

# Senate Bill 198

Sponsored by Senator BATES (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**.

Requires mandatory mediation between trustee and grantor before sale to foreclose residential trust deed. Requires certain notices and procedures for conducting mediation.

Requires trustee to provide grantor with documentation as part of notice of sale that identifies beneficial owner of loan.

Prohibits owner of foreclosed residential real property from neglecting real property during periods of vacancy. Permits local government to assess civil penalty for each day during which owner fails to remedy conditions of neglect.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to residential property foreclosures; creating new provisions; amending ORS 86.737, 86.740, 86.742, 86.745 and 86.750; repealing sections 9 and 10, chapter 864, Oregon Laws 2009; and declaring an emergency.

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

**SECTION 1.** ORS 86.737, as amended by section 4, chapter 864, Oregon Laws 2009, is amended to read:

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

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

**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 that date.

2  
3 By law, your lender has to provide you with details about the amount you owe, if you ask. You may  
4 call \_\_\_\_\_ (telephone number) to find out the exact amount you must pay to bring your  
5 mortgage loan current and to get other details about the amount you owe. You may also get these  
6 details by sending a request by certified mail to: \_\_\_\_\_.

7  
8 **If you are unable to pay the amount you owe on your mortgage or fulfill another obligation**  
9 **you have to your lender, you and the lender must enter into mediation to try to avoid fore-**  
10 **closure. A separate notice that gives you the details of this mediation process is included**  
11 **with this notice.**

12  
13 THIS IS WHEN AND WHERE  
14 YOUR PROPERTY WILL BE SOLD  
15 IF YOU DO NOT TAKE ACTION:  
16

17 Date and time: \_\_\_\_\_, 2\_\_\_\_\_ at \_\_\_\_\_

18  
19 Place: \_\_\_\_\_

20  
21 THIS IS WHAT YOU CAN DO  
22 TO STOP THE SALE:  
23

- 24 1. You can pay the amount past due or correct any other default, up to five days before the sale.  
25 2. You can refinance or otherwise pay off the loan in full anytime before the sale.  
26 3. You can [*call \_\_\_\_\_ (name) at \_\_\_\_\_ (telephone number) to find out if your*  
27 *lender is willing to give you more time or change the terms of your loan.*] **try to reach a settlement**  
28 **with your lender during a mandatory mediation process in which you may make a reasonable**  
29 **offer to meet the obligations of your loan. The lender is not obligated to accept your offer**  
30 **and may propose a counteroffer.**  
31 4. You can sell your home, provided the sale price is enough to pay what you owe.  
32

33 There are government agencies and nonprofit organizations that can give you information about  
34 foreclosure and help you decide what to do. For the name and telephone number of an organization  
35 near you, please call the statewide telephone contact number at \_\_\_\_\_. You may also  
36 wish to talk to a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar's  
37 Lawyer Referral Service at \_\_\_\_\_ or toll-free in Oregon at \_\_\_\_\_ or you may  
38 visit [*its*] **the Oregon State Bar** website at: \_\_\_\_\_. Legal assistance may be available if  
39 you have a low income and meet federal poverty guidelines. For more information and a directory  
40 of legal aid programs, go to \_\_\_\_\_.

41  
42 **Your lender may be willing, before proceeding with mediation or foreclosure, to modify your**  
43 **loan to reduce the interest rate, reduce the monthly payments or both. You can get infor-**  
44 **mation about possible loan modification programs by contacting your lender**  
45 **at \_\_\_\_\_. If you can't reach your lender, you may contact the trustee at the tele-**

1 **phone number at the bottom of this notice. If you have already entered into a loan modifi-**  
2 **cation with your lender, you might not be able to modify your loan again unless your**  
3 **circumstances have changed. Your lender is not obligated to modify your loan.**

4  
5 **During mediation you may discuss options for modifying your loan with your lender. In these**  
6 **discussions you may have the assistance of a lawyer, a housing counselor or another person**  
7 **of your choosing. To receive a referral to a housing counselor or other assistance available**  
8 **in your community, call this toll-free consumer mortgage foreclosure information**  
9 **number: \_\_\_\_\_.** Many lenders participate in new federal loan modification pro-  
10 **grams. You can obtain more information about these programs at:**  
11 **\_\_\_\_\_.**

12  
13 **IF YOU WANT TO APPLY TO MODIFY YOUR LOAN, YOU MUST FILL OUT AND MAIL**  
14 **BACK THE ENCLOSED “MODIFICATION REQUEST FORM.” YOUR LENDER MUST RE-**  
15 **CEIVE THE FORM BY \_\_\_\_\_, WHICH IS 30 DAYS AFTER THE DATE SHOWN**  
16 **BELOW.**

17  
18 **WARNING:** You may get offers from people who tell you they can help you keep your property. You  
19 should be careful about those offers. Make sure you understand any papers you are asked to sign.  
20 If you have any questions, talk to a lawyer or one of the organizations mentioned above before  
21 signing.

