

House Bill 3656

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 **as introduced**.

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.

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*] **within 10 days before or after** the note, bond or other
23 obligation secured by the foreclosed residential trust deed **was created**.[: 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.*]

26 (3) Notwithstanding ORS 88.070, in a judicial foreclosure of a trust deed that is not a residential
27 trust deed the judgment must provide that if the sale proceeds are insufficient to satisfy the judg-
28 ment, execution may issue for the amount by which the unpaid balance of the obligation secured by
29 the trust deed exceeds the net sale proceeds payable to 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 (4) This section does not preclude:

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

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

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

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

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

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

13 **(2) The amendments to ORS 86.770 (2) by section 1 of this 2010 Act apply to trustee's**
14 **sales that occur on or after August 4, 2009, except for trustee's sales for which legal action**
15 **has commenced before the effective date of this 2010 Act. The amendments to ORS 86.770 (2)**
16 **by section 1 of this 2010 Act apply to judgments entered following a judicial foreclosure on**
17 **or after the effective date of this 2010 Act.**

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

21 _____