

# Senate Bill 1013

Sponsored by Senator BONAMICI (Pre-session 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 **as introduced**.

Provides that requirement to provide certain notices to tenant of foreclosed property applies only to residential tenant. Prescribes form of required notice.

Provides that if tenant elects to apply prepaid rent or security deposit to tenant's rent obligation, purchaser at trustee's sale is not responsible for return of security deposit or prepaid rent to tenant.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to the rights of tenants in foreclosed property; creating new provisions; amending ORS 86.745 and 90.300; and declaring an emergency.

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

**SECTION 1.** ORS 86.745 is amended to read:

86.745. The notice of sale shall:

(1) List the names of the grantor, trustee and beneficiary in the trust deed, and the mailing address of the trustee.

(2) Describe the property the trust deed covers.

(3) Identify the book and page of the mortgage records that record the trust deed.

(4) State the default for which the foreclosure is made.

(5) State the sum owing on the obligation that the trust deed secures.

(6) State that the property will be sold to satisfy the obligation.

(7) Set forth the date, time and place of the sale.

(8) State that the right exists under ORS 86.753 to have the proceeding dismissed and the trust deed reinstated by paying the entire amount then due, together with costs, trustee's fees and attorney fees, and by curing any other default complained of in the notice of default, at any time that is not later than five days before the date last set for the sale.

(9) **If the property is a dwelling unit, as defined in ORS 90.100**, include a notice addressed clearly to any person who occupies the property and who is or might be a tenant. The notice required under this subsection must:

(a) Include contact information for the Oregon State Bar and a person or organization that provides legal help to individuals at no charge to the individual;

(b) Include information concerning the right the person has to notice under ORS 86.755 (5)(c) and state that the person may have additional rights under federal law;

(c) Be set apart from other text in the notice of sale; and

(d) Be in substantially the following form:

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**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.

## NOTICE TO TENANTS:

1  
2 If you are a tenant of this property, foreclosure could affect your rental agreement. A purchaser  
3 who buys this property at a foreclosure sale has the right to require you to move out after giving  
4 you notice of the requirement.

5 If you do not have a fixed-term lease, the purchaser may require you to move out after giving  
6 you a 30-day notice on or after the date of the sale.

7 If you have a fixed-term lease, you may be entitled to receive after the date of the sale a 60-day  
8 notice of the purchaser's requirement that you move out.

9 To be entitled to either a 30-day or 60-day notice, you must give the trustee of the property  
10 written evidence of your rental agreement at least 30 days before the date first set for the sale. If  
11 you have a fixed-term lease, you must give the trustee a copy of the rental agreement. If you do not  
12 have a fixed-term lease and cannot provide a copy of the rental agreement, you may give the trustee  
13 other written evidence of the existence of the rental agreement. The date that is 30 days before the  
14 date of the sale is\_\_\_\_\_. The name of the trustee and the trustee's mailing address  
15 are listed on this notice.

16 Federal law may grant you additional rights, including a right to a longer notice period. Consult  
17 a lawyer for more information about your rights under federal law.

18 You have the right to apply your security deposit and any rent you prepaid toward your current  
19 obligation under your rental agreement. If you want to do so, you must notify your landlord in  
20 writing and in advance that you intend to do so.

21 If you believe you need legal assistance with this matter, you may contact the Oregon State Bar  
22 and ask for the lawyer referral service. Contact information for the Oregon State Bar is included  
23 with this notice. If you have a low income and meet federal poverty guidelines, you may be eligible  
24 for free legal assistance. Contact information for where you can obtain free legal assistance is in-  
25 cluded with this notice.

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28 **SECTION 2.** ORS 86.745, as amended by section 1 of this 2010 Act, is amended to read:

29 86.745. The notice of sale shall:

30 (1) List the names of the grantor, trustee and beneficiary in the trust deed, and the mailing ad-  
31 dress of the trustee.

32 (2) Describe the property the trust deed covers.

