

B-Engrossed
Senate Bill 491

Ordered by the House June 1
Including Senate Amendments dated April 21 and House Amendments
dated June 1

Sponsored by Senator BONAMICI; Senator DINGFELDER (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.

Modifies requirements for notice of foreclosure and termination of tenancy for residential dwellings in foreclosure.

Declares emergency, effective 90 days after passage.

A BILL FOR AN ACT

1
2 Relating to residential rental dwellings in foreclosure; creating new provisions; amending ORS
3 86.745, 86.755, 90.300, 105.124 and 105.126; and declaring an emergency.

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

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

7 86.745. The notice of sale shall:

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

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

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

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

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

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

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

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

20 (9) If the property includes one or more dwelling units[, *as defined in ORS 90.100*] **that are**
21 **subject to ORS chapter 90**, include a notice addressed clearly to any [*person*] **individual** who oc-
22 cupies the property and who is or might be a residential tenant. The notice required under this
23 subsection must:

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

26 (b) Include information concerning the right the [*person*] **individual** has to notice under ORS
27 86.755 **(6)(c)** [*(5)(c)*] *and state that the person may have additional rights under federal law*];

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

2 (d) Be in substantially the following form:

3 [_____]

4
5 **NOTICE TO RESIDENTIAL TENANTS**

6 *The property in which you are living is in foreclosure. A foreclosure sale is scheduled for*
7 *_____ Unless the lender who is foreclosing on this property is paid, the foreclosure*
8 *will go through and someone new will own this property.*

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

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

18 **FEDERAL LAW REQUIRES**

19 **YOU TO BE NOTIFIED**

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

30 **STATE LAW NOTIFICATION REQUIREMENTS**

31 *IF THE FEDERAL LAW DOES NOT APPLY, STATE LAW STILL REQUIRES THE BUYER*
32 *TO GIVE YOU NOTICE IN WRITING BEFORE REQUIRING YOU TO MOVE OUT IF YOU ARE*
33 *OCCUPYING AND RENTING THE PROPERTY AS A TENANT IN GOOD FAITH. EVEN IF*
34 *THE FEDERAL LAW REQUIREMENT IS NO LONGER EFFECTIVE AFTER DECEMBER 31,*
35 *2012, THE REQUIREMENT UNDER STATE LAW STILL APPLIES TO YOUR SITUATION. Un-*
36 *der state law, if you have a fixed-term lease (for example, a six-month or one-year lease), the buyer must*
37 *give you at least 60 days' notice in writing before requiring you to move out. If the buyer wants to*
38 *move in and use this property as the buyer's primary residence, the buyer can give you written notice*
39 *and require you to move out after 30 days, even if you have a fixed-term lease with more than 30 days*
40 *left.*

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

43 *IMPORTANT: For the buyer to be required to give you notice under state law, you must prove*
44 *to the business or individual who is handling the foreclosure sale that you are occupying and renting*
45 *this property as a residential dwelling under a legitimate rental agreement. The name and address of*

1 the business or individual who is handling the foreclosure sale is shown on this notice under the
2 heading "TRUSTEE." You must mail or deliver your proof not later than _____ (30
3 days before the date first set for the foreclosure sale). Your proof must be in writing and should be a
4 copy of your rental agreement or lease. If you do not have a written rental agreement or lease, you can
5 provide other proof, such as receipts for rent you paid.

6 ABOUT YOUR SECURITY DEPOSIT

7 Under state law, you may apply your security deposit and any rent you paid in advance against
8 the current rent you owe your landlord. To do this, you must notify your landlord in writing that you
9 want to subtract the amount of your security deposit or prepaid rent from your rent payment. You may
10 do this only for the rent you owe your current landlord. If you do this, you must do so before the
11 foreclosure sale. The business or individual who buys this property at the foreclosure sale is not re-
12 sponsible to you for any deposit or prepaid rent you paid to your landlord.

13 ABOUT YOUR TENANCY

14 AFTER THE FORECLOSURE SALE

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

22 YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY
23 IS SOLD TO ANOTHER BUSINESS OR INDIVIDUAL OR UNTIL A COURT OR A LENDER
24 TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED. AS EX-
25 PLAINED ABOVE, YOU MAY BE ABLE TO APPLY A DEPOSIT YOU MADE OR PREPAID
26 RENT YOU PAID AGAINST YOUR CURRENT RENT OBLIGATION. BE SURE TO KEEP
27 PROOF OF ANY PAYMENTS YOU MAKE AND OF ANY NOTICE YOU GIVE OR RECEIVE
28 CONCERNING THE APPLICATION OF YOUR DEPOSIT OR YOUR PREPAID RENT.

29 IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR HOME
30 WITHOUT FIRST GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT
31 YOUR RIGHTS, YOU MAY WISH TO CONSULT A LAWYER. If you believe you need legal as-
32 sistance, contact the Oregon State Bar and ask for the lawyer referral service. Contact information for
33 the Oregon State Bar is included with this notice. If you do not have enough money to pay a lawyer
34 and are otherwise eligible, you may be able to receive legal assistance for free. Information about whom
35 to contact for free legal assistance is included with this notice.

36 [_____]

37
38
39
40 NOTICE TO RESIDENTIAL TENANTS

41 The property in which you are living is in foreclosure. A foreclosure sale is scheduled for
42 _____ (date). The date of this sale may be postponed. Unless the lender that is foreclosing
43 on this property is paid before the sale date, the foreclosure will go through and someone
44 new will own this property. After the sale, the new owner is required to provide you with
45 contact information and notice that the sale took place.

AFTER THE FORECLOSURE SALE

The new owner that buys this property at the foreclosure sale may be willing to allow you to stay as a tenant instead of requiring you to move out after 90 days or at the end of your fixed term lease. After the sale, you should receive a written notice informing you that the sale took place and giving you the new owner's name and contact information. You should contact the new owner if you would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement with you or does not notify you in writing within 30 days after the date of the foreclosure sale that you must move out, the new owner becomes your new landlord and must maintain the property. Otherwise:

- You do not owe rent;
- The new owner is not your landlord and is not responsible for maintaining the property on your behalf; and
- You must move out by the date the new owner specifies in a notice to you.

The new owner may offer to pay your moving expenses and any other costs or amounts you and the new owner agree on in exchange for your agreement to leave the premises in less than 90 days or before your fixed term lease expires. You should speak with a lawyer to fully understand your rights before making any decisions regarding your tenancy.

IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT A LAWYER. If you believe you need legal assistance, contact the Oregon State Bar and ask for the lawyer referral service. Contact information for the Oregon State Bar is included with this notice. If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to receive legal assistance for free. Information about whom to contact for free legal assistance is included with this notice.

SECTION 2. ORS 86.755 is amended to read:

86.755. (1) The trustee shall hold the trustee's sale on the date and at the time and place designated in the notice of sale[, *which must be at a designated time after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110 and at a designated place in the county or one of the counties where the property is situated*]. **The designated time of the trustee's sale must be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the designated place of the trustee's sale must be in the county or one of the counties in which the property is situated.** The trustee may sell the property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the trustee's sale. The attorney for the trustee, or an agent that the trustee or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

(2) The trustee or the attorney for the trustee, or an agent that the trustee or the attorney conducting the sale designates, may postpone the sale for one or more periods totaling not more than 180 days from the original sale date, giving notice of each adjournment by public proclamation made at the time and place set for sale. The trustee, the attorney or an agent that the trustee or the attorney designates may make the proclamation.

