

**A-Engrossed**  
**House Bill 3656**

Ordered by the House February 12  
Including House Amendments dated February 12

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT ACCOUNTABILITY

**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 interest in property covered by trust deed is terminated and foreclosed as to person that was given notice of trustee's sale. [*Provides that bar against action for deficiency applies to property covered by trust deed, not just property covered by residential trust deed. Removes requirement that debt evidenced by note, bond or other obligation must be owed to beneficiary in residential trust deed that was subject to trustee's sale or foreclosure.*] **Clarifies circumstances in which bar against action for deficiency applies to property.**

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to sales of foreclosed property; creating new provisions; amending ORS 86.770; and declar-  
3 ing an emergency.

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

5 **SECTION 1.** ORS 86.770 is amended to read:

6 86.770. (1) If, under ORS 86.705 to 86.795, a trustee sells property covered by a trust deed, the  
7 trustee's sale forecloses and terminates the interest in the property that belongs to a person [*that*  
8 *received*] **to which** notice of the sale **was given** under ORS 86.740 and 86.750 or to a person that  
9 claims an interest by, through or under the person [*that received*] **to which** notice **was given**. A  
10 person whose interest the trustee's sale foreclosed and terminated may not redeem the property from  
11 the purchaser at the trustee's sale. A failure to give notice to a person entitled to notice does not  
12 affect the validity of the sale as to persons that were notified.

13 (2) Except in accordance with subsection (4) of this section, after a trustee's sale under ORS  
14 86.705 to 86.795, or after a judicial foreclosure of a residential trust deed, an action for a deficiency  
15 may not be brought or a judgment entered against the grantor, the grantor's successor in interest  
16 or another person obligated on:

17 (a) The note, bond or other obligation secured by the [*residential*] trust deed for the property  
18 that was subject to the trustee's sale or the **judicial** foreclosure; or

19 (b) Any other note, bond or other obligation secured by a residential trust deed for, or mortgage  
20 on, the property that was subject to the trustee's sale or the **judicial** foreclosure when the debt, of  
21 which the note, bond or other obligation is evidence:

22 [*(A) Was created at the same time as the note, bond or other obligation secured by the foreclosed*  
23 *residential trust deed; and*]

24 [*(B) Is owed to the beneficiary in the residential trust deed that was subject to the trustee's sale*  
25 *or the foreclosure.*]

**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) Was created on the same day as, and used as part of the same purchase or repur-**  
2 **chase transaction as, the note, bond or other obligation secured by the foreclosed residential**  
3 **trust deed; and**

4       **(B) Is owed to or was originated by the beneficiary or an affiliate of the beneficiary in**  
5 **the residential trust deed that was subject to the trustee's sale or the foreclosure.**

6       (3) Notwithstanding ORS 88.070, in a judicial foreclosure of a trust deed that is not a residential  
7 trust deed the judgment must provide that if the sale proceeds are insufficient to satisfy the judg-  
8 ment, execution may issue for the amount by which the unpaid balance of the obligation secured by  
9 the trust deed exceeds the net sale proceeds payable to the beneficiary.

10       (4) This section does not preclude:

11       (a) An action that forecloses, judicially or nonjudicially:

12       (A) Other property covered by the trust deed that is the subject of the foreclosure; or

13       (B) Another trust deed, mortgage, security agreement, consensual or nonconsensual security in-  
14 terest or lien that covers other real or personal property that is also used as security for the note,  
15 bond or other obligation that is secured by the trust deed for the property that was sold.

16       (b) An action against a guarantor for a deficiency that remains after a judicial foreclosure.

17       (5) A guarantor of an obligation secured by a residential trust deed may not recover a deficiency  
18 from the grantor or a successor in interest of the grantor.

19       **SECTION 2. (1) The amendments to ORS 86.770 by section 1 of this 2010 Act apply to a**  
20 **trust deed or mortgage or a note, bond or other obligation secured by a trust deed or**  
21 **mortgage that was executed before, on or after the effective date of this 2010 Act.**

22       **(2)(a) The amendments to ORS 86.770 (2)(a) by section 1 of this 2010 Act apply to an**  
23 **action for a deficiency brought on or after August 4, 2009.**

24       **(b) The amendments to ORS 86.770 (2)(b) by section 1 of this 2010 Act apply only to an**  
25 **action for a deficiency brought on or after the effective date of this 2010 Act.**

26       **SECTION 3. This 2010 Act being necessary for the immediate preservation of the public**  
27 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**  
28 **on its passage.**

29