

A-Engrossed
Senate Bill 519

Ordered by the Senate April 18
Including Senate Amendments dated April 18

Sponsored by Senator DINGFELDER; Senator BONAMICI, Representative FREDERICK (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.

Provides that if property that is subject to trustee's sale or judgment of foreclosure and sale is also subject to affordable housing covenant, *[or if public body holds interest in property that is junior to interest that beneficiary in trust deed or plaintiff in foreclosure suit holds,]* sale is subject to right of eligible covenant holder *[or public body]* to purchase property for total sum of obligations secured by trust deed or mortgage on property or highest bid received for the property other than bid from eligible covenant holder *[or public body]*.

Requires notice of sale and judgment of foreclosure and sale to give notice as to rights of eligible covenant holders *[or public bodies]*.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to sales of property subject to foreclosure; creating new provisions; amending ORS 86.705,
3 86.745, 86.750, 86.755, 130.005 and 456.280; and declaring an emergency.

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

5 **SECTION 1.** ORS 86.705 is amended to read:

6 86.705. As used in ORS 86.705 to 86.795¹, *unless the context requires otherwise*:

7 **(1) "Affordable housing covenant" has the meaning given that term in ORS 456.270.**

8 *[(1)]* **(2) "Beneficiary" means [the] a person named or otherwise designated in a trust deed as the**
9 **person for whose benefit a trust deed is given, or the person's successor in interest, and who [shall**
10 **not be] is not the trustee unless the beneficiary is qualified to be a trustee under ORS 86.790 (1)(d).**

11 **(3) "Eligible covenant holder" has the meaning given that term in ORS 456.270.**

12 *[(2)]* **(4) "Grantor" means the person [conveying] that conveys an interest in real property by**
13 **a trust deed as security for the performance of an obligation.**

14 *[(3)]* **(5) "Residential trust deed" means a trust deed on property upon which are situated four**
15 **or fewer residential units, [and] one of which [the residential units is occupied as the principal resi-**
16 **dence of] the grantor, the grantor's spouse or the grantor's minor or dependent child occupies as**
17 **a principal residence at the time a trust deed foreclosure is commenced.**

18 *[(4)]* **(6) "Residential unit" means an improvement designed for residential use.**

19 *[(5)]* **(7) "Trust deed" means a deed executed in conformity with ORS 86.705 to 86.795¹, and**
20 **conveying] that conveys an interest in real property to a trustee in trust to secure the performance**
21 **of an obligation [owed by] the grantor or other person named in the deed owes to a beneficiary.**

22 *[(6)]* **(8) "Trustee" means a person, other than the beneficiary, to whom [an interest in real**
23 **property is conveyed by] a trust deed conveys an interest in real property, or [such] the person's**
24 **successor in interest[. The term includes a person who is], or an employee of the beneficiary, if the**

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 [person] **employee** is qualified to be a trustee under ORS 86.790.

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

4 86.745. The notice of sale [shall] **required under ORS 86.740 must:**

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

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

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

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

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

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

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

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

17 **(9) If the property is subject to an affordable housing covenant, state that the sale is**
18 **subject to the right of an eligible covenant holder to purchase the property as provided in**
19 **ORS 86.755 (1)(b).**

20 [(9)] **(10)** If the property includes one or more dwelling units, as defined in ORS 90.100, include
21 a notice addressed clearly to any person who occupies the property and who is or might be a resi-
22 dential tenant. The notice required under this subsection must:

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

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

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

28 (d) Be in substantially the following form:

30
31 **NOTICE TO RESIDENTIAL TENANTS**

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

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

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

44 **FEDERAL LAW REQUIRES**
45 **YOU TO BE NOTIFIED**

1 IF YOU ARE OCCUPYING AND RENTING THIS PROPERTY AS A RESIDENTIAL DWELL-
2 ING UNDER A LEGITIMATE RENTAL AGREEMENT, FEDERAL LAW REQUIRES THE BUYER
3 TO GIVE YOU NOTICE IN WRITING A CERTAIN NUMBER OF DAYS BEFORE THE BUYER
4 CAN REQUIRE YOU TO MOVE OUT. THE FEDERAL LAW THAT REQUIRES THE BUYER TO
5 GIVE YOU THIS NOTICE IS EFFECTIVE UNTIL DECEMBER 31, 2012. Under federal law, the
6 buyer must give you at least 90 days' notice in writing before requiring you to move out. If you are
7 renting this property under a fixed-term lease (for example, a six-month or one-year lease), you may
8 stay until the end of your lease term. If the buyer wants to move in and use this property as the
9 buyer's primary residence, the buyer can give you written notice and require you to move out after
10 90 days, even if you have a fixed-term lease with more than 90 days left.