(3) The purchaser shall pay at the time of sale the price bid, and, within 10 days following

1 payment, the trustee shall execute and deliver the trustee’s deed to the purchaser.

2 (4) The trustee’s deed shall convey to the purchaser the interest in the property that the grantor
3 had, or had the power to convey, at the time the grantor executed the trust deed, together with any
4 interest the grantor or the grantor’s successors in interest acquire after the execution of the trust
5 deed.

6 (5)(a) **If property purchased at the trustee’s sale includes one or more dwelling units that
7 are subject to ORS chapter 90, the purchaser must provide written notice of change in
8 ownership to the occupants of each unit within 30 days after the date of sale and before or
9 concurrently with service of a written termination notice authorized by subsection (6)(c)(B)
10 of this section.**

11 (b) **The notice required by this subsection must:**

12 (A) **Explain that the dwelling unit has been sold at a foreclosure sale and that the pur-
13 chaser at that sale is the new owner.**

14 (B) **Include the date on which the foreclosure sale took place.**

15 (C) **Include the name, contact address and contact telephone number of the purchaser
16 or the purchaser’s representative.**

17 (D) **Provide information about the rights of bona fide residential tenants as provided in
18 subsections (6)(c) and (e) and (9)(a) of this section.**

19 (E) **Include contact information for the Oregon State Bar and a person or organization
20 that provides legal help to individuals at no charge to the individual.**

21 (c) **The notice must be served by one or more of the following methods:**

22 (A) **Personal delivery to the tenant.**

23 (B) **First class mail to the tenant at the dwelling unit.**

24 (C) **First class mail to the tenant at the dwelling unit and attachment of a second notice
25 copy. The second notice copy must be attached in a secure manner to the main entrance to
26 the portion of the premises in the possession of the tenant.**

27 (D) **If the names of the tenants are not known to the purchaser, the notice may be ad-
28 dressed to “occupants.”**

29 (d) **A notice that contains the information required under paragraph (b)(B) and (C) of this
30 subsection meets the requirements of paragraph (b) of this subsection if the notice is in
31 substantially the following form:**

32 _____

33
34 **NOTICE TO RESIDENTIAL TENANTS OF CHANGE IN OWNERSHIP**

35 **The property in which you are living has gone through foreclosure and was sold to a new
36 owner on _____ (date). The contact information for the new owner or the owner’s repre-
37 sentative is _____ (name, address, telephone number).**

38 **IF YOU ARE A BONA FIDE TENANT RENTING THIS PROPERTY AS A RESIDENTIAL
39 DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER
40 THE FORECLOSURE SALE FOR:**

- 41 • **THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED**
- 42 **TERM LEASE; OR**
- 43 • **AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMI-**
- 44 **NATION NOTICE.**

45 **If the new owner wants to move in and use this property as a primary residence, the new**

1 owner can give you written notice and require you to move out after 90 days, even though
2 you have a fixed term lease with more than 90 days left.

3 You must be provided with at least 90 days' written notice after the foreclosure sale be-
4 fore you can be required to move.

5 A bona fide tenant is a residential tenant who is not the borrower (property owner), or
6 a child, spouse or parent of the borrower, and whose rental agreement:

- 7 • Is the result of an arm's-length transaction;
- 8 • Requires the payment of rent that is not substantially less than fair market rent
9 for the property, unless the rent is reduced or subsidized due to a federal, state or local
10 subsidy; and
- 11 • Was entered into prior to the date of the foreclosure sale.

12 **IMPORTANT:**

13 **YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S REPRESENTATIVE**
14 **AT THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW**
15 **OWNER KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN**
16 **EVIDENCE OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU**
17 **HAVE A FIXED TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 90 DAYS**
18 **LEFT. Written evidence of your rental agreement can be a copy of your lease or rental**
19 **agreement, or other documentation of the existence of your rental agreement. Keep your**
20 **original documents and a record of any information you give to the new owner.**

21 **YOUR TENANCY**

22 **BETWEEN NOW AND THE MOVE-OUT DATE**

23 The new owner may be willing to allow you to stay as a tenant instead of requiring you
24 to move out after 90 days or at the end of your fixed term lease. You should contact the new
25 owner if you would like to stay. If the new owner accepts rent from you, signs a new resi-
26 dential rental agreement with you or does not notify you in writing within 30 days after the
27 date of the foreclosure sale that you must move out, the new owner becomes your new
28 landlord and must maintain the property. Otherwise:

- 29 • You do not owe rent;
 - 30 • The new owner is not your landlord and is not responsible for maintaining the property;
- 31 and
- 32 • You must move out by the date the new owner specifies in a notice to you.

33 The new owner may offer to pay your moving expenses and any other costs or amounts
34 you and the new owner agree on in exchange for your agreement to leave the premises in
35 less than 90 days or before your fixed term lease expires. You should speak with a lawyer to
36 fully understand your rights before making any decisions regarding your tenancy.

37 **IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR**
38 **DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO**
39 **COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD**
40 **CONSULT A LAWYER. If you believe you need legal assistance, contact the Oregon State**
41 **Bar and ask for the lawyer referral service. Contact information for the Oregon State Bar**
42 **is included with this notice. If you do not have enough money to pay a lawyer and are oth-**
43 **erwise eligible, you may be able to receive legal assistance for free. Information about whom**
44 **to contact for free legal assistance is included with this notice.**

1

2 ~~[(5)(a)]~~ **(6)(a) Except as provided in paragraph (b) or (c) of this subsection,** the purchaser
3 at the trustee's sale is entitled to possession of the property on the 10th day after the sale. A person
4 that remains in possession after the 10th day under any interest, except an interest prior to the trust
5 deed or an interest the grantor or a successor of the grantor created voluntarily is a tenant at
6 sufferance. The purchaser may obtain possession of the property from a tenant at sufferance by
7 following the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

8 (b) Except as provided in paragraph (c) of this subsection, at any time after the trustee's sale
9 the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable
10 judicial procedure to obtain possession of the property from a person that holds possession under
11 an interest that the grantor or a successor of the grantor created voluntarily if, not earlier than 30
12 days before the date first set for the sale, the person was served with not less than 30 days' written
13 notice of the requirement to surrender or deliver possession of the property.