33 (3) Identify the book and page of the mortgage records that record the trust deed.

34 (4) State the default for which the foreclosure is made.

35 (5) State the sum owing on the obligation that the trust deed secures.

36 (6) State that the property will be sold to satisfy the obligation.

37 (7) Set forth the date, time and place of the sale.

38 (8) State that the right exists under ORS 86.753 to have the proceeding dismissed and the trust  
39 deed reinstated by paying the entire amount then due, together with costs, trustee's fees and attor-  
40 ney fees, and by curing any other default complained of in the notice of default, at any time that is  
41 not later than five days before the date last set for the sale.

42 (9) If the property is a dwelling unit, as defined in ORS 90.100, include a notice addressed clearly  
43 to any person who occupies the property and who is or might be a tenant. The notice required under  
44 this subsection must:

45 (a) Include contact information for the Oregon State Bar and a person or organization that

1 provides legal help to individuals at no charge to the individual;

2 (b) Include information concerning the right the person has to notice under ORS 86.755 (5)(c)  
3 and state that the person may have additional rights under federal law;

4 (c) Be set apart from other text in the notice of sale; and

5 (d) Be in substantially the following form:

6 \_\_\_\_\_  
7  
8 **[NOTICE TO TENANTS:]**

9 *[If you are a tenant of this property, foreclosure could affect your rental agreement. A purchaser  
10 who buys this property at a foreclosure sale has the right to require you to move out after giving you  
11 notice of the requirement.]*

12 *[If you do not have a fixed-term lease, the purchaser may require you to move out after giving you  
13 a 30-day notice on or after the date of the sale.]*

14 *[If you have a fixed-term lease, you may be entitled to receive after the date of the sale a 60-day  
15 notice of the purchaser’s requirement that you move out.]*

16 *[To be entitled to either a 30-day or 60-day notice, you must give the trustee of the property written  
17 evidence of your rental agreement at least 30 days before the date first set for the sale. If you have a  
18 fixed-term lease, you must give the trustee a copy of the rental agreement. If you do not have a fixed-  
19 term lease and cannot provide a copy of the rental agreement, you may give the trustee other written  
20 evidence of the existence of the rental agreement. The date that is 30 days before the date of the sale  
21 is\_\_\_\_\_. The name of the trustee and the trustee’s mailing address are listed on this  
22 notice.]*

23 *[Federal law may grant you additional rights, including a right to a longer notice period. Consult  
24 a lawyer for more information about your rights under federal law.]*

25 *[You have the right to apply your security deposit and any rent you prepaid toward your current  
26 obligation under your rental agreement. If you want to do so, you must notify your landlord in writing  
27 and in advance that you intend to do so.]*

28 *[If you believe you need legal assistance with this matter, you may contact the Oregon State Bar  
29 and ask for the lawyer referral service. Contact information for the Oregon State Bar is included with  
30 this notice. If you have a low income and meet federal poverty guidelines, you may be eligible for free  
31 legal assistance. Contact information for where you can obtain free legal assistance is included with  
32 this notice.]*

33 **NOTICE TO RESIDENTIAL TENANTS**

34 **The property in which you are living is in foreclosure. A foreclosure sale is scheduled for**  
35 **\_\_\_\_\_.** **Unless the property owner (your landlord) pays the lender who is fore-**  
36 **closing on this property, the foreclosure will go through and someone new will own this**  
37 **property.**

38 **The following information applies to you only if you occupy and rent this property as a**  
39 **residential dwelling under a legitimate rental agreement. The information does not apply to**  
40 **you if you own this property or if you are a commercial tenant.**

41 **If the foreclosure goes through, the business or individual who buys this property at the**  
42 **foreclosure sale has the right to require you to move out. The buyer must first give you an**  
43 **eviction notice in writing that specifies the date by which you must move out. The buyer**  
44 **may not give you this notice until after the foreclosure sale happens. If you do not leave**  
45 **before the move-out date, the buyer can have the sheriff remove you from the property after**

1 a court hearing. You will receive notice of the court hearing.