22  
23 **DATED:** \_\_\_\_\_, 2\_\_\_\_\_

24  
25 **Trustee name:** \_\_\_\_\_ (print)

26  
27 **Trustee signature:** \_\_\_\_\_

28  
29 **Trustee telephone number:** \_\_\_\_\_

30  
31  
32 (2) The Department of Consumer and Business Services may adopt rules prescribing the format,  
33 font size and other physical characteristics of the notice form set forth in subsection (1) of this  
34 section. The department shall adopt rules specifying the resource telephone contact numbers and  
35 website addresses the *[sender is to]* **person that sends the notice must** insert in **the blanks in**  
36 **the notice form to** *[completing]* **complete** the notice.

37 (3) *[When filling]* **A person that fills** blanks in the notice form set forth in subsection (1) of this  
38 section, *the sender of the notice* shall include, stated in plain language:

39 (a) The amount of payment that *[was needed to]* **will** bring the mortgage loan current as of the  
40 date stated in the notice; and

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

42 (A) A telephone number that *[will allow]* **allows** the grantor access during regular business  
43 hours to details regarding the grantor’s loan delinquency and repayment information; and

44 (B) A telephone number that *[will allow]* **allows** the grantor access during regular business  
45 hours to person-to-person consultation with an individual *[authorized by]* the beneficiary **has au-**

1 **thorized** to discuss the grantor's payment and loan term negotiation and modification options.

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

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

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

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

7 (5) If the [*sender giving*] **person that sends the** notice under subsection (1) of this section has  
8 actual knowledge that the grantor is not the occupant of the residential real property, the [*sender*]  
9 **person** shall also give notice to the occupant of the property by both first class and certified mail  
10 with return receipt requested.

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

18 **SECTION 2.** ORS 86.740 is amended to read:

19 86.740. (1)(a) **Except as provided in paragraph (b) of this subsection,** subsequent to recording  
20 notice of default as provided in ORS 86.735 and at least 120 days before the day the trustee conducts  
21 the sale, notice of the sale [*shall*] **with the contents described in ORS 86.745 must** be served  
22 pursuant to ORCP 7 D(2) and 7 D(3) or mailed by both first class and certified mail with return re-  
23 ceipt requested[.].

24 **(b) If the sale is for the purpose of foreclosing a residential trust deed, the notice of sale**  
25 **must be served or mailed in the manner provided in paragraph (a) of this subsection at least**  
26 **180 days before the date of the sale. The notice described in ORS 86.737 and a notice that**  
27 **prescribes mandatory mediation in advance of the sale as described in section 7 of this 2011**  
28 **Act must accompany the notice of sale.**

29 **(2) The notice of sale described in subsection (1) of this section and, if required, the no-**  
30 **tice described in ORS 86.737 and the notice described in section 7 of this 2011 Act must be**  
31 **served or mailed in the manner provided in subsection (1)(a) of this section** to the last-known  
32 address of the following persons or [*their*] **the legal representatives of the persons,** if any:

33 (a) The grantor in the trust deed.

34 (b) [*Any*] **A** successor in interest to the grantor whose interest appears of record, or of whose  
35 interest the trustee or the beneficiary has actual notice.

36 (c) [*Any*] **A** person, including the Department of Revenue or [*any other*] **another** state agency,  
37 [*having*] **that has** a lien or interest subsequent to the trust deed if the lien or interest appears of  
38 record or the beneficiary has actual notice of the lien or interest.

39 (d) [*Any*] **A** person [*requesting*] **that requests** notice as provided in ORS 86.785.

40 **(e) The Department of Consumer and Business Services.**

41 [(2)] **(3)** A notice served by mail under subsection (1) of this section is effective when the notice  
42 is mailed.

43 [(3)(a)] **(4)(a)** The disability, insanity or death of [*any*] **a** person to whom notice of sale **or other**  
44 **required notices** must be given under this section does not delay or impair in any way the trustee's  
45 right under a trust deed to foreclose under the deed. If the disability, insanity or death occurs [*prior*

1 *to the recording of] before the notice of default is recorded, the required notices [notice shall]*  
 2 **must** be given instead to the guardian, the conservator of the estate of the person or the adminis-  
 3 trator or personal representative of the person, as the case may be, in the manner and by the time  
 4 set forth in this section.

