

House Bill 2472

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim 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**.

Requires trustee or beneficiary named in trust deed to respond in writing to grantor not later than 30 calendar days after receiving communication from grantor that is related to grantor's mortgage loan. Prescribes standards for response.

Makes violation of requirement to respond to communication, requirement to provide loan modification request form and process request for loan modification and certain other violations unlawful practice subject to enforcement under Unlawful Trade Practices Act.

Removes sunset from laws that require response to loan modification request.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to mortgage lending; creating new provisions; amending ORS 86.737, 86.750 and 646.608;
3 repealing sections 9 and 10, chapter 864, Oregon Laws 2009; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 86.705 to 86.795.**

6 **SECTION 2. (1) A trustee or beneficiary shall respond in writing to the grantor named**
7 **in the trust deed not later than 30 calendar days after receiving a communication from the**
8 **grantor that is related to the grantor's mortgage loan. The trustee or beneficiary shall re-**
9 **spond in such a way as to address the substance of the grantor's communication with in-**
10 **formation that is accurate, specific and relevant to the topic set forth in the grantor's**
11 **communication. If the grantor's communication asks the trustee or beneficiary to perform**
12 **an action, the trustee or beneficiary shall:**

13 (a) **Perform the requested action, state in the written response that the trustee or ben-**
14 **eficiary has performed the requested action and report or provide the results of the action;**
15 **or**

16 (b) **State in the written response that the trustee or beneficiary did not perform the re-**
17 **quested action and explain why the trustee or beneficiary did not perform the requested**
18 **action.**

19 (2) **A violation of the provisions of subsection (1) of this section is an unlawful practice**
20 **under ORS 646.608.**

21 **SECTION 3. ORS 86.737, as amended by section 4, chapter 864, Oregon Laws 2009, is amended**
22 **to read:**

23 86.737. (1) If a notice of default is recorded for property that is subject to a residential trust
24 deed, the sender of a notice of sale under ORS 86.740 shall, on or before the date the notice of sale
25 is served or mailed, give notice under this section to the grantor by both first class and certified
26 mail with return receipt requested. Subject to any rules adopted under subsection (2) of this section,
27 the notice must be in substantially the following form and printed in at least 14-point type:

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.

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NOTICE:
YOU ARE IN DANGER OF LOSING
YOUR PROPERTY IF YOU DO NOT
TAKE ACTION IMMEDIATELY

This notice is about your mortgage loan on your property at _____ (address).

Your lender has decided to sell this property because the money due on your mortgage loan has not been paid on time or because you have failed to fulfill some other obligation to your lender. This is sometimes called "foreclosure."

The amount you would have had to pay as of _____ (date) to bring your mortgage loan current was \$_____. The amount you must now pay to bring your loan current may have increased since that date.

By law, your lender has to provide you with details about the amount you owe, if you ask. You may call _____ (telephone number) to find out the exact amount you must pay to bring your mortgage loan current and to get other details about the amount you owe. You may also get these details by sending a request by certified mail to: _____.

THIS IS WHEN AND WHERE
YOUR PROPERTY WILL BE SOLD
IF YOU DO NOT TAKE ACTION:

Date and time: _____, 2_____ at _____

Place: _____

THIS IS WHAT YOU CAN DO
TO STOP THE SALE:

1. You can pay the amount past due or correct any other default, up to five days before the sale.
2. You can refinance or otherwise pay off the loan in full anytime before the sale.
3. You can [*call _____ (name) at _____ (telephone number) to find out if your lender is willing to*] **request that your lender** give you more time or change the terms of your loan.
4. You can sell your home, provided the sale price is enough to pay what you owe.

There are government agencies and nonprofit organizations that can give you information about foreclosure and help you decide what to do. For the name and telephone number of an organization near you, please call the statewide telephone contact number at _____. You may also wish to talk to a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at _____ or toll-free in Oregon at _____ or you may visit its website at: _____. Legal assistance may be available if you have a low income

1 and meet federal poverty guidelines. For more information and a directory of legal aid programs,
2 go to _____.

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4 **Your lender may be willing to modify your loan to reduce the interest rate, reduce the**
5 **monthly payments or both. You can get information about possible loan modification pro-**
6 **grams by contacting your lender at _____. If you can't reach your lender, you may**
7 **contact the trustee at the telephone number at the bottom of this notice. If you have already**
8 **entered into a loan modification with your lender, it is possible that you will not be able to**
9 **modify your loan again unless your circumstances have changed. Your lender is not obligated**
10 **to modify your loan.**

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12 **You may request to meet with your lender to discuss options for modifying your loan. During**
13 **discussions with your lender, you may have the assistance of a lawyer, a housing counselor**
14 **or another person of your choosing. To receive a referral to a housing counselor or other**
15 **assistance available in your community, call this toll-free consumer mortgage foreclosure**
16 **information number: _____. Many lenders participate in new federal loan modifi-**
17 **cation programs. You can obtain more information about these programs at:**
18 **_____.**

19
20 **IF YOU WANT TO APPLY TO MODIFY YOUR LOAN, YOU MUST FILL OUT AND MAIL**
21 **BACK THE ENCLOSED "LOAN MODIFICATION REQUEST FORM." YOUR LENDER MUST**
22 **RECEIVE THE FORM BY _____, WHICH IS 30 DAYS AFTER THE DATE SHOWN**
23 **BELOW.**

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26 **WARNING:** You may get offers from people who tell you they can help you keep your property. You
27 should be careful about those offers. Make sure you understand any papers you are asked to sign.
28 If you have any questions, talk to a lawyer or one of the organizations mentioned above before
29 signing.

