

A-Engrossed
House Bill 3610

Ordered by the Senate February 19
Including Senate Amendments dated February 19

Sponsored by Representative GARRARD; Representative RICHARDSON (Presession filed.)

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 beneficiary or beneficiary's agent that denies request for loan modification to provide grantor with explanation of how beneficiary or beneficiary's agent calculated that grantor was not eligible for loan modification.

Specifies that beneficiary or beneficiary's agent complies with requirement if beneficiary or beneficiary's agent complies with certain federal guidelines.

Requires beneficiary or beneficiary's agent that denies loan modification to record affidavit that states that beneficiary or beneficiary's agent provided required information.

Requires beneficiary or beneficiary's agent to describe basis for beneficiary's determination that grantor was not eligible for loan modification.

Specifies date by which trustee must provide affidavit of compliance with requirement to meet with grantor and review grantor's request to modify mortgage loan.

[Declares emergency, effective on passage.] Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to affidavits for loan modification; amending ORS 86.750 and section 3, chapter 864, Oregon
3 Laws 2009; and prescribing an effective date.

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

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

6 **Sec. 3.** (1)(a) If a grantor returns the form identified in [*section 20 (6), chapter 19, Oregon Laws*
7 *2008,*] **ORS 86.737 (6)** to the lender by the date specified on the form, the beneficiary or an agent
8 of the beneficiary shall review the information the grantor provided in the form and, in good faith,
9 shall process the grantor's request. The beneficiary or the beneficiary's agent, as soon as reasonably
10 practicable but not later than 45 days after receiving the form, shall notify the grantor whether the
11 beneficiary approves or denies the request or requires additional information.

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

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

22 **(d) A trustee's sale for the property subject to the loan may not occur until after the beneficiary**

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 or the beneficiary's agent timely responds to the grantor **as provided in this subsection**. During
 2 the 45-day period, the beneficiary or the beneficiary's agent may request the grantor to provide ad-
 3 ditional information required to determine whether the loan can be modified.

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

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

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

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

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

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

32 **SECTION 2.** ORS 86.750 is amended to read:

33 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in
 34 ORS 86.745 [*shall*] **must** be served upon an occupant of the property described in the trust deed in
 35 the manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days
 36 before the day the trustee conducts the sale.

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

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

1 that is at least two days after the second attempt.

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

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

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

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

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

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

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

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

31 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in
32 ORS 86.745 [*shall*] **must** be served upon an occupant of the property described in the trust deed in
33 the manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days
34 before the day the trustee conducts the sale.

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

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

45 (C) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection

1 on the third attempt, the person [*attempting*] **that attempts to effect** service shall send a copy of
2 the notice, bearing the word “occupant” as the addressee, to the property address by first class mail
3 with postage prepaid.

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

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

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

14 (a) An affidavit of mailing, if any;

15 (b) An affidavit of service, if any;

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

17 (d) An affidavit of publication.

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

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

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