5 (b) If the disability, insanity or death of *[any] a person to whom a notice [of sale] required*  
 6 **under this section** must be given *[under this section]* occurs on or after the *[recording of]* notice  
 7 of default **is recorded**, the trustee shall, if and when the trustee has knowledge of the disability,  
 8 insanity or death, promptly give the guardian, **the** conservator of the estate or the administrator  
 9 or personal representative, as the case may be, the *[notice provided in ORS 86.745. This notice shall*  
 10 *be given]* **required notices by sending the notices** by first class and certified mail with return re-  
 11 ceipt requested[, ] to the last-known address of the guardian, conservator or administrator or per-  
 12 sonal representative.

13 (c) *[In the event]* **If** there is no administrator or personal representative of the estate of the  
 14 person to whom *[notice of sale]* **the required notices** must be given under this section, the *[notice]*  
 15 **notices** may be given instead to the heirs at law or devisees of the deceased person in the manner  
 16 and by the time set forth in this section.

17 **(5)(a) If the trustee knows or has reason to know that the grantor of a residential trust**  
 18 **deed speaks or reads primarily in a language other than the English language, the trustee**  
 19 **shall provide the notices described in subsection (1) of this section in both the English lan-**  
 20 **guage and the language the grantor primarily speaks or reads.**

21 **(b) For purposes of this subsection, a trustee has reason to know that a grantor speaks**  
 22 **or reads primarily in a language other than the English language if the trustee or an agent**  
 23 **or affiliate of the trustee has previously communicated with the grantor in the other lan-**  
 24 **guage in the course of a transaction related to the residential trust deed or in the course**  
 25 **of servicing a note or loan related to the residential trust deed.**

26 **(6) The Department of Consumer and Business Services, upon receiving a notice under**  
 27 **subsection (2) of this section, shall provide the name and contact information for the grantor**  
 28 **named in the notice to one or more housing counselors qualified as described in section 10**  
 29 **of this 2011 Act. The department shall maintain a current list of qualified housing counselors**  
 30 **for this purpose.**

31 **SECTION 3.** ORS 86.742 is amended to read:

32 86.742. (1) If the trustee fails to give notice of the sale to any person entitled to notice under  
 33 ORS 86.740 *[(1)(c)] (2)(c)*, and *[such] the* person did not have actual notice of the sale at least 25  
 34 days *[prior to] before* the date the trustee conducted the sale, *[such] the* omitted person *[shall*  
 35 *have] has* the same rights possessed by the holder of a junior lien or interest who was omitted as  
 36 a party defendant in a judicial foreclosure proceeding, and the purchaser at the trustee's sale or the  
 37 purchaser's heirs, assigns or transferees, *[shall] have* the same rights *[possessed by]* a purchaser at  
 38 a sheriff's sale **possesses** following a judicial foreclosure.

39 (2) The omitted person may also commence an action against the trustee in the circuit court in  
 40 the county where the real property is located. In an action against the trustee, the omitted person  
 41 *[shall be]* **is** entitled to damages upon proof that:

42 (a) The trustee did not give notice of the sale to the omitted person in the manner required by  
 43 ORS 86.740 *[(1)(c)] (2)(c)* and 86.750;

44 (b) A search of the record under the name of the grantor *[as it]* **or the name of the grantor's**  
 45 **successor in interest** *[appears]* **as either name appears** on the trust deed[, *or the name of the*

1 *grantor's successor in interest,*] would have revealed the omitted person's interest;

2 (c) The omitted person could and would have cured the default under ORS 86.753; and

3 (d) The omitted person sustained actual damages as a result of *[such]* **the omitted** person's loss  
4 of the opportunity to cure the default under ORS 86.753 (1).

5 (3) In an action against the trustee under subsection (2) of this section, *[any]* **a** defendant or  
6 third party defendant may move for dismissal on the ground that the omitted person would not or  
7 could not have cured the default and reinstated the trust deed if the omitted person had received  
8 the notice required by ORS 86.740 *[(1)(c)]* **(2)(c)**. The court shall hold a hearing on *[such]* **the** motion  
9 *[prior to any]* **before a** hearing on *[any]* **a** motion for summary judgment, and *[prior to trial of]* **be-**  
10 **fore trying** the action. The court shall deny the motion only if the omitted person produces affida-  
11 vits or other evidence sufficient for a reasonable jury to find, applying a standard of clear and  
12 convincing evidence, that the omitted person had the financial ability to cure the default under ORS  
13 86.753 *[prior to]* **before** the date of the trustee's sale, and that the omitted person would have done  
14 so had the omitted person received the notice required by ORS 86.740 *[(1)(c)]* **(2)(c)**. If the court  
15 grants the motion to dismiss *[it]*, **the court** shall award attorney fees pursuant to subsection (5) of  
16 this section.

