

# House Bill 2916

Sponsored by Representative WINGARD (at the request of John Bacon) (Presession 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**.

Directs lender that requires or consents to short sale of residential property to offer option to borrower to pay residual debt in amount or at discount at which lender sells or assigns residual debt to third party for collection. Specifies conditions for offer and acceptance of offer. Requires amount or discount in offer to be comparable to amount or discount common in market for similar debt.

Provides that violation of provisions of Act is unlawful practice enforceable with private action.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to residual debts following short sales of residential property; creating new provisions;  
3 amending ORS 646.608; and declaring an emergency.

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

### **SECTION 1. (1) As used in this section:**

5  
6 (a) **"Borrower"** means an individual who, directly or indirectly and individually or to-  
7 gether with another person, is obligated on a real estate loan agreement, including but not  
8 limited to a mortgagor or a grantor, as defined in ORS 86.705.

9 (b) **"Lender"** means a person that makes, extends or holds a real estate loan agreement,  
10 including but not limited to a mortgagee or a beneficiary, as defined in ORS 86.705.

11 (c) **"Real estate loan agreement"** means an arrangement between a lender and a bor-  
12 rower, including but not limited to a mortgage or a trust deed, by means of which the lender  
13 agrees to extend a loan and the borrower agrees to secure the loan in whole or in part with  
14 residential property, or an interest in residential property, that is located in this state.

15 (d) **"Residential property"** means real property upon which is situated four or fewer im-  
16 provements designed for residential use, one of which a borrower occupies as the borrower's  
17 residence.

18 (e) **"Residual debt"** means an amount due on a loan, evidence of which exists in a real  
19 estate loan agreement, note, bond, contract or similar written agreement, that a borrower  
20 is unable to pay out of the proceeds from a sale of the residential property that secures the  
21 loan.

22 (f) **"Short sale"** means a sale of residential property that is subject to foreclosure under  
23 ORS 86.705 to 86.795 or ORS chapter 88 for an amount that is less than the remaining amount  
24 due on the loan that the residential property secures.

25 (2)(a) **If a lender requires or consents to a short sale of residential property that secures**  
26 **a loan under a real estate loan agreement, before selling or assigning a residual debt for**  
27 **collection to another person or to a collection agency, as defined in ORS 697.005, the lender**  
28 **shall offer the borrower an option to pay the residual debt for the same amount or at the**  
29 **same discount the lender would offer when selling or assigning the residual debt to the other**

**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 person or the collection agency. The lender shall offer the option in writing.

2 (b) The amount or discount that the lender offers must be an amount or discount that  
 3 is common in the trade or practice of the market for debts of a similar amount sold or as-  
 4 signed under similar circumstances, taking into account any special circumstances that ap-  
 5 ply to the residual debt or that exist between the lender and the borrower. The lender shall  
 6 describe in the written offer any special circumstances that apply or exist.

7 (3)(a) The offer described in subsection (2)(a) of this section must remain open and sub-  
 8 ject to the borrower's acceptance for a period of 30 calendar days after the date of the  
 9 lender's written offer. The lender may not charge the borrower a fee or require consideration  
 10 in any form in exchange for the option.

11 (b) If the borrower accepts the option, the lender shall prepare and deliver to the bor-  
 12 rower a statement of account in writing that shows the amount of the residual debt, the  
 13 amount of the discount and the resulting amount that the lender will accept as payment in  
 14 full of the residual debt. The lender shall allow the borrower a period of 30 calendar days  
 15 from the date of the statement of account in which to tender payment for the discounted  
 16 residual debt shown in the statement of account.

17 (c) If the borrower fails to tender payment of the discounted residual debt within the  
 18 30-day period, the borrower's failure operates as a revocation of acceptance and the lender  
 19 may proceed to collect the residual debt or to sell or assign the residual debt for collection.

20 (4) Upon receiving payment of the discounted residual debt described in subsection (3)(b)  
 21 of this section, the lender shall:

22 (a) Apply the amount to the borrower's account;

23 (b) Mark the note, bond or other evidence of the borrower's obligation as paid in full; and

24 (c) Return to the borrower a true copy of the note, bond or other evidence of the obli-  
 25 gation marked as described in paragraph (b) of this subsection.

