

SENATE AMENDMENTS TO SENATE BILL 1013

By COMMITTEE ON CONSUMER PROTECTION AND PUBLIC AFFAIRS

February 8

1 On page 1 of the printed bill, line 3, after “86.745” insert “, 86.750”.

2 In line 19, delete “is a dwelling unit” and insert “includes one or more dwelling units”.

3 In line 20, before “tenant” insert “residential”.

4 On page 2, delete lines 28 through 45 and delete pages 3 and 4.

5 On page 5, delete lines 1 through 22 and insert:

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

7 “86.745. The notice of sale shall:

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

10 “(2) Describe the property the trust deed covers.

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

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

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

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

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

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

20 “(9) If the property includes one or more dwelling units, as defined in ORS 90.100, include a
21 notice addressed clearly to any person who occupies the property and who is or might be a resi-
22 dential tenant. The notice required under this subsection must:

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

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

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

28 “(d) Be in substantially the following form:

29 “

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31

[NOTICE TO TENANTS:]

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

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[If you do not have a fixed-term lease, the purchaser may require you to move out after giving you

1 a 30-day notice on or after the date of the sale.]

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

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

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

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

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

21 NOTICE TO RESIDENTIAL TENANTS

22 **The property in which you are living is in foreclosure. A foreclosure sale is scheduled for**
23 **_____.** Unless the lender who is foreclosing on this property is paid, the fore-
24 closure will go through and someone new will own this property.

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

28 **If the foreclosure goes through, the business or individual who buys this property at the**
29 **foreclosure sale has the right to require you to move out. The buyer must first give you an**
30 **eviction notice in writing that specifies the date by which you must move out. The buyer**
31 **may not give you this notice until after the foreclosure sale happens. If you do not leave**
32 **before the move-out date, the buyer can have the sheriff remove you from the property after**
33 **a court hearing. You will receive notice of the court hearing.**

34 FEDERAL LAW REQUIRES YOU TO BE NOTIFIED

35 **IF YOU ARE OCCUPYING AND RENTING THIS PROPERTY AS A RESIDENTIAL**
36 **DWELLING UNDER A LEGITIMATE RENTAL AGREEMENT, FEDERAL LAW REQUIRES**
37 **THE BUYER TO GIVE YOU NOTICE IN WRITING A CERTAIN NUMBER OF DAYS BE-**
38 **FORE THE BUYER CAN REQUIRE YOU TO MOVE OUT. THE FEDERAL LAW THAT RE-**
39 **QUIRES THE BUYER TO GIVE YOU THIS NOTICE IS EFFECTIVE UNTIL DECEMBER 31,**
40 **2012. Under federal law, the buyer must give you at least 90 days' notice in writing before**
41 **requiring you to move out. If you are renting this property under a fixed-term lease (for**
42 **example, a six-month or one-year lease), you may stay until the end of your lease term. If**
43 **the buyer wants to move in and use this property as the buyer's primary residence, the**
44 **buyer can give you written notice and require you to move out after 90 days, even if you have**
45 **a fixed-term lease with more than 90 days left.**

1 **RECEIVE CONCERNING THE APPLICATION OF YOUR DEPOSIT OR YOUR PREPAID**
2 **RENT.**

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

11 “

12 _____
13 **“SECTION 3.** ORS 86.750 is amended to read:

14 **“86.750. (1)(a)** Except as provided in paragraph (b) of this subsection, the notice prescribed in
15 ORS 86.745 [*shall*] **must** be served upon an occupant of the property described in the trust deed in
16 the manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days
17 before the day the trustee conducts the sale.

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

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

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

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

35 **“(2)(a) Except as provided in paragraph (b) of this subsection,** a copy of the notice of sale
36 [*shall*] **must** be published in a newspaper of general circulation in each of the counties in which the
37 property is situated once a week for four successive weeks. The last publication [*shall*] **must** be
38 made more than 20 days prior to the date the trustee conducts the sale.

39 **“(b) The copy of the notice of sale required to be published under paragraph (a) of this**
40 **subsection does not need to include the notice to tenants required under ORS 86.745 (9).**

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

44 **“(a)** An affidavit of mailing, if any;

45 **“(b)** An affidavit of service, if any;

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

2 “(d) An affidavit of publication.

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

6 “(5) On or before the date the trustee conducts the sale, the trustee shall file for recording in
7 the official record of the county or counties in which the property is located an affidavit from the
8 beneficiary or the beneficiary’s agent that states how the beneficiary or the beneficiary’s agent has
9 complied with the provisions of section 3 (1) and (2), chapter 864, Oregon Laws 2009.

10 “**SECTION 4.** ORS 86.750, as amended by section 6, chapter 864, Oregon Laws 2009, is amended
11 to read:

12 “86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in
13 ORS 86.745 [shall] **must** be served upon an occupant of the property described in the trust deed in
14 the manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days
15 before the day the trustee conducts the sale.

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

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

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

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

33 “(2)(a) **Except as provided in paragraph (b) of this subsection,** a copy of the notice of sale
34 [shall] **must** be published in a newspaper of general circulation in each of the counties in which the
35 property is situated once a week for four successive weeks. The last publication [shall] **must** be
36 made more than 20 days prior to the date the trustee conducts the sale.

37 “(b) **The copy of the notice of sale required to be published under paragraph (a) of this**
38 **subsection does not need to include the notice to tenants required under ORS 86.745 (9).**

39 “(3) On or before the date the trustee conducts the sale, the trustee shall file for recording in
40 the official record of the county or counties in which the property described in the deed is situated
41 the following affidavits with respect to the notice of sale:

42 “(a) An affidavit of mailing, if any;

43 “(b) An affidavit of service, if any;

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

45 “(d) An affidavit of publication.

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

4 In line 23, delete “3” and insert “5”.

5 On page 8, line 1, delete “4” and insert “6”.

6 In line 3, delete “3” and insert “5”.

7 In line 5, delete “5.” and insert “7. (1)”.

8 After line 6, insert:

9 “(2) Before the operative date specified in subsection (1) of this section, a trustee may meet the
10 trustee’s obligations under ORS 86.745 by using either the form for the notice to tenants described
11 in ORS 86.745 (9), as amended by section 1 of this 2010 Act, or the form for the notice to residential
12 tenants described in ORS 86.745 (9), as amended by section 2 of this 2010 Act.”.

13 In line 7, delete “6” and insert “8”.

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