17 (4) In *[any]* **an** action against the trustee or *[any other]* **another** party under this section, the  
18 omitted person shall plead that the omitted person did not have actual knowledge of the sale at least  
19 25 days *[prior to]* **before** the date the trustee conducted the sale, but thereafter the defendant *[shall*  
20 *have]* **has** the burden of proving that the omitted person did have *[such]* notice.

21 (5) In *[all suits]* **a suit** brought under this section, the applicable court may, upon entering  
22 judgment, allow to the prevailing party as a part of the costs a reasonable amount for attorney fees  
23 at trial and on appeal.

24 (6) The remedies described in subsections (1) to (5) of this section *[shall be]* **are** the sole reme-  
25 dies available to a person entitled to notice of foreclosure by advertisement and sale under ORS  
26 86.740 *[(1)(c)]* **(2)(c)**, who failed to receive *[such]* notice. *[Such a]* **The** person's failure to redeem or  
27 to commence an action against the trustee within five years of the date of a trustee's sale under  
28 ORS 86.755 *[shall bar any]* **bars an** action under this section or *[any]* **under** other applicable law.

29 **SECTION 4.** ORS 86.745, as amended by sections 1 and 2, chapter 28, Oregon Laws 2010, is  
30 amended to read:

31 86.745. The notice of sale **required under ORS 86.740** shall:

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

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

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

36 (4) **Include documentation as an attachment that establishes that the beneficiary or the**  
37 **beneficiary's agent is the real party in interest with respect to the loan. The documentation**  
38 **must consist of:**

39 (a) **A true copy of the original debt instrument that is the basis for the claimed right to**  
40 **foreclose the residential trust deed; and**

41 (b) **Evidence of the chain of title, including conveyances, endorsements and assignments**  
42 **of the residential trust deed, note and security instrument, from the date of the original loan**  
43 **on which the beneficiary seeks to foreclose to the date of the notice of sale.**

44 *[(4)]* (5) State the default for which the foreclosure is made.

45 *[(5)]* (6) State the sum owing on the obligation that the trust deed secures.

1 [6] (7) State that the property will be sold to satisfy the obligation.

2 [7] (8) Set forth the date, time and place of the sale.

3 [8] (9) State that the right exists under ORS 86.753 to have the proceeding dismissed and the  
4 trust deed reinstated by paying the entire amount then due, together with costs, trustee's fees and  
5 attorney fees, and by curing any other default complained of in the notice of default, at any time  
6 that is not later than five days before the date last set for the sale.

7 [(9)] (10) If the property includes one or more dwelling units, as defined in ORS 90.100, include  
8 a notice addressed clearly to any person who occupies the property and who is or might be a resi-  
9 dential tenant. The notice required under this subsection must:

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

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

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

15 (d) Be in substantially the following form:

16 \_\_\_\_\_

17  
18 NOTICE TO RESIDENTIAL TENANTS

19 The property in which you are living is in foreclosure. A foreclosure sale is scheduled for  
20 \_\_\_\_\_. Unless the lender who is foreclosing on this property is paid, the foreclosure  
21 will go through and someone new will own this property.

22 The following information applies to you only if you occupy and rent this property as a resi-  
23 dential dwelling under a legitimate rental agreement. The information does not apply to you if you  
24 own this property or if you are not a residential tenant.

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

31 FEDERAL LAW REQUIRES

32 YOU TO BE NOTIFIED

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

43 STATE LAW NOTIFICATION REQUIREMENTS

44 IF THE FEDERAL LAW DOES NOT APPLY, STATE LAW STILL REQUIRES THE BUYER  
45 TO GIVE YOU NOTICE IN WRITING BEFORE REQUIRING YOU TO MOVE OUT IF YOU ARE

1 OCCUPYING AND RENTING THE PROPERTY AS A TENANT IN GOOD FAITH. EVEN IF THE  
2 FEDERAL LAW REQUIREMENT IS NO LONGER EFFECTIVE AFTER DECEMBER 31, 2012, THE  
3 REQUIREMENT UNDER STATE LAW STILL APPLIES TO YOUR SITUATION. Under state law,  
4 if you have a fixed-term lease (for example, a six-month or one-year lease), the buyer must give you  
5 at least 60 days' notice in writing before requiring you to move out. If the buyer wants to move in  
6 and use this property as the buyer's primary residence, the buyer can give you written notice and  
7 require you to move out after 30 days, even if you have a fixed-term lease with more than 30 days  
8 left.