2 **FEDERAL LAW REQUIRES YOU TO BE NOTIFIED**

3 **IF YOU ARE OCCUPYING AND RENTING THIS PROPERTY AS A RESIDENTIAL**  
 4 **DWELLING UNDER A LEGITIMATE RENTAL AGREEMENT, FEDERAL LAW REQUIRES**  
 5 **THE BUYER TO GIVE YOU NOTICE IN WRITING A CERTAIN NUMBER OF DAYS BE-**  
 6 **FORE THE BUYER CAN REQUIRE YOU TO MOVE OUT. THE FEDERAL LAW THAT RE-**  
 7 **QUIRES THE BUYER TO GIVE YOU THIS NOTICE IS EFFECTIVE UNTIL DECEMBER 31,**  
 8 **2012. Under federal law, the buyer must give you at least 90 days' notice in writing before**  
 9 **requiring you to move out. If you are renting this property under a fixed-term lease (for**  
 10 **example, a six-month or one-year lease), you may stay until the end of your lease term. If**  
 11 **the buyer wants to move in and use this property as the buyer's primary residence, the**  
 12 **buyer can give you written notice and require you to move out after 90 days, even if you have**  
 13 **a fixed-term lease with more than 90 days left.**

14 **STATE LAW NOTIFICATION REQUIREMENTS**

15 **IF THE FEDERAL LAW DOES NOT APPLY BECAUSE YOU ARE NOT CONSIDERED**  
 16 **TO BE A BONA FIDE TENANT, STATE LAW STILL REQUIRES THE BUYER TO GIVE**  
 17 **YOU NOTICE IN WRITING BEFORE REQUIRING YOU TO MOVE OUT IF YOU ARE OC-**  
 18 **CUPYING AND RENTING THE PROPERTY AS A TENANT IN GOOD FAITH. EVEN IF THE**  
 19 **FEDERAL LAW REQUIREMENT IS NO LONGER EFFECTIVE AFTER DECEMBER 31, 2012,**  
 20 **THE REQUIREMENT UNDER STATE LAW STILL APPLIES TO YOUR SITUATION. Under**  
 21 **state law, if you have a fixed-term lease (for example, a six-month or one-year lease), the**  
 22 **buyer must give you at least 60 days' notice in writing before requiring you to move out. If**  
 23 **the buyer wants to move in and use this property as the buyer's primary residence, the**  
 24 **buyer can give you written notice and require you to move out after 30 days, even if you have**  
 25 **a fixed-term lease with more than 30 days left.**

26 **If you are renting under a month-to-month or week-to-week rental agreement, the buyer**  
 27 **must give you at least 30 days' notice in writing before requiring you to move out.**

28 **IMPORTANT: For the buyer to be required to give you notice under state law, you must**  
 29 **prove to the business or individual who is handling the foreclosure sale that you are occu-**  
 30 **pying and renting this property as a residential dwelling under a legitimate rental agreement.**  
 31 **The name and address of the business or individual who is handling the foreclosure sale is**  
 32 **shown on this notice under the heading "TRUSTEE." You must mail or deliver your proof**  
 33 **not later than \_\_\_\_\_ (30 days before the date first set for the foreclosure sale).**  
 34 **Your proof must be in writing and should be a copy of your rental agreement or lease. If you**  
 35 **do not have a written rental agreement or lease, you can provide other proof, such as re-**  
 36 **ceipts for rent you paid.**

37 **ABOUT YOUR SECURITY DEPOSIT**

38 **Under state law, you may apply your security deposit and any rent you paid in advance**  
 39 **against the current rent you owe your landlord. To do this, you must notify your landlord**  
 40 **in writing that you want to subtract the amount of your security deposit or prepaid rent**  
 41 **from your rent payment. You may do this only for the rent you owe your current landlord.**  
 42 **If you do this, you must do so before the foreclosure sale. The business or individual who**  
 43 **buys this property at the foreclosure sale is not responsible to you for any deposit or prepaid**  
 44 **rent you paid to your landlord.**

