

Senate Bill 481

Sponsored by Senator BONAMICI (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires notice of trustee's sale to be sent to tenant of grantor in trust deed under certain circumstances.

Includes tenant of grantor as person that may cure default and requires trustee to provide tenant with information necessary to effect cure.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to procedures required for a trustee's sale; creating new provisions; amending ORS 86.740
3 and 86.753; and prescribing an effective date.

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

5 **SECTION 1.** ORS 86.740 is amended to read:

6 86.740. (1) Subsequent to recording notice of default as provided in ORS 86.735 and at least 120
7 days before the day the trustee conducts the sale, notice of the sale [*shall*] **must** be served pursuant
8 to ORCP 7 D(2) and 7 D(3) or mailed by both first class and certified mail with return receipt re-
9 quested, to the last-known address of the following persons or [*their*] **the** legal representatives **of**
10 **the persons**, if any:

11 (a) The grantor in the trust deed.

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

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

17 **(d) A person that is a tenant of the grantor, if the person notifies the trustee or benefi-**
18 **ciary of the existence of a lease or if the trustee or beneficiary has actual notice that the**
19 **person occupies the property and is or may be a tenant of the grantor.**

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

21 (2) A notice served by mail under subsection (1) of this section is effective when the notice is
22 mailed.

23 (3)(a) The disability, insanity or death of [*any*] **a** person to whom notice of sale must be given
24 under this section does not delay or impair in any way the trustee's right under a trust deed to
25 foreclose under the deed. If the disability, insanity or death occurs [*prior to*] **before** the recording
26 of notice of default, the notice [*shall*] **must** be given instead to the guardian, the conservator of the
27 estate of the person or the administrator or personal representative of the person, as the case may
28 be, in the manner and by the time set forth in this section.

29 (b) If the disability, insanity or death of [*any*] **a** person to whom notice of sale must be given
30 under this section occurs on or after the recording of notice of default, the trustee shall, if and when

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 the trustee has knowledge of the disability, insanity or death, promptly give the guardian,
 2 conservator of the estate or the administrator or personal representative, as the case may be, the
 3 notice provided in ORS 86.745. This notice shall be given by first class and certified mail with return
 4 receipt requested, to the last-known address of the guardian, conservator or administrator or per-
 5 sonal representative.

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

10 **SECTION 2.** ORS 86.753 is amended to read:

11 86.753. (1) *[Where]* **If** a trustee has commenced foreclosure of a trust deed by advertisement and
 12 sale, the grantor, the grantor's successor in interest to all or any part of the trust property, *[any]*
 13 **a** beneficiary under a subordinate trust deed, *[or any]* **a** person *[having]* **that has** a subordinate lien
 14 or encumbrance of record on the property **or a person that is a tenant of the grantor[,]** may cure
 15 the default or defaults at any time prior to five days before the date last set for the sale. If the
 16 default consists of *[a failure]* **failing** to pay, when due, sums secured by the trust deed, the default
 17 may be cured by paying the entire amount due at the time of cure under the terms of the obligation,
 18 other than *[such]* **a** portion *[as]* **that** would not then be due *[had]* **if a** *[no]* default **had not** occurred.
 19 **The trustee shall provide a person that is identified in this subsection and that intends to**
 20 **effect a cure with the information necessary to effect the cure including, but not limited to,**
 21 **the sums, costs and expenses due as of the date of the intended cure.** Any other default of the
 22 trust deed obligation that is capable of being cured may be cured by tendering the performance re-
 23 quired under the obligation or trust deed. In any case, and in addition to paying the sums or
 24 tendering the performance necessary to cure the default, the person effecting the cure shall pay to
 25 the beneficiary all costs and expenses actually incurred in enforcing the obligation and trust deed,
 26 together with trustee's and attorney fees in the amount of:

27 (a) A total of \$1,000 for both trustee's fees and attorney fees, or the amount actually charged
 28 by the trustee and attorney, whichever is less, if the trust deed is a residential trust deed; or

29 (b) Reasonable attorney fees and trustee's fees actually charged by the trustee and attorney if
 30 the trust deed is not a residential trust deed. *[Any]* **A** person entitled to cure the default may, either
 31 before or after reinstatement, request *[any]* **a** court of competent jurisdiction to determine the rea-
 32 sonableness of the fee demanded or paid as a condition of reinstatement. The court may award at-
 33 torney fees to the prevailing party. An action to determine reasonable attorney fees or trustee's fees
 34 under this section *[shall]* **does** not forestall *[any]* **a** sale or affect *[its]* **the** validity **of a sale.**

35 (2) After cure of the default under subsection (1) of this section, *[all]* **the trustee shall dismiss**
 36 proceedings under ORS 86.740 to 86.755 *[shall be dismissed by the trustee,]* and **reinstate** the obli-
 37 gation and trust deed, **which** *[shall be reinstated and shall]* **will** remain in force *[the same]* as if
 38 *[no]* **an** acceleration had **not** occurred.

39 **SECTION 3.** The amendments to ORS 86.740 and 86.753 by sections 1 and 2 of this 2011
 40 Act apply to trustee's sales that are scheduled to occur on or after the effective date of this
 41 2011 Act.

42 **SECTION 4.** This 2011 Act takes effect on the 91st day after the date on which the 2011
 43 session of the Seventy-sixth Legislative Assembly adjourns sine die.