

## HOUSE AMENDMENTS TO A-ENGROSSED SENATE BILL 491

By COMMITTEE ON GENERAL GOVERNMENT AND CONSUMER PROTECTION

June 1

1 On page 8 of the printed A-engrossed bill, line 3, delete “created”.

2 On page 20, delete lines 2 through 45 and delete pages 21 through 24 and insert:

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

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

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

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

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

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

28 “(b) The notice required by this subsection must:

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

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

32 “(C) Include the name, contact address and contact telephone number of the purchaser or the  
33 purchaser’s representative.

34 “(D) Provide information about the rights of bona fide residential tenants as provided in sub-  
35 sections (6)(c) and (e) and (9)(a) of this section.

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

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

4 “(A) Personal delivery to the tenant.

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

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

9 “(D) If the names of the tenants are not known to the purchaser, the notice may be addressed  
10 to ‘occupants.’

11 “(d) A notice that contains the information required under paragraph (b)(B) and (C) of this sub-  
12 section meets the requirements of paragraph (b) of this subsection if the notice is in substantially  
13 the following form:

14 “ \_\_\_\_\_

15  
16 NOTICE TO RESIDENTIAL TENANTS OF CHANGE IN OWNERSHIP

17 The property in which you are living has gone through foreclosure and was sold to a new owner  
18 on \_\_\_\_\_ (date). The contact information for the new owner or the owner’s representative is  
19 \_\_\_\_\_ (name, address, telephone number).

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

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

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

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

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

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

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

40 IMPORTANT:

41 YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER’S REPRESENTATIVE AT  
42 THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER  
43 KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE  
44 OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED  
45 TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN [90] 30 DAYS LEFT. Written evi-

1 dence of your rental agreement can be a copy of your lease or rental agreement, or other doc-  
2 umentation of the existence of your rental agreement. Keep your original documents and a record  
3 of any information you give to the new owner.

4 YOUR TENANCY

5 BETWEEN NOW AND THE MOVE-OUT DATE

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

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

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

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

27 “ \_\_\_\_\_

28  
29 “(6)(a) Except as provided in paragraph (b) or (c) of this subsection, the purchaser at the  
30 trustee’s sale is entitled to possession of the property on the 10th day after the sale. A person that  
31 remains in possession after the 10th day under any interest, except an interest prior to the trust  
32 deed or an interest the grantor or a successor of the grantor created voluntarily is a tenant at  
33 sufferance. The purchaser may obtain possession of the property from a tenant at sufferance by  
34 following the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

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

41 “(c) If the property purchased at the trustee’s sale includes a dwelling unit that is subject to  
42 ORS chapter 90 and an individual occupies the unit under a bona fide tenancy, the purchaser may  
43 obtain possession by following the procedures set forth in ORS 105.105 to 105.168 and by using the  
44 complaint form provided in ORS 105.124 or 105.126:

45 “(A) [*Upon expiration of the fixed term of the tenancy,*] **At least 60 days after service of a**

1 **written termination notice**, if the bona fide tenancy is a fixed term tenancy as defined in ORS  
2 90.100; or

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

5 “(i) A fixed term tenancy and the purchaser intends to occupy, as the purchaser’s primary resi-  
6 dence, the dwelling unit that is subject to the fixed term tenancy; or

7 “(ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS  
8 90.100.

9 “(d) If a purchaser gives a [90-day] **30-day** written termination notice pursuant to paragraph (c)  
10 of this subsection, the purchaser may include in the notice a request that a tenant with a fixed term  
11 tenancy provide written evidence of the existence of the tenancy to the purchaser at an address  
12 described in the notice. Written evidence includes a copy of the rental agreement or another docu-  
13 ment that shows the existence of the fixed term tenancy. Failure of the tenant to provide the re-  
14 quested written evidence before the purchaser files an action for possession based on a [90-day]  
15 **30-day** notice:

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

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

21 “(e) A purchaser may not commence a proceeding under ORS 105.105 to 105.168 that is author-  
22 ized under this subsection before the later of:

23 “(A) The 10th day after the trustee’s sale;

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

27 “(C) The date specified in a written notice of the purchaser’s intent to terminate a tenancy if  
28 the notice is required by and is given to the person in accordance with paragraph (c) of this sub-  
29 section; or

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

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

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

39 “(h) As used in this subsection, ‘bona fide tenancy’ means tenancy of a dwelling unit that is  
40 subject to ORS chapter 90 that results from an arm’s-length transaction that occurred before the  
41 date of a foreclosure sale in which:

42 “(A) The mortgagor or the child, spouse or parent of the mortgagor under the contract is not  
43 the tenant; and

44 “(B) The rent required is not substantially less than fair market rent for the dwelling unit, un-  
45 less the rent is reduced or subsidized due to a federal, state or local subsidy.

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

3 “(a) Personal delivery to the tenant.

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

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

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

11 “(9)(a) Notwithstanding the provisions of subsection (6)(c) of this section and except as provided  
12 in paragraph (b) of this subsection, the purchaser is not a landlord subject to the provisions of ORS  
13 chapter 90 unless the purchaser:

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

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

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

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

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

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

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

31 “(B) Returning a security deposit.

32 “(b) A purchaser that is a landlord under the provisions of subsection (9)(a) of this section is  
33 liable to the individual who possesses the property under a tenancy described in subsection (6)(c)  
34 of this section for:

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

37 “(B) Returning a security deposit the individual pays after the date of the trustee’s sale.

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

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

45 “(A) Did not know, and did not have reasonable cause to know, of the existence of a fixed term

1 tenancy when commencing the action for possession; and

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

4 “(c) As used in this subsection, ‘prevailing party’ means the party in whose favor final judgment  
5 is rendered.

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

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

13 “(A) By registered or certified mail to:

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

16 “(ii) The address provided by each member of the Oregon State Bar who by registered or certi-  
17 fied mail requests the amended notice of sale and includes with the request the notice of default or  
18 an identification number for the trustee’s sale that would assist the trustee in identifying the prop-  
19 erty subject to the trustee’s sale and a self-addressed, stamped envelope measuring at least 8.5 by  
20 11 inches in size; or

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

23 “(13) The amended notice of sale must:

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

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

28 “(c) Specify the time and place for sale;

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

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

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

41 On page 25, delete lines 1 through 28.