45 **ABOUT YOUR TENANCY AFTER THE FORECLOSURE SALE**

1       **The business or individual who buys this property at the foreclosure sale may be willing**  
 2 **to allow you to stay as a tenant instead of requiring you to move out. You should contact**  
 3 **the buyer to discuss that possibility if you would like to stay. Under state law, if the buyer**  
 4 **accepts rent from you, signs a new residential rental agreement with you or does not notify**  
 5 **you in writing within 30 days after the date of the foreclosure sale that you must move out,**  
 6 **the buyer becomes your new landlord and must maintain the property. If the buyer does not**  
 7 **accept rent from you and does not notify you in writing that you must move out, there is**  
 8 **no landlord and no one is responsible for maintaining the property.**

9       **YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROP-**  
 10 **ERTY IS SOLD TO ANOTHER BUSINESS OR INDIVIDUAL OR UNTIL A COURT OR A**  
 11 **LENDER TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED.**  
 12 **BE SURE TO KEEP PROOF OF ANY PAYMENTS YOU MAKE.**

13       **IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR**  
 14 **HOME WITHOUT FIRST GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION**  
 15 **ABOUT YOUR RIGHTS, YOU MAY WISH TO CONSULT A LAWYER. If you believe you**  
 16 **need legal assistance, contact the Oregon State Bar and ask for the lawyer referral service.**  
 17 **Contact information for the Oregon State Bar is included with this notice. If you do not have**  
 18 **enough money to pay a lawyer and are otherwise eligible, you may be able to receive legal**  
 19 **assistance for free. Information about whom to contact for free legal assistance is included**  
 20 **with this notice.**

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23       **SECTION 3.** ORS 90.300 is amended to read:

24       90.300. (1) As used in this section, “security deposit” includes any last month’s rent deposit.

25       (2)(a) Except as otherwise provided in this section, a landlord may require [*the payment of*] a  
 26 **tenant to pay** a security deposit. The landlord shall provide [*a*] **the** tenant with a receipt for any  
 27 security deposit [*paid by*] the tenant **pays. The landlord shall hold** a security deposit or prepaid  
 28 rent [*shall be held by the landlord*] for the tenant who is a party to the rental agreement. [*The claim*  
 29 *of a tenant*] **A tenant’s claim** to the security deposit or prepaid rent [*shall be*] **is** prior to the claim  
 30 of [*any*] a creditor of the landlord, including a trustee in bankruptcy.

31       **(b) Except as provided in ORS 86.755 (8),** the holder of the landlord’s interest in the premises  
 32 at the time [*of termination of*] the tenancy **terminates** is responsible to the tenant for any security  
 33 deposit or prepaid rent and is bound by this section.

34       (3) A landlord may not charge a tenant a pet security deposit for keeping a service animal or  
 35 companion animal that a tenant with a disability requires as a reasonable accommodation under fair  
 36 housing laws.

37       (4)(a) Except as otherwise provided in this subsection, a landlord may not change the rental  
 38 agreement to require the **tenant to pay** [*payment of*] a new or increased security deposit during the  
 39 first year after the tenancy has begun. Subject to subsection (3) of this section, **the landlord may**  
 40 **require** an additional deposit [*may be required*] if the landlord and tenant agree to modify the terms  
 41 and conditions of the rental agreement to permit a pet or for other cause and the additional deposit  
 42 relates to [*that*] **the** modification. This paragraph does not prevent **a landlord from collecting** [*the*  
 43 *collection of*] a security deposit that [*was provided for under*] an initial rental agreement **provided**  
 44 **for** but **that** remained unpaid at the time the tenancy began.

45       (b) If a landlord requires a new or increased security deposit after the first year of the tenancy,

1 the landlord shall allow the tenant at least three months to pay *[that]* **the new or increased** deposit.