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

11 **IMPORTANT:** For the buyer to be required to give you notice under state law, you must prove  
12 to the business or individual who is handling the foreclosure sale that you are occupying and rent-  
13 ing this property as a residential dwelling under a legitimate rental agreement. The name and ad-  
14 dress of the business or individual who is handling the foreclosure sale is shown on this notice under  
15 the heading "TRUSTEE." You must mail or deliver your proof not later than  
16 \_\_\_\_\_ (30 days before the date first set for the foreclosure sale). Your proof must  
17 be in writing and should be a copy of your rental agreement or lease. If you do not have a written  
18 rental agreement or lease, you can provide other proof, such as receipts for rent you paid.

#### 19 ABOUT YOUR SECURITY DEPOSIT

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

#### 26 ABOUT YOUR TENANCY

#### 27 AFTER THE FORECLOSURE SALE

28 The business or individual who buys this property at the foreclosure sale may be willing to al-  
29 low you to stay as a tenant instead of requiring you to move out. You should contact the buyer to  
30 discuss that possibility if you would like to stay. Under state law, if the buyer accepts rent from you,  
31 signs a new residential rental agreement with you or does not notify you in writing within 30 days  
32 after the date of the foreclosure sale that you must move out, the buyer becomes your new landlord  
33 and must maintain the property. Otherwise, the buyer is not your landlord and is not responsible for  
34 maintaining the property on your behalf and you must move out by the date the buyer specifies in  
35 a notice to you.

36 **YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY**  
37 **IS SOLD TO ANOTHER BUSINESS OR INDIVIDUAL OR UNTIL A COURT OR A LENDER**  
38 **TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED. AS EX-**  
39 **PLAINED ABOVE, YOU MAY BE ABLE TO APPLY A DEPOSIT YOU MADE OR PREPAID**  
40 **RENT YOU PAID AGAINST YOUR CURRENT RENT OBLIGATION. BE SURE TO KEEP PROOF**  
41 **OF ANY PAYMENTS YOU MAKE AND OF ANY NOTICE YOU GIVE OR RECEIVE CONCERN-**  
42 **ING THE APPLICATION OF YOUR DEPOSIT OR YOUR PREPAID RENT.**

43 **IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR HOME**  
44 **WITHOUT FIRST GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT**  
45 **YOUR RIGHTS, YOU MAY WISH TO CONSULT A LAWYER.** If you believe you need legal as-



1 sistance, contact the Oregon State Bar and ask for the lawyer referral service. Contact information  
 2 for the Oregon State Bar is included with this notice. If you do not have enough money to pay a  
 3 lawyer and are otherwise eligible, you may be able to receive legal assistance for free. Information  
 4 about whom to contact for free legal assistance is included with this notice.

5 \_\_\_\_\_  
 6  
 7 **SECTION 5.** ORS 86.750, as amended by section 6, chapter 864, Oregon Laws 2009, section 4,  
 8 chapter 28, Oregon Laws 2010, and section 3, chapter 40, Oregon Laws 2010, is amended to read:

9 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the [*notice prescribed in*  
 10 *ORS 86.745*] **notices required under ORS 86.740** must be served upon an occupant of the property  
 11 described in the trust deed [*in the manner in which a summons is served pursuant to ORCP 7 D(2)*  
 12 *and 7 D(3) at least 120 days before the day the trustee conducts the sale*] **as provided in ORS 86.740**  
 13 **(1).**

14 (b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this sub-  
 15 section on the first attempt, the person that attempts to effect service shall post [*a copy*] **copies** of  
 16 the [*notice*] **required notices** in a conspicuous place on the property on the date of the first  
 17 attempt, **taking due care to protect the privacy of the information set forth in the notices.**  
 18 The person that attempts to effect service shall make a second attempt to effect service on a day  
 19 that is at least two days after the first attempt.

20 (B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection  
 21 on the second attempt, the person that attempts to effect service shall post [*a copy*] **copies** of the  
 22 [*notice*] **required notices** in a conspicuous place on the property on the date of the second  
 23 attempt, **taking due care to protect the privacy of the information set forth in the notices.**  
 24 The person that attempts to effect service shall make a third attempt to effect service on a day that  
 25 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 that attempts to effect service shall send [*a copy*] **copies** of the  
 28 [*notice*] **required notices**, bearing the word “occupant” as the addressee, to the property address  
 29 by first class mail with postage prepaid.

