

Senate Bill 492

Sponsored by Senator BONAMICI (Pre-session filed.)

SUMMARY

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

Removes certain exemptions from requirement to comply with law governing mortgage loan modifications. Extends sunset date for mortgage loan modification law.

Requires trustee to be resident of this state or have registered agent that meets certain qualifications.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to foreclosures of trust deeds; amending ORS 86.790 and sections 3, 9 and 10, chapter 864,
3 Oregon Laws 2009; and declaring an emergency.

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

5 **SECTION 1.** Section 3, chapter 864, Oregon Laws 2009, as amended by section 1, chapter 40,
6 Oregon Laws 2010, is amended to read:

7 **Sec. 3.** (1)(a) If a grantor returns the form identified in ORS 86.737 (6) to the lender by the date
8 specified on the form, the beneficiary or an agent of the beneficiary shall review the information the
9 grantor provided in the form and, in good faith, shall process the grantor's request. The beneficiary
10 or the beneficiary's agent, as soon as reasonably practicable but not later than 45 days after re-
11 ceiving the form, shall notify the grantor whether the beneficiary approves or denies the request
12 or requires additional information.

13 (b) If the beneficiary denies a request made under paragraph (a) of this subsection, the benefi-
14 ciary or the beneficiary's agent in the notice shall provide the grantor with an explanation of how
15 the beneficiary or the beneficiary's agent calculated that the grantor was not eligible for a loan
16 modification.

17 (c) A beneficiary or the beneficiary's agent complies with the requirement set forth in paragraph
18 (b) of this subsection if the beneficiary or the beneficiary's agent provides the information specified
19 for a borrower notice in Supplemental Directive 09-08, as in effect on [*the effective date of this 2010*
20 *Act*] **May 27, 2010**, issued by the United States Department of the Treasury under the Helping
21 Families Save Their Homes Act of 2009, P.L. 111-22, as in effect on [*the effective date of this 2010*
22 *Act*] **May 27, 2010**.

23 (d) A trustee's sale for the property subject to the loan may not occur until after the beneficiary
24 or the beneficiary's agent timely responds to the grantor as provided in this subsection. During the
25 45-day period, the beneficiary or the beneficiary's agent may request the grantor to provide addi-
26 tional information required to determine whether the loan can be modified.

27 (2)(a) Except as provided in paragraph (b) of this subsection, if the grantor timely requests a
28 meeting with the beneficiary, the beneficiary or the beneficiary's agent shall meet with the grantor
29 in person or shall speak to the grantor by telephone before the beneficiary or the beneficiary's agent
30 responds to the grantor's request to modify the loan. If the grantor requests the meeting, the bene-

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 fiary or the beneficiary's agent shall take reasonable steps to schedule the meeting by contacting
 2 the grantor at the grantor's last known address or telephone number or at the grantor's electronic
 3 mail address, if the grantor indicates on the loan modification form that the beneficiary or the
 4 beneficiary's agent can contact the grantor at the electronic mail address.

5 (b) A beneficiary or the beneficiary's agent complies with the provisions of paragraph (a) of this
 6 subsection even if the beneficiary or beneficiary's agent does not speak to or meet with the grantor
 7 if, within seven business days after the beneficiary or beneficiary's agent attempts to contact the
 8 grantor, the grantor does not respond.

9 (c) The beneficiary or the beneficiary's agent that meets with the grantor shall have or be able
 10 to obtain authority to modify the loan.

11 (3)(a) The beneficiary or the beneficiary's agent shall provide the trustee with the affidavit de-
 12 scribed in ORS 86.750 (5). In the affidavit, the beneficiary or the beneficiary's agent shall describe
 13 how the beneficiary or the beneficiary's agent has complied with subsections (1) and (2) of this sec-
 14 tion. If the beneficiary denies a request made under subsection (1)(a) of this section, as part of the
 15 description, the beneficiary or the beneficiary's agent shall state that the beneficiary or the
 16 beneficiary's agent provided the grantor with the information described in subsection (1)(b) or (c)
 17 of this section.

18 (b) The trustee shall record the affidavit described in paragraph (a) of this subsection.