14 *[(c) If the property purchased at the trustee's sale is a dwelling unit, as defined in ORS 90.100 (9),
15 that the person holds under a tenancy that the grantor or a successor of the grantor created voluntarily
16 and in good faith, the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other
17 applicable judicial procedure to obtain possession if after the sale the purchaser terminates the tenancy
18 in a written notice given to the person.]*

19 *[(A) At least 60 days before the termination date specified in the notice, if the tenancy is a fixed
20 term tenancy, as defined in ORS 90.100, and at least 30 days before the date first set for the trustee's
21 sale the person provided the trustee with a copy of the rental agreement that established the fixed term
22 tenancy. The provisions of this subparagraph do not apply to a purchaser that does not intend to ter-
23 minate a fixed term tenancy before the date on which the fixed term tenancy ends.]*

24 *[(B) At least 30 days before the termination date specified in the notice, if:]*

25 *[(i) The tenancy is a month-to-month tenancy or week-to-week tenancy, as those terms are defined
26 in ORS 90.100, and at least 30 days before the date first set for the trustee's sale the person provided
27 the trustee with a copy of the rental agreement that established the tenancy or with other written evi-
28 dence of the existence of a rental agreement, if the person cannot provide the rental agreement; or]*

29 *[(ii) The tenancy is a fixed term tenancy for which the person has provided notice to the trustee
30 as provided in subparagraph (A) of this paragraph and the purchaser intends to occupy the property
31 that is subject to the fixed term tenancy as the purchaser's primary residence.]*

32 **(c) If the property purchased at the trustee's sale includes a dwelling unit that is subject
33 to ORS chapter 90 and an individual occupies the unit under a bona fide tenancy, the pur-
34 chaser may obtain possession by following the procedures set forth in ORS 105.105 to 105.168
35 and by using the complaint form provided in ORS 105.124 or 105.126:**

36 **(A) Upon expiration of the fixed term of the tenancy, if the bona fide tenancy is a fixed
37 term tenancy as defined in ORS 90.100; or**

38 **(B) At least 90 days after service of a written termination notice if the bona fide tenancy
39 is:**

40 **(i) A fixed term tenancy and the purchaser intends to occupy, as the purchaser's primary
41 residence, the dwelling unit that is subject to the fixed term tenancy; or**

42 **(ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in
43 ORS 90.100.**

44 **(d) If a purchaser gives a 90-day written termination notice pursuant to paragraph (c)
45 of this subsection, the purchaser may include in the notice a request that a tenant with a**

1 **fixed term tenancy provide written evidence of the existence of the tenancy to the purchaser**
2 **at an address described in the notice. Written evidence includes a copy of the rental agree-**
3 **ment or another document that shows the existence of the fixed term tenancy. Failure of**
4 **the tenant to provide the requested written evidence before the purchaser files an action for**
5 **possession based on a 90-day notice:**

6 **(A) Does not prevent the tenant from asserting the existence of the fixed term tenancy**
7 **as a defense to the action.**

8 **(B) Prevents the tenant from recovering prevailing party attorney fees or costs and dis-**
9 **bursements pursuant to subsection (11)(b) of this section. The 90-day notice must describe**
10 **the provisions of this paragraph.**

11 *[(d)]* **(e) A purchaser may not commence a proceeding under ORS 105.105 to 105.168 that is au-**
12 **thorized under this subsection before the later of:**

13 **(A) The 10th day after the trustee's sale;**

14 **(B) The date specified in a written notice of the requirement to surrender or deliver possession**
15 **of the property if the notice is required by and is given to the person in accordance with paragraph**
16 **(b) of this subsection;**

17 **(C) The date specified in a written notice of the purchaser's intent to terminate a tenancy if the**
18 **notice is required by and is given to the person in accordance with paragraph (c) of this subsection;**
19 **or**

20 **(D) The date on which the term of a fixed term tenancy ends, if the property is a dwelling unit**
21 **and the purchaser has not terminated the tenancy in accordance with paragraph (c) of this sub-**
22 **section.**

23 **(f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to 105.168 must**
24 **attach proof of service of a written termination notice required by paragraph (c) of this**
25 **subsection to the pleadings.**

26 **(g) In an action to obtain possession, violation of the procedures required by subsection**
27 **(5) of this section or paragraph (c) of this subsection is a defense for a bona fide tenant**
28 **seeking to retain possession.**

29 **(h) As used in this subsection, "bona fide tenancy" means tenancy of a dwelling unit that**
30 **is subject to ORS chapter 90 that results from an arm's-length transaction that occurred**
31 **before the date of a foreclosure sale in which:**

32 **(A) The mortgagor or the child, spouse or parent of the mortgagor under the contract**
33 **is not the tenant; and**

34 **(B) The rent required is not substantially less than fair market rent for the dwelling unit,**
35 **unless the rent is reduced or subsidized due to a federal, state or local subsidy.**

36 *[(e) For the purposes of this subsection:]*

37 *[(A) A month-to-month tenancy or a week-to-week tenancy that a grantor or a successor of the*
38 *grantor first created after a notice of sale was served under ORS 86.750 is presumed not to be a*
39 *tenancy created in good faith.]*

40 *[(B) A fixed term tenancy that a grantor or a successor of the grantor created after a notice of sale*
41 *was served under ORS 86.750 is not a tenancy created in good faith.]*

42 *[(6) A purchaser shall serve a notice under subsection (5) of this section by first class mail and*
43 *not by certified or registered mail or a form of mail that may delay or hinder actual delivery of mail*
44 *to the addressee. The notice is effective three days after the notice is mailed.]*

45 **(7) A purchaser shall serve a notice under subsection (6) of this section by one or more**

1 **of the following methods:**

2 (a) **Personal delivery to the tenant.**

3 (b) **First class mail to the tenant at the dwelling unit.**

4 (c) **First class mail to the tenant at the dwelling unit and attachment of a second notice**
5 **copy. The second notice copy must be attached in a secure manner to the main entrance to**
6 **the portion of the premises in the possession of the tenant.**

7 (8) **If the notice under subsection (6) of this section is served by mail pursuant to sub-**
8 **section (7)(b) of this section, the minimum period for compliance must be extended by three**
9 **days and the notice must include the extension in the period stated in the notice.**

10 [(7)(a)] (9)(a) **Notwithstanding the provisions of subsection [(5)(c)] (6)(c) of this section and ex-**
11 **cept as provided in paragraph (b) of this subsection, the purchaser is not a landlord subject to the**
12 **provisions of ORS chapter 90 unless the purchaser:**

13 (A) **Accepts rent from the [person] individual who possesses the property under a tenancy de-**
14 **scribed in subsection [(5)(c)] (6)(c) of this section;**

15 (B) **Enters into a new rental agreement with the [person] individual who possesses the property**
16 **under a tenancy described in subsection [(5)(c)] (6)(c) of this section; or**

17 (C) **Fails to terminate the tenancy as provided in subsection [(5)(c)] (6)(c) of this section within**
18 **30 days after the date of the sale.**

19 (b) **The purchaser may act as a landlord for purposes of terminating a tenancy in accordance**
20 **with the provisions of ORS 90.396.**

21 (c) **The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and**
22 **659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does**
23 **not impose an affirmative duty to pay for or provide services. For the purpose of damages**
24 **pursuant to this paragraph, “rent” refers to the amount paid by the tenant to the landlord**
25 **for the right to occupy the unit before the foreclosure.**

26 [(8)(a)] (10)(a) **Except as provided in paragraph (b) of this subsection, the purchaser is not liable**
27 **to the [person] individual who possesses the property under a tenancy described in subsection**
28 **[(5)(c)] (6)(c) of this section for:**

29 (A) **Damage to the property or diminution in rental value; or**

30 (B) **Returning a security deposit.**

31 (b) **A purchaser that is a landlord under the provisions of subsection [(7)(a)] (9)(a) of this section**
32 **is liable to the [person] individual who possesses the property under a tenancy described in sub-**
33 **section [(5)(c)] (6)(c) of this section for:**

