

B-Engrossed
Senate Bill 952

Ordered by the House May 26
Including Senate Amendments dated April 30 and House Amendments
dated May 26

Sponsored by COMMITTEE ON JUDICIARY

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 purchaser is entitled to possession of property sold at trustee's sale subject to interests of person in possession of property under interest created voluntarily by grantor or successor to grantor.

Requires purchaser of foreclosed property to give additional notice to tenants living on property when purchaser intends to take possession of property. Creates different notice procedures for different types of tenancy. Modifies information to be included in notice. Creates other procedures related to taking possession of property.

Allows tenant who receives actual notice of foreclosure to apply security deposit or prepaid rent to pay rent obligation.

Declares emergency, effective [on] **60 days after** passage.

A BILL FOR AN ACT

1
2 Relating to rights of tenants in foreclosed property; creating new provisions; amending ORS 86.745,
3 86.755 and 223.523; 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 sale [*shall*] **must** be held on the date and at the time and place designated in the
7 notice of sale[.], **which must be at a designated time after 9 a.m. and before 4 p.m., based on**
8 **the standard of time set forth in ORS 187.110 and at a designated place in the county or one**
9 **of the counties where the property is situated.** The trustee may sell the property in one parcel
10 or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash.
11 Any person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the
12 trustee's sale. The attorney for the trustee, or [*any*] **an** agent designated by the trustee or the at-
13 torney, may conduct the sale and act in the sale as the **trustee's** auctioneer [*of the trustee*].

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

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

22 (4) The trustee's deed shall convey to the purchaser the interest in the property [*which*] **that**
23 the grantor had, or had the power to convey, at the time **the grantor executed** [*of the execution*

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 *by the grantor of]* the trust deed, together with any interest the grantor or the grantor's successors
2 in interest acquire after the execution of the trust deed.

3 (5)(a) The purchaser at the trustee's sale [*shall be*] is entitled to possession of the property on
4 the 10th day [*following*] **after** the sale[, *and any persons remaining*]. **A person that remains** in
5 possession after [*that*] **the 10th** day under any interest, except [*one*] **an interest** prior to the trust
6 deed or **an interest the grantor or a successor of the grantor** created voluntarily [*by the grantor*
7 *or a successor of the grantor, shall be deemed to be tenants*] **is a tenant** at sufferance. **The purchaser**
8 **may obtain possession of the property from a tenant at sufferance by following the proce-**
9 **dures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.** [*All persons*
10 *not holding under an interest prior to the trust deed may be removed from possession by following the*
11 *procedures set out in ORS 105.105 to 105.168 or other applicable judicial procedure, provided that a*
12 *person holding under an interest created voluntarily by the grantor or a successor of the grantor must*
13 *first receive 30 days' written notice of the intent to remove that person served no earlier than 30 days*
14 *before the date first set for the sale. Notices under this subsection shall be served by first class mail.*
15 *"First class mail" for purposes of this section does not include certified or registered mail, or any other*
16 *form of mail which may delay or hinder actual delivery of mail to the addressee.*]

17 (b) **Except as provided in paragraph (c) of this subsection, at any time after the trustee's**
18 **sale the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other**
19 **applicable judicial procedure to obtain possession of the property from a person that holds**
20 **possession under an interest that the grantor or a successor of the grantor created volun-**
21 **tarily if, not earlier than 30 days before the date first set for the sale, the person was served**
22 **with not less than 30 days' written notice of the requirement to surrender or deliver pos-**
23 **session of the property.**

24 (c) **If the property purchased at the trustee's sale is a dwelling unit, as defined in ORS**
25 **90.100 (9), that the person holds under a tenancy that the grantor or a successor of the**
26 **grantor created voluntarily and in good faith, the purchaser may follow the procedures set**
27 **forth in ORS 105.105 to 105.168 or other applicable judicial procedure to obtain possession if**
28 **after the sale the purchaser terminates the tenancy in a written notice given to the person:**

29 (A) **At least 60 days before the termination date specified in the notice, if the tenancy is**
30 **a fixed term tenancy, as defined in ORS 90.100, and at least 30 days before the date first set**
31 **for the trustee's sale the person provided the trustee with a copy of the rental agreement**
32 **that established the fixed term tenancy. The provisions of this subparagraph do not apply to**
33 **a purchaser that does not intend to terminate a fixed term tenancy before the date on which**
34 **the fixed term tenancy ends.**

35 (B) **At least 30 days before the termination date specified in the notice, if:**

36 (i) **The tenancy is a month-to-month tenancy or week-to-week tenancy, as those terms**
37 **are defined in ORS 90.100, and at least 30 days before the date first set for the trustee's sale**
38 **the person provided the trustee with a copy of the rental agreement that established the**
39 **tenancy or with other written evidence of the existence of a rental agreement, if the person**
40 **cannot provide the rental agreement; or**