2 (5) The landlord may claim all or part of the security deposit only if the **landlord required the**  
3 security deposit *[was made]* for any or all of the purposes *[provided by]* **specified in** subsection (6)  
4 of this section.

5 (6)(a) The landlord may claim from the security deposit only the amount reasonably necessary:

6 (A) To remedy the tenant's defaults in the performance of the rental agreement including, but  
7 not limited to, unpaid rent; and

8 (B) To repair damages to the premises caused by the tenant, not including ordinary wear and  
9 tear.

10 (b) A landlord is not required to repair damage caused by the tenant in order **for the landlord**  
11 to claim against the deposit for the cost to make the repair. Any labor costs **the landlord assesses**  
12 *[assessed]* under this subsection for cleaning or repairs must be based on a reasonable hourly rate.  
13 The landlord may charge a reasonable hourly rate for the **landlord's own** performance of cleaning  
14 or repair work *[by the landlord]*.

15 (c) Defaults and damages for which a landlord may recover under this subsection include, but  
16 are not limited to:

17 (A) Carpet cleaning, other than the use of a common vacuum cleaner, if:

18 (i) The cleaning is performed by use of a machine specifically designed for cleaning or  
19 shampooing carpets;

20 (ii) The carpet was cleaned immediately *[prior to]* **before** the tenant *[taking]* **took** possession;  
21 and

22 (iii) The written rental agreement provides that the landlord may deduct the cost of carpet  
23 cleaning regardless of whether the tenant cleans the carpet before *[delivery of]* **the tenant delivers**  
24 possession as described in ORS 90.147.

25 (B) Loss of use of the dwelling unit during the performance of necessary cleaning or repairs, if  
26 the cleaning or repairs are performed in a timely manner.

27 (7) A landlord may not require *[that]* a **tenant to pay or to forfeit a** security deposit or prepaid  
28 rent *[be required or forfeited]* to the landlord *[upon]* **for the tenant's** failure *[of the tenant]* to main-  
29 tain a tenancy for a minimum number of months in a month-to-month tenancy.

30 (8) **The landlord must apply** any last month's rent deposit *[must be applied]* to the rent due for  
31 the last month of the tenancy:

32 (a) *[Upon]* **When** either the landlord or **the** tenant *[giving]* **gives** to the other a notice of ter-  
33 mination, pursuant to this chapter, other than a notice of termination under ORS 90.394;

34 (b) *[Upon agreement by]* **When** the landlord and tenant **agree** to terminate the tenancy; or

35 (c) *[Upon termination pursuant to]* **When the tenancy terminates in accordance with** the  
36 provisions of a written rental agreement for a term tenancy.

37 (9) **A landlord shall account for and refund as provided in subsections (11) to (13) of this**  
38 **section** any portion of a last month's rent deposit *[not applied]* **the landlord does not apply** as  
39 provided under subsection (8) of this section *[shall be accounted for and refunded as provided under*  
40 *subsections (11) to (13) of this section]*. Unless the tenant and landlord agree otherwise, **the tenant**  
41 **may not require the landlord to apply** a last month's rent deposit *[shall not be applied]* to rent  
42 due for any period other than the last month of the tenancy. A last month's rent deposit *[shall not*  
43 *operate to]* **does not** limit the amount of rent charged unless a written rental agreement provides  
44 otherwise.

45 (10) *[Upon termination of the tenancy]* **When the tenancy terminates**, a landlord shall account

1 for and refund to the tenant, **in the same manner this section requires for security deposits,**  
 2 the unused balance of any prepaid rent **the landlord has** not previously refunded to the tenant [*as*  
 3 *required by*] **under** ORS 90.380 and 105.120 (5)(b) or any other provision of this chapter[, *in the same*  
 4 *manner as required for security deposits by this section*]. The landlord may claim from the remaining  
 5 prepaid rent only the amount reasonably necessary to pay the tenant's unpaid rent.