34 (A) **Damage to the property or diminution in rental value that occurs after the date of the**
35 **trustee’s sale; or**

36 (B) **Returning a security deposit the [person] individual pays after the date of the trustee’s sale.**

37 (11)(a) **Except as provided in paragraph (b) of this subsection and notwithstanding an**
38 **agreement to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d),**
39 **(f) or (g), (7) or (9)(c) of this section, reasonable attorney fees at trial and on appeal may be**
40 **awarded to the prevailing party together with costs and disbursements.**

41 (b) **If a tenant asserts a successful defense to an action for possession pursuant to sub-**
42 **section (6)(c), (d), (f) or (g) of this section, the tenant is not entitled to prevailing party fees,**
43 **attorney fees or costs and disbursements if the purchaser:**

44 (A) **Did not know, and did not have reasonable cause to know, of the existence of a fixed**
45 **term tenancy when commencing the action for possession; and**

1 **(B) Promptly dismissed the action upon becoming aware of the existence of a fixed term**
2 **tenancy.**

3 **(c) As used in this subsection, “prevailing party” means the party in whose favor final**
4 **judgment is rendered.**

5 [(9)(a)] **(12)(a)** Notwithstanding subsection (2) of this section, except when a beneficiary has
6 participated in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by
7 proceedings in bankruptcy or for any other lawful reason shall, after release from the stay, continue
8 as if uninterrupted, if within 30 days after release the trustee sends amended notice of sale by reg-
9 istered or certified mail to the last-known address of the persons listed in ORS 86.740 and 86.750 (1).

10 (b) In addition to the notice required under paragraph (a) of this subsection, the trustee shall
11 send amended notice of sale:

12 (A) By registered or certified mail to:

13 (i) The address provided by each person who was present at the time and place set for the sale
14 that was stayed; and

15 (ii) The address provided by each member of the Oregon State Bar who by registered or certified
16 mail requests the amended notice of sale and includes with the request the notice of default or an
17 identification number for the trustee’s sale that would assist the trustee in identifying the property
18 subject to the trustee’s sale and a self-addressed, stamped envelope measuring at least 8.5 by 11
19 inches in size; or

20 (B) By posting a true copy or a link to a true copy of the amended notice of sale on the trustee’s
21 Internet website.

22 [(10)] **(13)** The amended notice of sale must:

23 (a) Be given at least 20 days prior to the amended date of sale;

24 (b) Set an amended date of sale that may be the same as the original sale date, or date to which
25 the sale was postponed, provided the requirements of this subsection and ORS 86.740 and 86.750 are
26 satisfied;

27 (c) Specify the time and place for sale;

28 (d) Conform to the requirements of ORS 86.745; and

29 (e) State that the original sale proceedings were stayed and the date the stay terminated.

30 [(11)] **(14)** If the publication of the notice of sale was not completed before the date the fore-
31 closure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any
32 other lawful reason, after release from the stay, in addition to complying with the provisions of
33 subsections [(9) and (10)] **(12) and (13)** of this section, the trustee shall complete the publication by
34 publishing an amended notice of sale that states that the notice has been amended following release
35 from the stay and that contains the amended date of sale. The amended notice must be published in
36 a newspaper of general circulation in each of the counties in which the property is situated once
37 a week for four successive weeks, except that the required number of publications must be reduced
38 by the number of publications that were completed before the effective date of the stay. The last
39 publication must be made more than 20 days before the date the trustee conducts the sale.

40 **SECTION 3.** ORS 105.124 is amended to read:

41 105.124. For a complaint described in ORS 105.123, if ORS chapter 90 applies to the dwelling
42 unit:

43 (1) The complaint must be in substantially the following form and be available from the clerk
44 of the court:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

IN THE CIRCUIT COURT
FOR THE COUNTY OF

No. _____

RESIDENTIAL EVICTION COMPLAINT

PLAINTIFF (Landlord or agent):

Address: _____

City: _____

State: _____ Zip: _____

Telephone: _____

vs.

DEFENDANT (Tenants/Occupants):

MAILING ADDRESS: _____

City: _____

State: _____ Zip: _____

Telephone: _____

1.

Tenants are in possession of the dwelling unit, premises or rental property described above or located at:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

2.

Landlord is entitled to possession of the property because of:

- 24-hour notice for personal injury, substantial damage, extremely outrageous act or unlawful occupant. ORS 90.396 or 90.403.
- 24-hour or 48-hour notice for violation of a drug or alcohol program. ORS 90.398.
- 24-hour notice for perpetrating domestic violence, sexual assault or stalking. ORS 90.445.
- 72-hour or 144-hour notice for nonpayment of rent. ORS 90.394.
- 7-day notice with stated cause in a week-to-week tenancy. ORS 90.392 (6).
- 10-day notice for a pet violation, a repeat violation in a month-to-month tenancy or without stated cause in a week-to-week tenancy. ORS 90.392 (5), 90.405 or 90.427 (2).
- 20-day notice for a repeat violation. ORS 90.630 (4).
- 30-day, 60-day or 180-day notice without stated cause in a month-to-month tenancy. ORS 90.427 (3) or (4) or 90.429.
- 30-day notice with stated cause. ORS 90.392, 90.630 or 90.632.
- Notice to bona fide tenants after foreclosure sale or termination of fixed term tenancy after foreclosure sale. ORS 86.755 (6)(c).**
- Other notice _____
- No notice (explain) _____

A COPY OF THE NOTICE RELIED UPON, IF ANY, IS ATTACHED

3.

If the landlord uses an attorney, the case goes to trial and the landlord wins in court, the landlord can collect attorney fees from the defendant pursuant to ORS 90.255 and 105.137 (3).

Landlord requests judgment for possession of the premises, court costs, disbursements and attorney fees.

I certify that the allegations and factual assertions in this complaint are true to the best of my knowledge.

1 _____
2 Signature of landlord or agent.
3 _____
4

5 (2) The complaint must be signed by the plaintiff or an attorney representing the plaintiff as
6 provided by ORCP 17, or verified by an agent or employee of the plaintiff or an agent or employee
7 of an agent of the plaintiff.

8 (3) A copy of the notice relied upon, if any, must be attached to the complaint.

9 **SECTION 4.** ORS 105.126 is amended to read:

10 105.126. For a complaint described in ORS 105.123, if ORS chapter 90 does not apply to the
11 premises:

12 (1) The complaint must be in substantially the following form and be available from the clerk
13 of the court:
14 _____

15
16 IN THE CIRCUIT COURT
17 FOR THE COUNTY OF
18 _____

19
20 EVICTION COMPLAINT
21 (Tenancy not covered by ORS chapter 90)

22
23 No. _____
24

25 (Landlord),
26 Plaintiff(s)

27
28 vs.

29
30 (Tenant),
31 Defendant(s)

32
33 1.

34 Defendant is in possession of the following premises:
35

36 _____
37
38 _____ (city)
39

40 2.

41 Defendant entered upon the premises with force or is unlawfully holding the premises with
42 force.
43

44 3.

