed.]*

33 **SECTION 10. The amendments to ORS 86.740 by section 9 of this 2009 Act become oper-
 34 ative on January 2, 2014.**

35 **SECTION 11. 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.**

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