30 (c) Service on an occupant is effected on the earlier of the date that [*notice is*] **the required**  
 31 **notices are** served as provided in paragraph (a) of this subsection or the first date on which [*notice*  
 32 *is*] **the required notices are** posted as described 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 must  
 34 be published in a newspaper of general circulation in each of the counties in which the property is  
 35 situated once a week for four successive weeks. The last publication must be made more than 20  
 36 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 subsection  
 38 does not need to include the **notice described under ORS 86.737, the notice described in section**  
 39 **7 of this 2011 Act, the documentation described in ORS 86.745 (4) or the notice to tenants re-**  
 40 **quired under ORS 86.745 [(9)] (10).**

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

6 (5) **Not later than five days before the date the trustee conducts the sale, the trustee  
 7 shall file for recording in the official record of the county or counties in which the property  
 8 is located an affidavit from the beneficiary or the beneficiary’s agent that states how the  
 9 beneficiary or the beneficiary’s agent has complied with the provisions of section 3 (1) and  
 10 (2), chapter 864, Oregon Laws 2009.**

11 **SECTION 6. Sections 7 to 11 of this 2011 Act are added to and made a part of ORS 86.705  
 12 to 86.795.**

13 **SECTION 7. A notice required under ORS 86.740 (1)(b) that prescribes mandatory medi-  
 14 ation in advance of a trustee’s sale to foreclose a residential trust deed must:**

15 (1) **Set forth the name, address, telephone number and other contact information for the  
 16 grantor in the trust deed.**

17 (2) **Itemize the amount in default and past due on the obligation that the residential trust  
 18 deed secures, the amount that must be paid to cure the default and associated costs and fees.**

19 (3) **Provide the account number or other information the trustee or beneficiary or an  
 20 agent of the trustee or beneficiary uses to identify the obligation the grantor owes to the  
 21 beneficiary.**

22 (4) **Provide the address, telephone number and other contact information for:**

23 (a) **The trustee, beneficiary and agent of the trustee or beneficiary that is authorized to  
 24 negotiate on the trustee’s or beneficiary’s behalf; and**

25 (b) **The Oregon State Bar’s lawyer referral service.**

26 (5) **State that the grantor and the trustee or beneficiary must participate in a mandatory  
 27 process of mediation for the purpose of avoiding a trustee’s sale.**

28 (6) **State that the grantor and the trustee will each bear half of the cost of the mediation.**

29 (7) **List the documents and other information the grantor must bring to the mediation.**

30 (8) **List the names of at least three persons who are qualified under section 10 of this 2011  
 31 Act to serve as mediators and provide for each an address, telephone number and other  
 32 contact information.**

33 (9) **State that the grantor is entitled to be represented at the mediation by an attorney.**

34 **SECTION 8. (1)(a) Except as provided in paragraph (b) of this subsection, within 30 days  
 35 after the date on which the trustee caused a notice that prescribes mandatory mediation to  
 36 be served or mailed as described in ORS 86.740 (1), the trustee shall send a second notice by  
 37 first-class mail to the grantor that:**

38 (A) **Schedules a time and location for the mediation on a date that is not later than 90  
 39 days after the date on which the notice that prescribes mandatory mediation was served or  
 40 mailed as described in ORS 86.740 (1); and**

41 (B) **Proposes a mediator from the list in the notice of mandatory mediation and informs  
 42 the grantor that the grantor may object in writing to the trustee’s nomination and propose  
 43 another mediator from the list within 10 business days after the mailing date for the second  
 44 notice.**

45 (b) **If the grantor returns the form described in ORS 86.737 (6) by the date specified on**

1 the form, the trustee may delay sending the second notice described in paragraph (a) of this  
2 subsection until after the beneficiary approves or denies the grantor's application for a loan  
3 modification. If the beneficiary approves the application, the trustee shall dispense with the  
4 second notice described in paragraph (a) of this subsection and shall proceed as if the trustee  
5 and the grantor had reached a settlement under section 9 (3) of this 2011 Act. If the benefi-  
6 ciary denies the application, the trustee, within 10 days after the beneficiary's denial, shall  
7 send the second notice as provided in subsection (1) of this section, except that the date of  
8 the mediation may not be later than 120 days after the date on which the notice that pre-  
9 scribes mandatory mediation was served or mailed as described in ORS 86.740 (1).

10 (2) If the grantor objects to the trustee's proposed mediator, the trustee must schedule  
11 the mediation with the mediator that the grantor proposes unless the trustee objects. If the  
12 trustee and the grantor each object to the other's proposed mediator, the trustee must  
13 schedule the mediation with the remaining mediator.

14 (3) The trustee shall pay the initial expenses of the mediation and is entitled to receive  
15 the grantor's portion of the expenses of the mediation in accordance with the provisions of  
16 section 9 (5) of this 2011 Act.

17 (4)(a) Except as provided in paragraph (b) of this subsection, during the period that be-  
18 gins on the date the notice of mandatory mediation was served or mailed and ending on the  
19 date on which the mediation concludes, the beneficiary and the trustee or an agent or affil-  
20 iate of the beneficiary or trustee may not add fees or charges to the obligation the grantor  
21 owes the beneficiary.