45 Plaintiff is entitled to possession of the premises, because:

- 1 _____ 30-day notice (month-to-month
- 2 tenancy)
- 3 _____ 30-day notice (cause)
- 4 _____ **Notice to bona fide tenants after foreclosure**
- 5 **sale or termination of fixed term tenancy**
- 6 **after foreclosure sale. ORS 86.755 (6)(c).**
- 7 _____ Other notice (explain) _____
- 8 _____ No notice (explain) _____

9

10 A COPY OF ANY NOTICE RELIED UPON IS ATTACHED

11

12 Wherefore, plaintiff prays for possession of the premises, costs and disbursements and attorney

13 fees, if applicable.

14 _____

15

16 Plaintiff

17 _____

18

19 (2) A copy of the notice relied upon, if any, must be attached to the complaint.

20 **SECTION 5.** ORS 90.300, as amended by section 5, chapter 28, Oregon Laws 2010, is amended

21 to read:

22 90.300. (1) As used in this section, "security deposit" includes any last month's rent deposit.

23 (2)(a) Except as otherwise provided in this section, a landlord may require a tenant to pay a

24 security deposit. The landlord shall provide the tenant with a receipt for any security deposit the

25 tenant pays. The landlord shall hold a security deposit or prepaid rent for the tenant who is a party

26 to the rental agreement. A tenant's claim to the security deposit or prepaid rent is prior to the claim

27 of a creditor of the landlord, including a trustee in bankruptcy.

28 (b) Except as provided in ORS 86.755 [(8)] (10), the holder of the landlord's interest in the

29 premises at the time the tenancy terminates is responsible to the tenant for any security deposit or

30 prepaid rent and is bound by this section.

31 (3) A landlord may not charge a tenant a pet security deposit for keeping a service animal or

32 companion animal that a tenant with a disability requires as a reasonable accommodation under fair

33 housing laws.

34 (4)(a) Except as otherwise provided in this subsection, a landlord may not change the rental

35 agreement to require the tenant to pay a new or increased security deposit during the first year

36 after the tenancy has begun. Subject to subsection (3) of this section, the landlord may require an

37 additional deposit if the landlord and tenant agree to modify the terms and conditions of the rental

38 agreement to permit a pet or for other cause and the additional deposit relates to the modification.

39 This paragraph does not prevent a landlord from collecting a security deposit that an initial rental

40 agreement provided for but that remained unpaid at the time the tenancy began.

41 (b) If a landlord requires a new or increased security deposit after the first year of the tenancy,

42 the landlord shall allow the tenant at least three months to pay the new or increased deposit.

43 (5) The landlord may claim all or part of the security deposit only if the landlord required the

44 security deposit for any or all of the purposes specified in subsection (6) of this section.

45 (6)(a) The landlord may claim from the security deposit only the amount reasonably necessary:

1 (A) To remedy the tenant's defaults in the performance of the rental agreement including, but
2 not limited to, unpaid rent; and

3 (B) To repair damages to the premises caused by the tenant, not including ordinary wear and
4 tear.

5 (b) A landlord is not required to repair damage caused by the tenant in order for the landlord
6 to claim against the deposit for the cost to make the repair. Any labor costs the landlord assesses
7 under this subsection for cleaning or repairs must be based on a reasonable hourly rate. The land-
8 lord may charge a reasonable hourly rate for the landlord's own performance of cleaning or repair
9 work.

10 (c) Defaults and damages for which a landlord may recover under this subsection include, but
11 are not limited to:

12 (A) Carpet cleaning, other than the use of a common vacuum cleaner, if:

13 (i) The cleaning is performed by use of a machine specifically designed for cleaning or
14 shampooing carpets;

15 (ii) The carpet was cleaned immediately before the tenant took possession; and

16 (iii) The written rental agreement provides that the landlord may deduct the cost of carpet
17 cleaning regardless of whether the tenant cleans the carpet before the tenant delivers possession
18 as described in ORS 90.147.

19 (B) Loss of use of the dwelling unit during the performance of necessary cleaning or repairs, if
20 the cleaning or repairs are performed in a timely manner.

21 (7) A landlord may not require a tenant to pay or to forfeit a security deposit or prepaid rent
22 to the landlord for the tenant's failure to maintain a tenancy for a minimum number of months in
23 a month-to-month tenancy.

24 (8) The landlord must apply any last month's rent deposit to the rent due for the last month of
25 the tenancy:

26 (a) When either the landlord or the tenant gives to the other a notice of termination, pursuant
27 to this chapter, other than a notice of termination under ORS 90.394;

28 (b) When the landlord and tenant agree to terminate the tenancy; or

29 (c) When the tenancy terminates in accordance with the provisions of a written rental agree-
30 ment for a term tenancy.

31 (9) A landlord shall account for and refund as provided in subsections (11) to (13) of this section
32 any portion of a last month's rent deposit the landlord does not apply as provided under subsection
33 (8) of this section. Unless the tenant and landlord agree otherwise, the tenant may not require the
34 landlord to apply a last month's rent deposit to rent due for any period other than the last month
35 of the tenancy. A last month's rent deposit does not limit the amount of rent charged unless a
36 written rental agreement provides otherwise.

37 (10) When the tenancy terminates, a landlord shall account for and refund to the tenant, in the
38 same manner this section requires for security deposits, the unused balance of any prepaid rent the
39 landlord has not previously refunded to the tenant under ORS 90.380 and 105.120 (5)(b) or any other
40 provision of this chapter. The landlord may claim from the remaining prepaid rent only the amount
41 reasonably necessary to pay the tenant's unpaid rent.

42 (11) In order to claim all or part of any prepaid rent or security deposit, within 31 days after
43 the tenancy terminates and the tenant delivers possession the landlord shall give to the tenant a
44 written accounting that states specifically the basis or bases of the claim. The landlord shall give
45 a separate accounting for security deposits and for prepaid rent.

1 (12) The landlord shall return to the tenant the security deposit or prepaid rent or the portion
2 of the security deposit or prepaid rent that the landlord does not claim in the manner provided by
3 subsections (10) and (11) of this section not later than 31 days after the tenancy terminates and the
4 tenant delivers possession to the landlord.

5 (13) The landlord shall give the written accounting required under subsection (11) of this section
6 or shall return the security deposit or prepaid rent as required by subsection (12) of this section by
7 personal delivery or by first class mail.

8 (14) If a security deposit or prepaid rent secures a tenancy for a space for a manufactured
9 dwelling or floating home the tenant owns and occupies, whether or not in a facility, and the
10 dwelling or home is abandoned as described in ORS 90.425 (2) or 90.675 (2), the 31-day period de-
11 scribed in subsections (11) and (12) of this section commences on the earliest of:

12 (a) Waiver of the abandoned property process under ORS 90.425 (26) or 90.675 (22);

13 (b) Removal of the manufactured dwelling or floating home from the rented space;

14 (c) Destruction or other disposition of the manufactured dwelling or floating home under ORS
15 90.425 (10)(b) or 90.675 (10)(b); or

16 (d) Sale of the manufactured dwelling or floating home pursuant to ORS 90.425 (10)(a) or 90.675
17 (10)(a).

18 (15) If the landlord fails to comply with subsection (12) of this section or if the landlord in bad
19 faith fails to return all or any portion of any prepaid rent or security deposit due to the tenant
20 under this chapter or the rental agreement, the tenant may recover the money due in an amount
21 equal to twice the amount:

22 (a) Withheld without a written accounting under subsection (11) of this section; or

23 (b) Withheld in bad faith.