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31 DATED: _____, 2_____

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33 Trustee name: _____ (print)

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35 Trustee signature: _____

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37 Trustee telephone number: _____

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40 (2) The Department of Consumer and Business Services may adopt rules prescribing the format,
41 font size and other physical characteristics of the notice form set forth in subsection (1) of this
42 section. The department shall adopt rules specifying the resource telephone contact numbers and
43 website addresses the sender is to insert in completing the notice.

44 (3) When filling blanks in the notice form set forth in subsection (1) of this section, the sender
45 of the notice shall include, stated in plain language:

1 (a) The amount of payment that was needed to bring the mortgage loan current as of the date
2 stated in the notice; and

3 (b) One or more telephone numbers consisting of:

4 (A) A telephone number that will allow the grantor access during regular business hours to
5 details regarding the grantor's loan delinquency and repayment information; and

6 (B) A telephone number that will allow the grantor access during regular business hours to
7 person-to-person consultation with an individual authorized by the beneficiary to discuss the
8 grantor's payment and loan term negotiation and modification options.

9 (4) Telephone numbers described in subsection (3) of this section must be toll-free numbers un-
10 less the beneficiary:

11 (a) Made the loan with the beneficiary's own money;

12 (b) Made the loan for the beneficiary's own investment; and

13 (c) Is not in the business of making loans secured by an interest in real estate.

14 (5) If the sender giving notice under subsection (1) of this section has actual knowledge that the
15 grantor is not the occupant of the residential real property, the sender shall also give notice to the
16 occupant of the property by both first class and certified mail with return receipt requested.

17 **(6) The notice required under subsection (1) of this section must be accompanied by a**
18 **form to request a loan modification. The form must include the address to which and state**
19 **the date by which the grantor must return the form. The date must be 30 days after the date**
20 **on which the trustee signs the notice. The form may state that the grantor must disclose**
21 **current information about the grantor's income and expenses, the grantor's address, phone**
22 **number and electronic mail address and other facts that may affect the grantor's eligibility**
23 **for a loan modification.**

24 **SECTION 4.** ORS 86.750, as amended by section 6, chapter 864, Oregon Laws 2009, section 4,
25 chapter 28, Oregon Laws 2010, and section 3, chapter 40, Oregon Laws 2010, is amended to read:

26 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in
27 ORS 86.745 must be served upon an occupant of the property described in the trust deed in the
28 manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before
29 the day the trustee conducts the sale.

30 (b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this sub-
31 section on the first attempt, the person that attempts to effect service shall post a copy of the notice
32 in a conspicuous place on the property on the date of the first attempt. The person that attempts
33 to effect service shall make a second attempt to effect service on a day that is at least two days
34 after the first attempt.

35 (B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection
36 on the second attempt, the person that attempts to effect service shall post a copy of the notice in
37 a conspicuous place on the property on the date of the second attempt. The person that attempts
38 to effect service shall make a third attempt to effect service on a day that is at least two days after
39 the second attempt.

40 (C) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection
41 on the third attempt, the person that attempts to effect service shall send a copy of the notice,
42 bearing the word "occupant" as the addressee, to the property address by first class mail with
43 postage prepaid.

44 (c) Service on an occupant is effected on the earlier of the date that notice is served as provided
45 in paragraph (a) of this subsection or the first date on which notice is posted as described in para-

1 graph (b)(A) of this subsection.

2 (2)(a) Except as provided in paragraph (b) of this subsection, a copy of the notice of sale must
 3 be published in a newspaper of general circulation in each of the counties in which the property
 4 **described in the deed** is situated once a week for four successive weeks. The last publication must
 5 be made more than 20 days prior to the date the trustee conducts the sale.

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

8 (3) At or before the time the trustee conducts the sale, the trustee shall file for recording in the
 9 official record of the county or counties in which the property described in the deed is situated the
 10 following affidavits with respect to the notice of sale:

- 11 (a) An affidavit of mailing, if any;
- 12 (b) An affidavit of service, if any;
- 13 (c) An affidavit of service attempts and posting, if any; and
- 14 (d) An affidavit of publication.

15 (4) At or before the time the trustee conducts the sale, the trustee shall file for recording in the
 16 official record of the county or counties in which the property described in the deed is situated an
 17 affidavit of mailing with respect to the notice to the grantor required under ORS 86.737.