41 (ii) **The tenancy is a fixed term tenancy for which the person has provided notice to the**
42 **trustee as provided in subparagraph (A) of this paragraph and the purchaser intends to oc-**
43 **cupy the property that is subject to the fixed term tenancy as the purchaser's primary res-**
44 **idence.**

45 (d) **A purchaser may not commence a proceeding under ORS 105.105 to 105.168 that is**

1 authorized under this subsection before the later of:

2 (A) The 10th day after the trustee's sale;

3 (B) The date specified in a written notice of the requirement to surrender or deliver
4 possession of the property if the notice is required by and is given to the person in accord-
5 ance with paragraph (b) of this subsection;

6 (C) The date specified in a written notice of the purchaser's intent to terminate a
7 tenancy if the notice is required by and is given to the person in accordance with paragraph
8 (c) of this subsection; or

9 (D) The date on which the term of a fixed term tenancy ends.

10 (e) For the purposes of this subsection:

11 (A) A month-to-month tenancy or a week-to-week tenancy that a grantor or a successor
12 of the grantor first created after a notice of sale was served under ORS 86.750 is presumed
13 not to be a tenancy created in good faith.

14 (B) A fixed term tenancy that a grantor or a successor of the grantor created after a
15 notice of sale was served under ORS 86.750 is not a tenancy created in good faith.

16 (6) A purchaser shall serve a notice under subsection (5) of this section by first class
17 mail and not by certified or registered mail or a form of mail that may delay or hinder actual
18 delivery of mail to the addressee. The notice is effective three days after the notice is mailed.

19 (7)(a) Notwithstanding the provisions of subsection (5)(c) of this section and except as
20 provided in paragraph (b) of this subsection, the purchaser is not a landlord subject to the
21 provisions of ORS chapter 90 unless the purchaser:

22 (A) Accepts rent from the person who possesses the property under a tenancy described
23 in subsection (5)(c) of this section;

24 (B) Enters into a new rental agreement with the person who possesses the property un-
25 der a tenancy described in subsection (5)(c) of this section; or

26 (C) Fails to terminate the tenancy as provided in subsection (5)(c) of this section within
27 30 days after the date of the sale.

28 (b) The purchaser may act as a landlord for purposes of terminating a tenancy in ac-
29 cordance with the provisions of ORS 90.396.

30 (8)(a) Except as provided in paragraph (b) of this subsection, the purchaser is not liable
31 to the person who possesses the property under a tenancy described in subsection (5)(c) of
32 this section for:

33 (A) Damage to the property or diminution in rental value; or

34 (B) Returning a security deposit.

35 (b) A purchaser that is a landlord under the provisions of subsection (7)(a) of this section
36 is liable to the person who possesses the property under a tenancy described in subsection
37 (5)(c) of this section for:

38 (A) Damage to the property or diminution in rental value that occurs after the date of
39 the trustee's sale; or

40 (B) Returning a security deposit the person pays after the date of the trustee's sale.

41 [(6)] (9) Notwithstanding subsection (2) of this section, except when a beneficiary has partic-
42 ipated in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by pro-
43 ceedings in bankruptcy or for any other lawful reason shall, after release from the stay, continue
44 as if uninterrupted, if within 30 days after release the trustee gives amended notice of sale by reg-
45 istered or certified mail to the last-known address of [those] the persons listed in ORS 86.740 and

1 86.750 (1) and to the address provided by each person who was present at the time and place set for
2 the sale [*which*] **that** was stayed. The amended notice of sale [*shall*] **must**:

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

4 (b) Set an amended date of sale [*which*] **that** may be the same as the original sale date, or date
5 to which the sale was postponed, provided the requirements of ORS 86.740, 86.750 and this sub-
6 section are satisfied;

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

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

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

10 [(7)] **(10)** If the publication of the notice of sale was not completed prior to the date the fore-
11 closure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any
12 other lawful reason, after release from the stay, in addition to complying with the provisions of
13 subsection [(6)] **(9)** of this section, the trustee shall complete the publication by publishing an
14 amended notice of sale [*which*] **that** states that the notice has been amended following release from
15 the stay, and [*which*] **that** contains the amended date of sale. The amended notice [*shall*] **must** be
16 published in a newspaper of general circulation in each of the counties in which the property is
17 situated once a week for four successive weeks, except that the required number of publications
18 shall be reduced by the number of publications that were completed prior to the effective date of
19 the stay. The last publication [*shall*] **must** be made more than 20 days prior to the date the trustee
20 conducts the sale.

21 **SECTION 2.** ORS 86.745 is amended to read:

22 86.745. The notice of sale shall [*set forth*]:

23 (1) **List** the names of the grantor, trustee and beneficiary in the trust deed, and the mailing
24 address of the trustee.

25 (2) [*A description of*] **Describe** the property [*covered by*] the trust deed **covers**.

26 (3) **Identify** the book and page of the mortgage records [*where*] **that record** the trust deed [*is*
27 *recorded*].

28 (4) **State** the default for which the foreclosure is made.