24 (16)(a) A security deposit or prepaid rent in the possession of the landlord is not garnishable
25 property, as provided in ORS 18.618.

26 (b) If a landlord delivers a security deposit or prepaid rent to a garnishor in violation of ORS
27 18.618 (1)(b), the landlord that delivered the security deposit or prepaid rent to the garnishor shall
28 allow the tenant at least 30 days after a copy of the garnishee response required by ORS 18.680 is
29 delivered to the tenant under ORS 18.690 to restore the security deposit or prepaid rent. If the
30 tenant fails to restore a security deposit or prepaid rent under the provisions of this paragraph be-
31 fore the tenancy terminates, and the landlord retains no security deposit or prepaid rent from the
32 tenant after the garnishment, the landlord is not required to refund or account for the security de-
33 posit or prepaid rent under subsection (10) of this section.

34 (17) This section does not preclude the landlord or tenant from recovering other damages under
35 this chapter.

36 **SECTION 6.** ORS 86.745, as amended by sections 1 and 2, chapter 28, Oregon Laws 2010, and
37 section 1 of this 2011 Act, is amended to read:

38 86.745. The notice of sale shall:

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

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

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

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

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

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

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

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

6 (9) If the property includes one or more dwelling units that are subject to ORS chapter 90, in-
7 clude a notice addressed clearly to any individual who occupies the property and who is or might
8 be a residential tenant. The notice required under this subsection must:

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

11 (b) Include information concerning the right the individual has to notice under ORS 86.755 (6)(c);

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

13 (d) Be in substantially the following form:
14

15
16 NOTICE TO RESIDENTIAL TENANTS

17 The property in which you are living is in foreclosure. A foreclosure sale is scheduled for
18 _____ (date). The date of this sale may be postponed. Unless the lender that is foreclosing on this
19 property is paid before the sale date, the foreclosure will go through and someone new will own this
20 property. After the sale, the new owner is required to provide you with contact information and
21 notice that the sale took place.

22 The following information applies to you only if you are a bona fide tenant occupying and
23 renting this property as a residential dwelling under a legitimate rental agreement. The information
24 does not apply to you if you own this property or if you are not a bona fide residential tenant.

25 If the foreclosure sale goes through, the new owner will have the right to require you to move
26 out. Before the new owner can require you to move, the new owner must provide you with written
27 notice that specifies the date by which you must move out. If you do not leave before the move-out
28 date, the new owner can have the sheriff remove you from the property after a court hearing. You
29 will receive notice of the court hearing.

30 PROTECTION FROM EVICTION

31 IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING THIS PROPERTY AS A
32 RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROP-
33 erty AFTER THE FORECLOSURE SALE FOR:

34 • *[THE REMAINDER OF YOUR FIXED TERM LEASE,]* **60 DAYS FROM THE DATE YOU**
35 **ARE GIVEN A WRITTEN TERMINATION NOTICE, IF YOU HAVE A FIXED TERM LEASE;**
36 **OR**

37 • **AT LEAST [90] 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION**
38 **NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO-WEEK RENTAL AGREE-**
39 **MENT.**

40 If the new owner wants to move in and use this property as a primary residence, the new owner
41 can give you written notice and require you to move out after [90] **30** days, even though you have
42 a fixed term lease with more than [90] **30** days left.

43 You must be provided with at least [90] **30** days' written notice after the foreclosure sale before
44 you can be required to move.

45 A bona fide tenant is a residential tenant who is not the borrower (property owner) or a child,

1 spouse or parent of the borrower, and whose rental agreement:

- 2 • Is the result of an arm's-length transaction;
- 3 • Requires the payment of rent that is not substantially less than fair market rent for the
4 property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
- 5 • Was entered into prior to the date of the foreclosure sale.

6 ABOUT YOUR TENANCY
7 BETWEEN NOW AND THE FORECLOSURE SALE:

8 RENT

9 YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY
10 IS SOLD OR UNTIL A COURT TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU
11 CAN BE EVICTED. BE SURE TO KEEP PROOF OF ANY PAYMENTS YOU MAKE.

12 SECURITY DEPOSIT

13 You may apply your security deposit and any rent you paid in advance against the current rent
14 you owe your landlord as provided in ORS 90.367. To do this, you must notify your landlord in
15 writing that you want to subtract the amount of your security deposit or prepaid rent from your rent
16 payment. You may do this only for the rent you owe your current landlord. If you do this, you must
17 do so before the foreclosure sale. The business or individual who buys this property at the foreclo-
18 sure sale is not responsible to you for any deposit or prepaid rent you paid to your landlord.

19 ABOUT YOUR TENANCY
20 AFTER THE FORECLOSURE SALE

21 The new owner that buys this property at the foreclosure sale may be willing to allow you to
22 stay as a tenant instead of requiring you to move out after [90] **30 or 60** days [*or at the end of your*
23 *fixed term lease*]. After the sale, you should receive a written notice informing you that the sale took
24 place and giving you the new owner's name and contact information. You should contact the new
25 owner if you would like to stay. If the new owner accepts rent from you, signs a new residential
26 rental agreement with you or does not notify you in writing within 30 days after the date of the
27 foreclosure sale that you must move out, the new owner becomes your new landlord and must
28 maintain the property. Otherwise:

- 29 • You do not owe rent;
- 30 • The new owner is not your landlord and is not responsible for maintaining the property on
31 your behalf; and
- 32 • You must move out by the date the new owner specifies in a notice to you.

33 The new owner may offer to pay your moving expenses and any other costs or amounts you and
34 the new owner agree on in exchange for your agreement to leave the premises in less than [90] **30**
35 **or 60** days [*or before your fixed term lease expires*]. You should speak with a lawyer to fully under-
36 stand your rights before making any decisions regarding your tenancy.

37 IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR
38 DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT
39 TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT
40 A LAWYER. If you believe you need legal assistance, contact the Oregon State Bar and ask for the
41 lawyer referral service. Contact information for the Oregon State Bar is included with this notice.
42 If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to
43 receive legal assistance for free. Information about whom to contact for free legal assistance is in-
44 cluded with this notice.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

SECTION 7. ORS 86.755, as amended by section 2 of this 2011 Act, is amended to read:

86.755. (1) The trustee shall hold the trustee's sale on the date and at the time and place designated in the notice of sale. The designated time of the trustee's sale must be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the designated place of the trustee's sale must be in the county or one of the counties in which the property is situated. The trustee may sell the property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the trustee's sale. The attorney for the trustee, or an agent that the trustee or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

(2) The trustee or the attorney for the trustee, or an agent that the trustee or the attorney conducting the sale designates, may postpone the sale for one or more periods totaling not more than 180 days from the original sale date, giving notice of each adjournment by public proclamation made at the time and place set for sale. The trustee, the attorney or an agent that the trustee or the attorney designates may make the proclamation.

(3) The purchaser shall pay at the time of sale the price bid, and, within 10 days following payment, the trustee shall execute and deliver the trustee's deed to the purchaser.