18 **(5) Not later than five days before the date the trustee conducts the sale, the trustee**
 19 **shall file for recording in the official record of the county or counties in which the property**
 20 **described in the deed is situated an affidavit from the beneficiary or the beneficiary's agent**
 21 **that states how the beneficiary or the beneficiary's agent has complied with the provisions**
 22 **of section 3 (1) and (2), chapter 864, Oregon Laws 2009.**

23 **SECTION 5.** ORS 646.608 is amended to read:

24 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
 25 ness, vocation or occupation the person does any of the following:

- 26 (a) Passes off real estate, goods or services as those of another.
- 27 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
 28 proval, or certification of real estate, goods or services.
- 29 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
 30 ciation with, or certification by, another.
- 31 (d) Uses deceptive representations or designations of geographic origin in connection with real
 32 estate, goods or services.
- 33 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
 34 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
 35 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- 36 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
 37 reconditioned, reclaimed, used or secondhand.
- 38 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
 39 or that real estate or goods are of a particular style or model, if they are of another.
- 40 (h) Disparages the real estate, goods, services, property or business of a customer or another
 41 by false or misleading representations of fact.
- 42 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or
 43 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
 44 a limitation of quantity.
- 45 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,

1 or amounts of price reductions.

2 (k) Makes false or misleading representations concerning credit availability or the nature of the
3 transaction or obligation incurred.

4 (L) Makes false or misleading representations relating to commissions or other compensation to
5 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
6 stration purposes or in exchange for submitting names of potential customers.

7 (m) Performs service on or dismantles any goods or real estate when not authorized by the
8 owner or apparent owner thereof.

9 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
10 vides the information required under ORS 646.611.

11 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
12 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
13 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
14 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
15 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
16 tomer enters into the transaction.

17 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
18 cize a product, business or service.

19 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
20 not to deliver them as promised.

21 (r) Organizes or induces or attempts to induce membership in a pyramid club.

22 (s) Makes false or misleading representations of fact concerning the offering price of, or the
23 person's cost for real estate, goods or services.

24 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
25 known material defect or material nonconformity.

26 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

27 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
28 ORS 698.640, whether in a commercial or noncommercial situation.

29 (w) Manufactures mercury fever thermometers.

30 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
31 law, or is:

32 (A) Prescribed by a person licensed under ORS chapter 677; and

33 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
34 on the proper cleanup of mercury should breakage occur.

35 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
36 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
37 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
38 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
39 graph, "thermostat" means a device commonly used to sense and, through electrical communication
40 with heating, cooling or ventilation equipment, control room temperature.

41 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
42 mercury light switches.

43 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

44 (bb) Violates ORS 646A.070 (1).

45 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

- 1 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 2 (ee) Violates ORS 646.883 or 646.885.
- 3 (ff) Violates ORS 646.569.
- 4 (gg) Violates the provisions of ORS 646A.142.
- 5 (hh) Violates ORS 646A.360.
- 6 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 7 (jj) Violates ORS 646.563.
- 8 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 9 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 10 thereto.
- 11 (mm) Violates ORS 646A.210 or 646A.214.
- 12 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 13 (oo) Violates ORS 646A.095.
- 14 (pp) Violates ORS 822.046.
- 15 (qq) Violates ORS 128.001.
- 16 (rr) Violates ORS 646.649 (2) to (4).
- 17 (ss) Violates ORS 646A.090 (2) to (4).
- 18 (tt) Violates ORS 87.686.
- 19 (uu) Violates ORS 646.651.
- 20 (vv) Violates ORS 646A.362.
- 21 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 22 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 23 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 24 (zz) Violates ORS 87.007 (2) or (3).
- 25 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 26 (bbb) Engages in an unlawful practice under ORS 646.648.
- 27 (ccc) Violates ORS 646A.365.
- 28 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 29 (eee) Sells a gift card in violation of ORS 646A.276.
- 30 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 31 (ggg) Violates ORS 646A.430 to 646A.450.
- 32 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 33 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 34 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 35 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 36 subject of the violation.
- 37 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 38 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 39 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 40 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 41 (nnn) Violates ORS 646A.082.
- 42 (ooo) Violates ORS 646.647.
- 43 (ppp) Violates ORS 646A.115.
- 44 (qqq) Violates a provision of ORS 646A.405.
- 45 **(rrr) Violates a provision of ORS 86.737 or 86.750 or section 3, chapter 864, Oregon Laws**

1 **2009, or section 2 of this 2011 Act.**

2 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
3 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

4 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
5 need not prove competition between the parties or actual confusion or misunderstanding.

6 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
7 torney General has first established a rule in accordance with the provisions of ORS chapter 183
8 declaring the conduct to be unfair or deceptive in trade or commerce.

9 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
10 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
11 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

12 **SECTION 6. Sections 9 and 10, chapter 864, Oregon Laws 2009, are repealed.**

13 **SECTION 7. (1) Section 2 of this 2011 Act applies to a communication that a grantor
14 sends on or after the effective date of this 2011 Act.**

15 **(2) The amendments to ORS 646.608 by section 5 of this 2011 Act apply to a violation that
16 occurs on or after the effective date of this 2011 Act.**

17 **SECTION 8. This 2011 Act takes effect on the 91st day after the date on which the 2011
18 session of the Seventy-sixth Legislative Assembly adjourns sine die.**

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