22 (b) During the period described in paragraph (a) of this subsection, the beneficiary or the  
23 trustee or an agent or affiliate of the beneficiary or trustee may add to the grantor's obli-  
24 gation the following amounts:

25 (A) Interest charged under the terms of the loan agreement or other evidence of the  
26 obligation; or

27 (B) Service fees or charges incurred by the grantor as part of the obligation before the  
28 date on which a notice described in ORS 86.740 (1) was served or mailed.

29 **SECTION 9.** (1) If a grantor is represented at a mediation conducted to avoid a sale of  
30 real property described in a residential trust deed, the mediator, the trustee or the grantor  
31 may offer a reasonable settlement proposal to avoid the sale, including a proposal generated  
32 by an automated loan modification formula that the Federal Deposit Insurance Corporation  
33 develops. With the consent of both parties, the mediator may adopt rules to facilitate a  
34 settlement and may, with the parties' consent, suspend or continue the mediation, provided  
35 that the mediator may not continue the mediation later than 180 days after the date on  
36 which the initial notice that prescribed mandatory mediation was served.

37 (2) If the grantor is not represented, the mediator shall generate a settlement proposal  
38 by using an automated loan modification formula that the Federal Deposit Insurance Cor-  
39 poration develops.

40 (3) If the trustee and grantor reach a settlement, the mediator shall witness and sign a  
41 document that sets forth the terms of the settlement. The mediator shall report to the De-  
42 partment of Consumer and Business Services that the parties have reached a settlement.  
43 The trustee, within two business days after signing a settlement document under this sub-  
44 section, shall dismiss all proceedings under ORS 86.705 to 86.795, reinstate the residential  
45 trust deed and continue the obligation under the terms of the settlement document.

1 (4) If the parties do not reach a settlement, the mediator shall report to the department  
 2 that the parties have not reached a settlement. Unless the trustee and the grantor agree,  
 3 the mediator may not recommend a resolution to the dispute in the mediator's report. The  
 4 trustee may proceed with the sale scheduled according to the notice of sale required under  
 5 ORS 86.740 (1) to foreclose a residential trust deed.

6 (5) If the trustee and grantor reach a settlement, the grantor may elect to include the  
 7 grantor's portion of the cost of the mediation in the payment plan described in the settle-  
 8 ment document. If the trustee and the grantor do not reach a settlement, the grantor shall  
 9 bear the grantor's portion of the cost of the mediation.

10 **SECTION 10.** To qualify as a mediator for the purposes of the mediation described in  
 11 section 9 of this 2011 Act, a person must be trained in using the automated loan modification  
 12 formula that the Federal Deposit Insurance Corporation develops and be:

13 (1) A member of the Oregon State Bar or otherwise qualified as a mediator as provided  
 14 in rules adopted under ORS 1.002; or

15 (2) A housing counselor that the United States Department of Housing and Urban De-  
 16 velopment has approved in accordance with the department's Housing Counseling Program  
 17 Handbook 7610.1.

18 **SECTION 11.** (1) A grantor that did not receive a notice that prescribes mandatory me-  
 19 diation as provided under ORS 86.740 (1) 180 days before the date of a sale to foreclose a  
 20 residential trust deed may apply to the Department of Consumer and Business Services for  
 21 an order to suspend the sale. If the department finds that a notice required under ORS 86.740  
 22 (1) was not served or mailed to the department, the department may issue the requested  
 23 order.

24 (2) An order issued under subsection (1) of this section extends the scheduled date of the  
 25 sale for a period of 60 days, pending the completion of a mediation conducted in accordance  
 26 with section 9 of this 2011 Act. The order must also notify the trustee in accordance with  
 27 ORS 183.415 that the trustee is entitled to a hearing under ORS 183.413 to 183.470. If the  
 28 trustee by clear and convincing evidence demonstrates that the grantor received the re-  
 29 quired notice, the department shall rescind the order.

30 (3) If the mediation concludes without a settlement before the 60-day period expires, the  
 31 department shall rescind the order and allow the sale to proceed as if the department had  
 32 not issued the order.

33 **SECTION 12.** (1) As used in this section:

34 (a) "Foreclosed residential real property" means residential property, as defined in ORS  
 35 18.901, that an owner obtains as a result of:

- 36 (A) Foreclosing a trust deed on the residential property;
- 37 (B) Receiving a judgment that forecloses a lien on the residential property; or
- 38 (C) Purchasing the residential property at a trustee's sale or sheriff's sale.