(4) The trustee's deed shall convey to the purchaser the interest in the property that the grantor had, or had the power to convey, at the time the grantor executed the trust deed, together with any interest the grantor or the grantor's successors in interest acquire after the execution of the trust deed.

(5)(a) If property purchased at the trustee's sale includes one or more dwelling units that are subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the occupants of each unit within 30 days after the date of sale and before or concurrently with service of a written termination notice authorized by subsection (6)(c)(B) of this section.

(b) The notice required by this subsection must:

(A) Explain that the dwelling unit has been sold at a foreclosure sale and that the purchaser at that sale is the new owner.

(B) Include the date on which the foreclosure sale took place.

(C) Include the name, contact address and contact telephone number of the purchaser or the purchaser's representative.

(D) Provide information about the rights of bona fide residential tenants as provided in subsections (6)(c) and (e) and (9)(a) of this section.

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

(c) The notice must be served by one or more of the following methods:

(A) Personal delivery to the tenant.

(B) First class mail to the tenant at the dwelling unit.

(C) First class mail to the tenant at the dwelling unit and attachment of a second notice copy. The second notice copy must be attached in a secure manner to the main entrance to the portion of the premises in the possession of the tenant.

(D) If the names of the tenants are not known to the purchaser, the notice may be addressed to "occupants."

(d) A notice that contains the information required under paragraph (b)(B) and (C) of this sub-

1 section meets the requirements of paragraph (b) of this subsection if the notice is in substantially
2 the following form:

3 _____
4
5 NOTICE TO RESIDENTIAL TENANTS OF CHANGE IN OWNERSHIP

6 The property in which you are living has gone through foreclosure and was sold to a new owner
7 on _____ (date). The contact information for the new owner or the owner's representative is
8 _____ (name, address, telephone number).

9 IF YOU ARE A BONA FIDE TENANT RENTING THIS PROPERTY AS A RESIDENTIAL
10 DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE
11 FORECLOSURE SALE FOR:

12 • [THE REMAINDER OF YOUR FIXED TERM LEASE,] **60 DAYS FROM THE DATE**
13 **YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF YOU HAVE A FIXED TERM**
14 **LEASE; OR**

15 • **AT LEAST [90] 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMI-**
16 **NATION NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO-WEEK RENTAL**
17 **AGREEMENT.**

18 If the new owner wants to move in and use this property as a primary residence, the new owner
19 can give you written notice and require you to move out after [90] 30 days, even though you have
20 a fixed term lease with more than [90] 30 days left.

21 You must be provided with at least [90] 30 days' written notice after the foreclosure sale before
22 you can be required to move.

23 A bona fide tenant is a residential tenant who is not the borrower (property owner), or a child,
24 spouse or parent of the borrower, and whose rental agreement:

- 25 • Is the result of an arm's-length transaction;
26 • Requires the payment of rent that is not substantially less than fair market rent for the
27 property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
28 • Was entered into prior to the date of the foreclosure sale.

29 IMPORTANT:

30 YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S REPRESENTATIVE AT
31 THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER
32 KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE
33 OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED
34 TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN [90] 30 DAYS LEFT. Written evi-
35 dence of your rental agreement can be a copy of your lease or rental agreement, or other doc-
36 umentation of the existence of your rental agreement. Keep your original documents and a record
37 of any information you give to the new owner.

38 YOUR TENANCY

39 BETWEEN NOW AND THE MOVE-OUT DATE

40 The new owner may be willing to allow you to stay as a tenant instead of requiring you to move
41 out after [90] 30 or 60 days [or at the end of your fixed term lease]. You should contact the new
42 owner if you would like to stay. If the new owner accepts rent from you, signs a new residential
43 rental agreement with you or does not notify you in writing within 30 days after the date of the
44 foreclosure sale that you must move out, the new owner becomes your new landlord and must
45 maintain the property. Otherwise:

- 1 • You do not owe rent;
- 2 • The new owner is not your landlord and is not responsible for maintaining the property; and
- 3 • You must move out by the date the new owner specifies in a notice to you.

4 The new owner may offer to pay your moving expenses and any other costs or amounts you and
5 the new owner agree on in exchange for your agreement to leave the premises in less than [90] **30**
6 **or 60** days [*or before your fixed term lease expires*]. You should speak with a lawyer to fully under-
7 stand your rights before making any decisions regarding your tenancy.

8 IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR
9 DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT
10 TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT
11 A LAWYER. If you believe you need legal assistance, contact the Oregon State Bar and ask for the
12 lawyer referral service. Contact information for the Oregon State Bar is included with this notice.
13 If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to
14 receive legal assistance for free. Information about whom to contact for free legal assistance is in-
15 cluded with this notice.

16
17
18 (6)(a) Except as provided in paragraph (b) or (c) of this subsection, the purchaser at the trustee's
19 sale is entitled to possession of the property on the 10th day after the sale. A person that remains
20 in possession after the 10th day under any interest, except an interest prior to the trust deed or an
21 interest the grantor or a successor of the grantor created voluntarily is a tenant at sufferance. The
22 purchaser may obtain possession of the property from a tenant at sufferance by following the pro-
23 cedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

24 (b) Except as provided in paragraph (c) of this subsection, at any time after the trustee's sale
25 the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable
26 judicial procedure to obtain possession of the property from a person that holds possession under
27 an interest that the grantor or a successor of the grantor created voluntarily if, not earlier than 30
28 days before the date first set for the sale, the person was served with not less than 30 days' written
29 notice of the requirement to surrender or deliver possession of the property.

30 (c) If the property purchased at the trustee's sale includes a dwelling unit that is subject to ORS
31 chapter 90 and an individual occupies the unit under a bona fide tenancy, the purchaser may obtain
32 possession by following the procedures set forth in ORS 105.105 to 105.168 and by using the com-
33 plaint form provided in ORS 105.124 or 105.126:

34 (A) [*Upon expiration of the fixed term of the tenancy,*] **At least 60 days after service of a**
35 **written termination notice**, if the bona fide tenancy is a fixed term tenancy as defined in ORS
36 90.100; or

37 (B) At least [90] **30** days after service of a written termination notice if the bona fide tenancy
38 is:

39 (i) A fixed term tenancy and the purchaser intends to occupy, as the purchaser's primary resi-
40 dence, the dwelling unit that is subject to the fixed term tenancy; or

41 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS
42 90.100.

43 (d) If a purchaser gives a [90-day] **30-day** written termination notice pursuant to paragraph (c)
44 of this subsection, the purchaser may include in the notice a request that a tenant with a fixed term
45 tenancy provide written evidence of the existence of the tenancy to the purchaser at an address

1 described in the notice. Written evidence includes a copy of the rental agreement or another docu-
2 ment that shows the existence of the fixed term tenancy. Failure of the tenant to provide the re-
3 quested written evidence before the purchaser files an action for possession based on a [90-day]
4 **30-day** notice:

5 (A) Does not prevent the tenant from asserting the existence of the fixed term tenancy as a
6 defense to the action.

7 (B) Prevents the tenant from recovering prevailing party attorney fees or costs and disburse-
8 ments pursuant to subsection (11)(b) of this section. The [90-day] **30-day** notice must describe the
9 provisions of this paragraph.