6 (11) In order to claim all or part of any prepaid rent or security deposit, within 31 days after  
 7 the [*termination of the*] tenancy **terminates** and [*delivery of*] **the tenant delivers** possession the  
 8 landlord shall give to the tenant a written accounting that states specifically the basis or bases of  
 9 the claim. The landlord shall give a separate accounting for security deposits and for prepaid rent.

10 (12) The **landlord shall return to the tenant the** security deposit or prepaid rent or **the** por-  
 11 tion [*thereof*] **of the security deposit or prepaid rent that the landlord does** not [*claimed*] **claim**  
 12 in the manner provided by subsections (10) and (11) of this section [*shall be returned to the tenant*]  
 13 not later than 31 days after [*the termination of*] the tenancy **terminates** and [*delivery of*] **the tenant**  
 14 **delivers** possession to the landlord.

15 (13) The landlord shall give the written accounting [*as*] required [*by*] **under** subsection (11) of  
 16 this section or shall return the security deposit or prepaid rent as required by subsection (12) of this  
 17 section by personal delivery or by first class mail.

18 (14) If a security deposit or prepaid rent secures a tenancy for a space for a [*tenant owned and*  
 19 *occupied*] manufactured dwelling or floating home **the tenant owns and occupies**, whether or not  
 20 in a facility, and the dwelling or home is abandoned as described in ORS 90.425 (2) or 90.675 (2), the  
 21 31-day period described in subsections (11) and (12) of this section commences on the earliest of:

22 (a) Waiver of the abandoned property process under ORS 90.425 (26) or 90.675 (22);

23 (b) Removal of the manufactured dwelling or floating home from the rented space;

24 (c) Destruction or other disposition of the manufactured dwelling or floating home under ORS  
 25 90.425 (10)(b) or 90.675 (10)(b); or

26 (d) Sale of the manufactured dwelling or floating home pursuant to ORS 90.425 (10)(a) or 90.675  
 27 (10)(a).

28 (15) If the landlord fails to comply with subsection (12) of this section or if the landlord in bad  
 29 faith fails to return all or any portion of any prepaid rent or security deposit due to the tenant  
 30 under this chapter or the rental agreement, the tenant may recover the money due in an amount  
 31 equal to twice the amount:

32 (a) Withheld without a written accounting under subsection (11) of this section; or

33 (b) Withheld in bad faith.

34 (16)(a) A security deposit or prepaid rent in the possession of the landlord is not garnishable  
 35 property, as provided in ORS 18.618.

36 (b) If a **landlord delivers a** security deposit or prepaid rent [*is delivered*] to a garnishor in vi-  
 37 olation of ORS 18.618 (1)(b), the landlord that delivered the security deposit or prepaid rent to the  
 38 garnishor shall allow the tenant at least 30 days after a copy of the garnishee response required by  
 39 ORS 18.680 is delivered to the tenant under ORS 18.690 to restore the security deposit or prepaid  
 40 rent. If the tenant fails to restore a security deposit or prepaid rent under the provisions of this  
 41 paragraph before the tenancy terminates, and the landlord retains no security deposit or prepaid  
 42 rent from the tenant after the garnishment, the landlord is not required to refund or account for the  
 43 security deposit or prepaid rent under subsection (10) of this section.

44 (17) This section does not preclude the landlord or tenant from recovering other damages under  
 45 this chapter.

1        **SECTION 4.** (1) The amendments to ORS 86.745 by section 1 of this 2010 Act apply to  
2 notices given under ORS 86.740 on or after the effective date of this 2010 Act.

3        (2) The amendments to ORS 90.300 by section 3 of this 2010 Act apply to tenancies that  
4 are terminated on or after the effective date of this 2010 Act.

5        **SECTION 5.** The amendments to ORS 86.745 by section 2 of this 2010 Act become opera-  
6 tive June 30, 2010.

7        **SECTION 6.** This 2010 Act being necessary for the immediate preservation of the public  
8 peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect  
9 on its passage.

10