

Senate Bill 952

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 **as introduced**.

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. Provides exceptions and requirements for notice of purchaser's intent to remove person in possession.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to rights of tenants in foreclosed property; creating new provisions; amending ORS 86.755;
3 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 be held on the date and at the time and place designated in the notice
7 of sale. The trustee may sell the property in one parcel or in separate parcels and shall sell the
8 parcel or parcels at auction to the highest bidder for cash. Any person, including the beneficiary
9 under the trust deed, but excluding the trustee, may bid at the trustee's sale. The attorney for the
10 trustee, or *[any]* **an** agent designated by the trustee or the attorney, may conduct the sale and act
11 in the sale as the **trustee's** auctioneer *[of the trustee]*.

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

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

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

24 (5) The purchaser at the trustee's sale *[shall be]* **is** entitled to possession of the property on the
25 10th day *[following]* **after** the sale~~,~~ *and any persons remaining*. **A person that remains** in pos-
26 session after that day under any interest, except *[one]* **an interest** prior to the trust deed or created
27 voluntarily by the grantor or a successor of the grantor, *[shall be deemed to be tenants]* **is a tenant**
28 at sufferance. *[All persons]* **Except as provided in subsection (6) of this section, a person** not
29 holding under an interest prior to the trust deed may be removed from possession by following the
30 procedures set out in ORS 105.105 to 105.168 or other applicable judicial procedure. *[, provided that*

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 a person holding under an interest created voluntarily by the grantor or a successor of the grantor
 2 must first receive 30 days' written notice of the intent to remove that person served no earlier than 30
 3 days before the date first set for the sale. Notices under this subsection shall be served by first class
 4 mail. "First class mail" for purposes of this section does not include certified or registered mail, or
 5 any other form of mail which may delay or hinder actual delivery of mail to the addressee.]

6 **(6) If a person is in possession of property sold at a trustee's sale under an interest**
 7 **created voluntarily by the grantor or a successor to the grantor, the purchaser at the trust-**
 8 **tee's sale is entitled to possession of the property subject to:**

9 **(a) The person's right to remain in possession until the expiration of a fixed term**
 10 **tenancy, as defined in ORS 90.100 (15), except that if the purchaser notifies the person that**
 11 **the purchaser will occupy the property as the purchaser's primary residence, the purchaser**
 12 **may terminate the person's interest by giving the person 90 days' written notice of the pur-**
 13 **chaser's intent to remove the person;**

14 **(b) The person's right to remain in possession until the purchaser gives the person 30**
 15 **days' written notice of the purchaser's intent to remove the person, if the person has a**
 16 **month-to-month tenancy, as defined in ORS 90.100 (26); or**

17 **(c) The person's right to remain in possession until the purchaser gives the person 10**
 18 **days' written notice of the purchaser's intent to remove the person, if the person has a**
 19 **week-to-week tenancy, as defined in ORS 90.100 (48).**

20 **(7) A purchaser shall serve a notice under subsection (6) of this section by first class**
 21 **mail and not by certified or registered mail or a form of mail that may delay or hinder actual**
 22 **delivery of mail to the addressee. The purchaser may serve the notice only after the date**
 23 **of the trustee's sale.**

24 [(6)] **(8)** Notwithstanding subsection (2) of this section, except when a beneficiary has partic-
 25 ipated in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by pro-
 26 ceedings in bankruptcy or for any other lawful reason shall, after release from the stay, continue
 27 as if uninterrupted, if within 30 days after release the trustee gives amended notice of sale by reg-
 28 istered or certified mail to the last-known address of [those] **the** persons listed in ORS 86.740 and
 29 86.750 (1) and to the address provided by each person who was present at the time and place set for
 30 the sale [which] **that** was stayed. The amended notice of sale [shall] **must**:

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

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

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

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

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

38 [(7)] **(9)** If the publication of the notice of sale was not completed prior to the date the foreclo-
 39 sure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other
 40 lawful reason, after release from the stay, in addition to complying with the provisions of subsection
 41 [(6)] **(8)** of this section, the trustee shall complete the publication by publishing an amended notice
 42 of sale [which] **that** states that the notice has been amended following release from the stay, and
 43 [which] **that** contains the amended date of sale. The amended notice [shall] **must** be published in a
 44 newspaper of general circulation in each of the counties in which the property is situated once a
 45 week for four successive weeks, except that the required number of publications shall be reduced

1 by the number of publications that were completed prior to the effective date of the stay. The last
2 publication [*shall*] **must** be made more than 20 days prior to the date the trustee conducts the sale.

3 **SECTION 2.** The amendments to ORS 86.755 by section 1 of this 2009 Act apply to trust-
4 tee's sales scheduled to be conducted on or after the effective date of this 2009 Act.

5 **SECTION 3.** This 2009 Act being necessary for the immediate preservation of the public
6 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
7 on its passage.

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