10 (e) A purchaser may not commence a proceeding under ORS 105.105 to 105.168 that is authorized
11 under this subsection before the later of:

12 (A) The 10th day after the trustee's sale;

13 (B) The date specified in a written notice of the requirement to surrender or deliver possession
14 of the property if the notice is required by and is given to the person in accordance with paragraph
15 (b) of this subsection;

16 (C) The date specified in a written notice of the purchaser's intent to terminate a tenancy if the
17 notice is required by and is given to the person in accordance with paragraph (c) of this subsection;
18 or

19 (D) The date on which the term of a fixed term tenancy ends, if the property is a dwelling unit
20 and the purchaser has not terminated the tenancy in accordance with paragraph (c) of this sub-
21 section.

22 (f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to 105.168 must attach
23 proof of service of a written termination notice required by paragraph (c) of this subsection to the
24 pleadings.

25 (g) In an action to obtain possession, violation of the procedures required by subsection (5) of
26 this section or paragraph (c) of this subsection is a defense for a bona fide tenant seeking to retain
27 possession.

28 (h) As used in this subsection, "bona fide tenancy" means tenancy of a dwelling unit that is
29 subject to ORS chapter 90 that results from an arm's-length transaction that occurred before the
30 date of a foreclosure sale in which:

31 (A) The mortgagor or the child, spouse or parent of the mortgagor under the contract is not the
32 tenant; and

33 (B) The rent required is not substantially less than fair market rent for the dwelling unit, unless
34 the rent is reduced or subsidized due to a federal, state or local subsidy.

35 (7) A purchaser shall serve a notice under subsection (6) of this section by one or more of the
36 following methods:

37 (a) Personal delivery to the tenant.

38 (b) First class mail to the tenant at the dwelling unit.

39 (c) First class mail to the tenant at the dwelling unit and attachment of a second notice copy.
40 The second notice copy must be attached in a secure manner to the main entrance to the portion
41 of the premises in the possession of the tenant.

42 (8) If the notice under subsection (6) of this section is served by mail pursuant to subsection
43 (7)(b) of this section, the minimum period for compliance must be extended by three days and the
44 notice must include the extension in the period stated in the notice.

45 (9)(a) Notwithstanding the provisions of subsection (6)(c) of this section and except as provided

1 in paragraph (b) of this subsection, the purchaser is not a landlord subject to the provisions of ORS
2 chapter 90 unless the purchaser:

3 (A) Accepts rent from the individual who possesses the property under a tenancy described in
4 subsection (6)(c) of this section;

5 (B) Enters into a new rental agreement with the individual who possesses the property under
6 a tenancy described in subsection (6)(c) of this section; or

7 (C) Fails to terminate the tenancy as provided in subsection (6)(c) of this section within 30 days
8 after the date of the sale.

9 (b) The purchaser may act as a landlord for purposes of terminating a tenancy in accordance
10 with the provisions of ORS 90.396.

11 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and
12 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not
13 impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to
14 this paragraph, "rent" refers to the amount paid by the tenant to the landlord for the right to oc-
15 cupy the unit before the foreclosure.

16 (10)(a) Except as provided in paragraph (b) of this subsection, the purchaser is not liable to the
17 individual who possesses the property under a tenancy described in subsection (6)(c) of this section
18 for:

19 (A) Damage to the property or diminution in rental value; or

20 (B) Returning a security deposit.

21 (b) A purchaser that is a landlord under the provisions of subsection (9)(a) of this section is li-
22 able to the individual who possesses the property under a tenancy described in subsection (6)(c) of
23 this section for:

24 (A) Damage to the property or diminution in rental value that occurs after the date of the
25 trustee's sale; or

26 (B) Returning a security deposit the individual pays after the date of the trustee's sale.

27 (11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement
28 to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or
29 (9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the pre-
30 vailing party together with costs and disbursements.

31 (b) If a tenant asserts a successful defense to an action for possession pursuant to subsection
32 (6)(c), (d), (f) or (g) of this section, the tenant is not entitled to prevailing party fees, attorney fees
33 or costs and disbursements if the purchaser:

34 (A) Did not know, and did not have reasonable cause to know, of the existence of a fixed term
35 tenancy when commencing the action for possession; and

36 (B) Promptly dismissed the action upon becoming aware of the existence of a fixed term tenancy.

37 (c) As used in this subsection, "prevailing party" means the party in whose favor final judgment
38 is rendered.

39 (12)(a) Notwithstanding subsection (2) of this section, except when a beneficiary has participated
40 in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by proceedings
41 in bankruptcy or for any other lawful reason shall, after release from the stay, continue as if unin-
42 terrupted, if within 30 days after release the trustee sends amended notice of sale by registered or
43 certified mail to the last-known address of the persons listed in ORS 86.740 and 86.750 (1).

44 (b) In addition to the notice required under paragraph (a) of this subsection, the trustee shall
45 send amended notice of sale:

1 (A) By registered or certified mail to:

2 (i) The address provided by each person who was present at the time and place set for the sale
3 that was stayed; and

4 (ii) The address provided by each member of the Oregon State Bar who by registered or certified
5 mail requests the amended notice of sale and includes with the request the notice of default or an
6 identification number for the trustee's sale that would assist the trustee in identifying the property
7 subject to the trustee's sale and a self-addressed, stamped envelope measuring at least 8.5 by 11
8 inches in size; or

9 (B) By posting a true copy or a link to a true copy of the amended notice of sale on the trustee's
10 Internet website.

11 (13) The amended notice of sale must:

12 (a) Be given at least 20 days prior to the amended date of sale;

13 (b) Set an amended date of sale that may be the same as the original sale date, or date to which
14 the sale was postponed, provided the requirements of this subsection and ORS 86.740 and 86.750 are
15 satisfied;

16 (c) Specify the time and place for sale;

17 (d) Conform to the requirements of ORS 86.745; and

18 (e) State that the original sale proceedings were stayed and the date the stay terminated.

19 (14) If the publication of the notice of sale was not completed before the date the foreclosure
20 proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other lawful
21 reason, after release from the stay, in addition to complying with the provisions of subsections (12)
22 and (13) of this section, the trustee shall complete the publication by publishing an amended notice
23 of sale that states that the notice has been amended following release from the stay and that con-
24 tains the amended date of sale. The amended notice must be published in a newspaper of general
25 circulation in each of the counties in which the property is situated once a week for four successive
26 weeks, except that the required number of publications must be reduced by the number of publica-
27 tions that were completed before the effective date of the stay. The last publication must be made
28 more than 20 days before the date the trustee conducts the sale.

29 **SECTION 8. Notwithstanding the amendments to ORS 105.124 and 105.126 by sections 3
30 and 4 of this 2011 Act, for the purpose of exhausting existing supplies of the complaint forms
31 modified pursuant to the amendments to ORS 105.124 and 105.126 by sections 3 and 4 of this
32 2011 Act, complaint forms satisfying the requirements of ORS 105.124 or 105.126, as in effect
33 on January 2, 2011, may be used until January 2, 2012.**

34 **SECTION 9. The amendments to ORS 86.745 and 86.755 by sections 6 and 7 of this 2011
35 Act become operative January 1, 2015.**

36 **SECTION 10. This 2011 Act being necessary for the immediate preservation of the public
37 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
38 90 days after passage.**