

Enrolled
House Bill 3610

Sponsored by Representative GARRARD; Representative RICHARDSON, Senator BONAMICI (Pre-session filed.)

CHAPTER

AN ACT

Relating to affidavits for loan modification; amending ORS 86.750 and section 3, chapter 864, Oregon Laws 2009; and prescribing an effective date.

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

SECTION 1. Section 3, chapter 864, Oregon Laws 2009, is amended to read:

Sec. 3. (1)(a) If a grantor returns the form identified in [section 20 (6), chapter 19, Oregon Laws 2008,] **ORS 86.737 (6)** to the lender by the date specified on the form, the beneficiary or an agent of the beneficiary shall review the information the grantor provided in the form and, in good faith, shall process the grantor's request. The beneficiary or the beneficiary's agent, as soon as reasonably practicable but not later than 45 days after receiving the form, shall notify the grantor whether the beneficiary approves or denies the request or requires additional information.

(b) If the beneficiary denies a request made under paragraph (a) of this subsection, the beneficiary or the beneficiary's agent in the notice shall provide the grantor with an explanation of how the beneficiary or the beneficiary's agent calculated that the grantor was not eligible for a loan modification.

(c) A beneficiary or the beneficiary's agent complies with the requirement set forth in paragraph (b) of this subsection if the beneficiary or the beneficiary's agent provides the information specified for a borrower notice in Supplemental Directive 09-08, as in effect on the effective date of this 2010 Act, issued by the United States Department of the Treasury under the Helping Families Save Their Homes Act of 2009, P.L. 111-22, as in effect on the effective date of this 2010 Act.

(d) A trustee's sale for the property subject to the loan may not occur until after the beneficiary or the beneficiary's agent timely responds to the grantor as provided in this subsection. During the 45-day period, the beneficiary or the beneficiary's agent may request the grantor to provide additional information required to determine whether the loan can be modified.

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

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

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

(3)(a) The beneficiary or the beneficiary's agent shall provide the trustee with the affidavit described in ORS 86.750 (5). In the affidavit, the beneficiary or the beneficiary's agent shall describe how the beneficiary or the beneficiary's agent has complied with subsections (1) and (2) of this section. **If the beneficiary denies a request made under subsection (1)(a) of this section, as part of the description, the beneficiary or the beneficiary's agent shall state that the beneficiary or the beneficiary's agent provided the grantor with the information described in subsection (1)(b) or (c) of this section.**

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

(4) Subsections (1) and (2) of this section do not apply to a beneficiary that determines in good faith, after considering the most current financial information the grantor provides, that the grantor is not eligible for a loan modification, provided that the beneficiary *[informs]* **or the beneficiary's agent notifies the grantor in writing** that the grantor is not eligible. **In the notice, the beneficiary or the beneficiary's agent shall describe the basis for the beneficiary's determination and explain the reasons why the grantor was not eligible.**

SECTION 2. ORS 86.750 is amended to read:

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

(b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the first attempt, the person *[attempting]* **that attempts to effect** service shall post a copy of the notice in a conspicuous place on the property on the date of the first attempt. The person *[attempting]* **that attempts to effect** service shall make a second attempt to effect service on a day that is at least two days after the first attempt.

(B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the second attempt, the person *[attempting]* **that attempts to effect** service shall post a copy of the notice in a conspicuous place on the property on the date of the second attempt. The person *[attempting]* **that attempts to effect** service shall make a third attempt to effect service on a day that is at least two days after the second attempt.

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

(c) Service on an occupant is *[deemed]* effected on the earlier of the date that notice is served as provided in paragraph (a) of this subsection or the first date on which notice is posted as described in paragraph (b)(A) of this subsection.

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

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

(a) An affidavit of mailing, if any;

(b) An affidavit of service, if any;

(c) An affidavit of service attempts and posting, if any; and

(d) An affidavit of publication.

(4) *[On or before the date]* **At or before the time** the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property described in the deed is situated an affidavit of mailing with respect to the notice to the grantor required under ORS 86.737.

(5) *[On or]* **Not later than five days** before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property is located an affidavit from the beneficiary or the beneficiary's agent that states how the beneficiary or the beneficiary's agent has complied with the provisions of section 3 (1) and (2), chapter 864, Oregon Laws 2009.

SECTION 3. ORS 86.750, as amended by section 6, chapter 864, Oregon Laws 2009, is amended to read:

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

(b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the first attempt, the person *[attempting]* **that attempts to effect** service shall post a copy of the notice in a conspicuous place on the property on the date of the first attempt. The person *[attempting]* **that attempts to effect** service shall make a second attempt to effect service on a day that is at least two days after the first attempt.

(B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the second attempt, the person *[attempting]* **that attempts to effect** service shall post a copy of the notice in a conspicuous place on the property on the date of the second attempt. The person *[attempting]* **that attempts to effect** service shall make a third attempt to effect service on a day that is at least two days after the second attempt.

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

(c) Service on an occupant is *[deemed]* effected on the earlier of the date that notice is served as provided in paragraph (a) of this subsection or the first date on which notice is posted as described in paragraph (b)(A) of this subsection.

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

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

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

(4) *[On or before the date]* **At or before the time** the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property described in the deed is situated an affidavit of mailing with respect to the notice to the grantor required under ORS 86.737.

SECTION 4. This 2010 Act takes effect on the 91st day after the date on which the special session of the Seventy-fifth Legislative Assembly adjourns sine die.

Passed by House February 15, 2010

Repassed by House February 23, 2010

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Chief Clerk of House

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Speaker of House

Passed by Senate February 22, 2010

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President of Senate

Received by Governor:

.....M,....., 2010

Approved:

.....M,....., 2010

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Governor

Filed in Office of Secretary of State:

.....M,....., 2010

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Secretary of State