19 *[(4) Subsections (1) and (2) of this section do not apply to a beneficiary that determines in good*
 20 *faith, after considering the most current financial information the grantor provides, that the grantor is*
 21 *not eligible for a loan modification, provided that the beneficiary or the beneficiary's agent notifies the*
 22 *grantor in writing that the grantor is not eligible. In the notice, the beneficiary or the beneficiary's*
 23 *agent shall describe the basis for the beneficiary's determination and explain the reasons why the*
 24 *grantor was not eligible.]*

25 **SECTION 2.** Section 9, chapter 864, Oregon Laws 2009, is amended to read:

26 **Sec. 9.** The amendments to ORS **86.737 and 86.750** [*and section 20, chapter 19, Oregon Laws*
 27 *2008,*] by sections 4 and 6, **chapter 864, Oregon Laws 2009,** [*of this 2009 Act*] become operative on
 28 January 2, [2012] **2014.**

29 **SECTION 3.** Section 10, chapter 864, Oregon Laws 2009, is amended to read:

30 **Sec. 10.** Section 3, **chapter 864, Oregon Laws 2009,** [*of this 2009 Act*] is repealed on January
 31 2, [2012] **2014.**

32 **SECTION 4.** ORS 86.790 is amended to read:

33 86.790. (1) The trustee of a trust deed under ORS 86.705 to 86.795 [*shall not be*] **is not** required
 34 to comply with the provisions of ORS chapters 707 and 709. [*and shall be:*] **The trustee must be**
 35 **a resident of this state or have a registered agent that meets the qualifications set forth in**
 36 **ORS 60.111 (2)(a) or (b) and must be:**

37 (a) [*Any*] **An** attorney who is an active member of the Oregon State Bar;

38 (b) A financial institution or trust company, as defined in ORS 706.008, that is authorized to do
 39 business under the laws of Oregon or the United States;

40 (c) A title insurance company authorized to insure title to real property in this state, **or a**
 41 **subsidiary, affiliate, insurance producer or branch of the title insurance company** [*its subsid-*
 42 *aries, affiliates, insurance producers or branches*];

43 (d) The United States or [*any*] **an** agency [*thereof*] **of the United States;** or

44 (e) **An** escrow [*agents*] **agent** licensed under ORS 696.505 to 696.590.

45 (2) An attorney who is a trustee under subsection (1)(a) of this section may represent the bene-

1 ficiary in addition to performing the duties of trustee.

2 (3) At any time after the trust deed is executed, the beneficiary may appoint in writing another
3 qualified trustee. If the appointment of the successor trustee is recorded in the mortgage records
4 of the county or counties in which the trust deed is recorded, the successor trustee *[shall be]* **is**
5 vested with *[all]* the powers of the original trustee.

6 (4) A trustee or successor trustee is a necessary and proper party to *[any]* **a** proceeding to de-
7 termine the validity of or enjoin *[any]* **a** private or judicial proceeding to foreclose a trust deed, but
8 a trustee or successor trustee is neither a necessary nor a proper party to *[any]* **a** proceeding to
9 determine title to the property subject to the trust deed, or to *[any]* **a** proceeding to impose, enforce
10 or foreclose *[any other]* **another** lien on the subject property.

11 (5) *[Nothing in]* ORS 86.705 to 86.795 *[imposes]* **do not impose** a duty on the trustee or successor
12 trustee to notify any person of *[any]* **a** proceeding with respect to *[such]* **the** person, except a pro-
13 ceeding *[initiated by]* **that** the trustee or successor trustee **initiated**.

14 (6) A trustee or the attorney for the trustee or *[any]* **an** agent *[designated by]* **that** the trustee
15 or the attorney **designated** may announce and accept a bid from the beneficiary whether or not the
16 beneficiary is present at the sale.

17 (7) The trustee or successor trustee *[shall]* **does not** have *[no]* **a** fiduciary duty or fiduciary ob-
18 ligation to the grantor or *[other persons having]* **another person that has** an interest in the prop-
19 erty subject to the trust deed. The trustee or successor trustee *[shall not be]* **is not** relieved of the
20 duty to reconvey the property subject to the trust deed to the grantor *[upon request for reconveyance*
21 *by]* **when** the beneficiary **requests the reconveyance**.

22 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
23 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
24 **on its passage.**

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