26 (5) The lender's mark described in subsection (4)(b) of this section establishes an accord  
 27 between the lender and the borrower and a satisfaction of the obligation in the real estate  
 28 loan agreement that binds the lender and prevents the lender or the lender's agent, assignee  
 29 or successor in interest from collecting any remaining amount under the real estate loan  
 30 agreement.

31 (6) A lender's violation of a provision of this section is an unlawful practice under ORS  
 32 646.608 that is subject to enforcement under ORS 646.638.

33 **SECTION 2.** ORS 646.608 is amended to read:

34 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-  
 35 ness, vocation or occupation the person does any of the following:

36 (a) Passes off real estate, goods or services as those of another.

37 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-  
 38 proval, or certification of real estate, goods or services.

39 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-  
 40 ciation with, or certification by, another.

41 (d) Uses deceptive representations or designations of geographic origin in connection with real  
 42 estate, goods or services.

43 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,  
 44 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a  
 45 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

1 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,  
2 reconditioned, reclaimed, used or secondhand.

3 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,  
4 or that real estate or goods are of a particular style or model, if they are of another.

5 (h) Disparages the real estate, goods, services, property or business of a customer or another  
6 by false or misleading representations of fact.

7 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or  
8 with intent not to supply reasonably expectable public demand, unless the advertisement discloses  
9 a limitation of quantity.

10 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,  
11 or amounts of price reductions.

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

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

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

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

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

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

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

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

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

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

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

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

39 (w) Manufactures mercury fever thermometers.

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

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

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

45 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to

1 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be  
 2 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the  
 3 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-  
 4 graph, “thermostat” means a device commonly used to sense and, through electrical communication  
 5 with heating, cooling or ventilation equipment, control room temperature.

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

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

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

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

11 (dd) Violates the provisions of ORS 128.801 to 128.898.

12 (ee) Violates ORS 646.883 or 646.885.

13 (ff) Violates ORS 646.569.

14 (gg) Violates the provisions of ORS 646A.142.

15 (hh) Violates ORS 646A.360.

16 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

17 (jj) Violates ORS 646.563.

18 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

19 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant  
 20 thereto.

21 (mm) Violates ORS 646A.210 or 646A.214.

22 (nn) Violates any provision of ORS 646A.124 to 646A.134.

23 (oo) Violates ORS 646A.095.

24 (pp) Violates ORS 822.046.

25 (qq) Violates ORS 128.001.

26 (rr) Violates ORS 646.649 (2) to (4).

27 (ss) Violates ORS 646A.090 (2) to (4).

28 (tt) Violates ORS 87.686.

29 (uu) Violates ORS 646.651.

30 (vv) Violates ORS 646A.362.

31 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

32 (xx) Violates ORS 180.440 (1) or 180.486 (1).

33 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

34 (zz) Violates ORS 87.007 (2) or (3).

35 (aaa) Violates ORS 92.405 (1), (2) or (3).

36 (bbb) Engages in an unlawful practice under ORS 646.648.

37 (ccc) Violates ORS 646A.365.

38 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

39 (eee) Sells a gift card in violation of ORS 646A.276.

40 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.

41 (ggg) Violates ORS 646A.430 to 646A.450.

42 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.

43 (iii) Violates a provision of ORS 646A.702 to 646A.720.

44 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-  
 45 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the

1 subject of the violation.

2 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.

3 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50  
4 U.S.C. App. 501 et seq., as in effect on January 1, 2010.

5 (mmm) Violates a provision of ORS 646A.480 to 646A.495.

6 (nnn) Violates ORS 646A.082.

7 (ooo) Violates ORS 646.647.

8 (ppp) Violates ORS 646A.115.

9 (qqq) Violates a provision of ORS 646A.405.

10 **(rrr) Violates a provision of section 1 of this 2011 Act.**

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

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

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

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

21 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**  
22 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
23 **on its passage.**