29 (5) **State** the sum owing on the obligation [*secured by*] **that** the trust deed **secures**.

30 (6) **State that** [*the election to sell*] the property **will be sold** to satisfy the obligation.

31 (7) **Set forth** the date, time and place of the sale[, *which shall be held at a designated time after*
32 *9 a.m. and before 4 p.m. based on the standard of time established by ORS 187.110 and at a designated*
33 *place in the county or one of the counties where the property is situated*].

34 (8) **State that** the right **exists** under ORS 86.753 to have the proceeding dismissed and the trust
35 deed reinstated by [*payment of*] **paying** the entire amount then due, together with costs, trustee's
36 **fees** and [*attorney's*] **attorney** fees, and by curing any other default complained of in the notice of
37 default, at any time [*prior to*] **that is not later than** five days before the date last set for the sale.

38 (9) **Include a notice addressed clearly to any person who occupies the property and who**
39 **is or might be a tenant. The notice required under this subsection must:**

40 (a) **Include contact information for the Oregon State Bar and a person or organization**
41 **that provides legal help to individuals at no charge to the individual;**

42 (b) **Include information concerning the right the person has to notice under ORS 86.755**
43 **(5) and state that the person may have additional rights under federal law;**

44 (c) **Be set apart from other text in the notice of sale; and**

45 (d) **Be in substantially the following form:**

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NOTICE TO TENANTS:

If you are a tenant of this property, foreclosure could affect your rental agreement. A purchaser who buys this property at a foreclosure sale has the right to require you to move out after giving you notice of the requirement.

If you do not have a fixed-term lease, the purchaser may require you to move out after giving you a 30-day notice on or after the date of the sale.

If you have a fixed-term lease, you may be entitled to receive after the date of the sale a 60-day notice of the purchaser's requirement that you move out.

To be entitled to either a 30-day or 60-day notice, you must give the trustee of the property written evidence of your rental agreement at least 30 days before the date first set for the sale. If you have a fixed-term lease, you must give the trustee a copy of the rental agreement. If you do not have a fixed-term lease and cannot provide a copy of the rental agreement, you may give the trustee other written evidence of the existence of the rental agreement. The date that is 30 days before the date of the sale is _____. The name of the trustee and the trustee's mailing address are listed on this notice.

Federal law may grant you additional rights, including a right to a longer notice period. Consult a lawyer for more information about your rights under federal law.

You have the right to apply your security deposit and any rent you prepaid toward your current obligation under your rental agreement. If you want to do so, you must notify your landlord in writing and in advance that you intend to do so.

If you believe you need legal assistance with this matter, you may contact the Oregon State Bar and ask for the lawyer referral service. Contact information for the Oregon State Bar is included with this notice. If you have a low income and meet federal poverty guidelines, you may be eligible for free legal assistance. Contact information for where you can obtain free legal assistance is included with this notice.

SECTION 3. Section 4 of this 2009 Act is added to and made a part of ORS chapter 90.

SECTION 4. A tenant who receives actual notice that the property that is the subject of the tenant's rental agreement with a landlord is in foreclosure may apply the tenant's security deposit or prepaid rent to the tenant's obligation to the landlord. The tenant must notify the landlord in writing that the tenant intends to do so.

SECTION 5. ORS 223.523 is amended to read:

223.523. (1) Before a sale of real property under ORS 223.505 to 223.590 takes place, the treasurer shall have notice of the sale printed once a week for four successive weeks in a daily or weekly newspaper, as defined in ORS 193.010, generally circulated in the county in which the sale will be held. The notice of sale shall set forth the name and address of the treasurer conducting the sale, a particular description of the real property to be sold, including a street address, if any, the name of the owner of the property, the amount unpaid on the lien or final assessment and the date, time and place of sale, which shall be held in accordance with ORS [86.745 (7)] **86.755.**

(2) The treasurer shall send a copy of the first of the four published notices by registered or certified mail to both the owner of the real property to be sold at the last-known post-office address of the owner or place of residence and to the occupant, if any, of the real property to be sold. The

1 treasurer shall also send a notice containing the same information required in a published notice
2 under subsection (1) of this section by registered or certified mail at least 60 days prior to the sale
3 to any person requesting notice under ORS 86.785 and to any person having a lien or other interest
4 in the real property to be sold if the lien or interest appears of record. The treasurer shall retain
5 and file the return receipt for the registered or certified mail.

6 **SECTION 6. Section 4 of this 2009 Act and the amendments to ORS 86.745 and 86.755 by**
7 **sections 1 and 2 of this 2009 Act apply to notices given under ORS 86.740 on or after the ef-**
8 **fective date of this 2009 Act and to proceedings or actions under ORS 105.105 to 105.168 that**
9 **begin on or after the effective date of this 2009 Act.**

10 **SECTION 7. This 2009 Act being necessary for the immediate preservation of the public**
11 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
12 **60 days after its passage.**

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