39 (b) "Neglect" means to fail or a failure to maintain the buildings, grounds or  
 40 appurtenances or monitor the condition of foreclosed residential real property in such a way  
 41 as to allow:

42 (A) The condition of a dwelling unit on the foreclosed residential real property to become  
 43 unfit for habitation or to cause or threaten to cause injury to a person's health, safety or  
 44 property should a person occupy the dwelling unit;

45 (B) Excessive growth of foliage or a lack of repair for a structure on the foreclosed res-

1 **idental real property that diminishes the value of adjacent property;**

2 **(C) Trespassers or squatters to remain on the foreclosed residential real property or in**  
 3 **a structure located on the foreclosed residential real property;**

4 **(D) Mosquito larvae or pupae to grow in standing water on the foreclosed residential real**  
 5 **property; or**

6 **(E) Other conditions on the foreclosed residential real property that cause or contribute**  
 7 **to causing a public nuisance.**

8 **(c) “Owner” means a person, other than a local government, that is named in a trust**  
 9 **deed or other instrument as the legal owner of foreclosed residential real property.**

10 **(2) An owner may not neglect the owner’s foreclosed residential real property during any**  
 11 **period in which the foreclosed residential real property is vacant.**

12 **(3) Subject to subsection (4) of this section, a local government may determine to assess**  
 13 **a civil penalty against an owner if the local government finds that the owner’s foreclosed**  
 14 **residential real property is located within the local government’s jurisdiction and that the**  
 15 **owner has violated subsection (2) of this section.**

16 **(4) A local government may assess a civil penalty under this section only after the local**  
 17 **government:**

18 **(a) Notifies the owner in writing that the local government has determined that the**  
 19 **owner has neglected foreclosed residential real property located within the local**  
 20 **government’s jurisdiction, and in the notice:**

21 **(A) Describes the conditions of neglect that formed the basis for the determination;**

22 **(B) States that the local government may assess a civil penalty against the owner in an**  
 23 **amount the local government specifies in the written notice; and**

24 **(C) Specifies the date by which the owner must begin to remedy the conditions of neglect**  
 25 **that formed the basis for the determination and the date by which the owner must complete**  
 26 **the remediation;**

27 **(b) Mails the notice to the address provided for the owner in the trust deed or other in-**  
 28 **strument that is evidence of legal ownership of the foreclosed residential real property or,**  
 29 **if the address is not current, posts the notice in a conspicuous location on the residential**  
 30 **real property; and**

31 **(c) Allows the owner an opportunity to remediate the conditions of neglect that formed**  
 32 **the basis for the determination as provided in subsection (5) of this section.**

33 **(5)(a) Before assessing a civil penalty under this section, a local government shall:**

34 **(A) Allow an owner not less than 30 days to remedy the conditions of neglect that formed**  
 35 **the basis for the local government’s determination to assess a civil penalty, unless the local**  
 36 **government makes a determination under paragraph (b) of this subsection; and**

37 **(B) Provide the owner with an opportunity to contest the assessment at a hearing. The**  
 38 **owner must contest the assessment within 10 days after the date on which the local gov-**  
 39 **ernment notifies the owner of the assessment.**

40 **(b) If the local government determines that a specific condition of the foreclosed resi-**  
 41 **dential real property constitutes a threat to public health or safety, the local government**  
 42 **may require the owner to remedy the specific condition in less than 30 days, provided that**  
 43 **the local government specifies in the written notice the date by which the owner must**  
 44 **remedy the specific condition.**

45 **(c) Subject to the provisions of this section, a local government may specify in the writ-**

1 ten notice different dates by which an owner must remedy separate conditions of neglect on  
2 the foreclosed residential real property.

3 (6)(a) A local government may not begin to assess a civil penalty under this section on  
4 or before the date specified in the written notice for the owner to complete the remediation.  
5 A civil penalty under this section may not exceed \$500 for each day during which the condi-  
6 tions of neglect persist after the date set forth for the owner to complete the remediation.

7 (b) In determining the amount of a civil penalty a local government will assess under this  
8 section, the local government shall take into account the owner's timely and good faith ef-  
9 forts to remedy the conditions that formed the basis for the determination.

10 (7) This section does not preempt local government ordinances or regulations.

11 SECTION 13. Sections 9 and 10, chapter 864, Oregon Laws 2009, are repealed.

12 SECTION 14. Sections 7 to 11 and the amendments to ORS 86.737, 86.740, 86.742, 86.745  
13 and 86.750 by sections 1 to 5 of this 2011 Act apply to foreclosure proceedings that commence  
14 on or after the effective date of this 2011 Act.

15 SECTION 15. This 2011 Act being necessary for the immediate preservation of the public  
16 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
17 on its passage.

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