11 STATE LAW NOTIFICATION REQUIREMENTS

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

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

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

32 ABOUT YOUR SECURITY DEPOSIT

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

39 ABOUT YOUR TENANCY

40 AFTER THE FORECLOSURE SALE

41 The business or individual who buys this property at the foreclosure sale may be willing to al-
42 low you to stay as a tenant instead of requiring you to move out. You should contact the buyer to
43 discuss that possibility if you would like to stay. Under state law, if the buyer accepts rent from you,
44 signs a new residential rental agreement with you or does not notify you in writing within 30 days
45 after the date of the foreclosure sale that you must move out, the buyer becomes your new landlord

1 and must maintain the property. Otherwise, the buyer is not your landlord and is not responsible for
2 maintaining the property on your behalf and you must move out by the date the buyer specifies in
3 a notice to you.

4 YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY
5 IS SOLD TO ANOTHER BUSINESS OR INDIVIDUAL OR UNTIL A COURT OR A LENDER
6 TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED. AS EX-
7 PLAINED ABOVE, YOU MAY BE ABLE TO APPLY A DEPOSIT YOU MADE OR PREPAID
8 RENT YOU PAID AGAINST YOUR CURRENT RENT OBLIGATION. BE SURE TO KEEP PROOF
9 OF ANY PAYMENTS YOU MAKE AND OF ANY NOTICE YOU GIVE OR RECEIVE CONCERN-
10 ING THE APPLICATION OF YOUR DEPOSIT OR YOUR PREPAID RENT.

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

19
20 **SECTION 3.** ORS 86.750, as amended by section 3, chapter 28, Oregon Laws 2010, and section
21 2, chapter 40, Oregon Laws 2010, is amended to read:

22 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in
23 ORS 86.745 must be served upon an occupant of the property described in the trust deed in the
24 manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before
25 the day the trustee conducts the sale.

26 (b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this sub-
27 section on the first attempt, the person that attempts to effect service shall post a copy of the notice
28 in a conspicuous place on the property on the date of the first attempt. The person that attempts
29 to effect service shall make a second attempt to effect service on a day that is at least two days
30 after the first attempt.

31 (B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection
32 on the second attempt, the person that attempts to effect service shall post a copy of the notice in
33 a conspicuous place on the property on the date of the second attempt. The person that attempts
34 to effect service shall make a third attempt to effect service on a day that is at least two days after
35 the second attempt.

36 (C) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection
37 on the third attempt, the person that attempts to effect service shall send a copy of the notice,
38 bearing the word "occupant" as the addressee, to the property address by first class mail with
39 postage prepaid.

40 (c) Service on an occupant is effected on the earlier of the date that notice is served as provided
41 in paragraph (a) of this subsection or the first date on which notice is posted as described in para-
42 graph (b)(A) of this subsection.

43 (2)(a) Except as provided in paragraph (b) of this subsection, a copy of the notice of sale must
44 be published in a newspaper of general circulation in each of the counties in which the property is
45 situated once a week for four successive weeks. The last publication must be made more than 20

1 days prior to the date the trustee conducts the sale.

2 (b) The copy of the notice of sale required to be published under paragraph (a) of this subsection
3 does not need to include the notice to tenants required under ORS 86.745 [(9)] (10).

4 (3) At or before the time the trustee conducts the sale, the trustee shall file for recording in the
5 official record of the county or counties in which the property described in the deed is situated the
6 following affidavits with respect to the notice of sale:

7 (a) An affidavit of mailing, if any;

8 (b) An affidavit of service, if any;

9 (c) An affidavit of service attempts and posting, if any; and

10 (d) An affidavit of publication.

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

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

19 **SECTION 4.** ORS 86.750, as amended by section 6, chapter 864, Oregon Laws 2009, section 4,
20 chapter 28, Oregon Laws 2010, and section 3, chapter 40, Oregon Laws 2010, is amended to read:

21 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in
22 ORS 86.745 must be served upon an occupant of the property described in the trust deed in the
23 manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before
24 the day the trustee conducts the sale.

25 (b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this sub-
26 section on the first attempt, the person that attempts to effect service shall post a copy of the notice
27 in a conspicuous place on the property on the date of the first attempt. The person that attempts
28 to effect service shall make a second attempt to effect service on a day that is at least two days
29 after the first attempt.

30 (B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection
31 on the second attempt, the person that attempts to effect service shall post a copy of the notice in
32 a conspicuous place on the property on the date of the second attempt. The person that attempts
33 to effect service shall make a third attempt to effect service on a day that is at least two days after
34 the second attempt.

35 (C) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection
36 on the third attempt, the person that attempts to effect service shall send a copy of the notice,
37 bearing the word "occupant" as the addressee, to the property address by first class mail with
38 postage prepaid.

39 (c) Service on an occupant is effected on the earlier of the date that notice is served as provided
40 in paragraph (a) of this subsection or the first date on which notice is posted as described in para-
41 graph (b)(A) of this subsection.

42 (2)(a) Except as provided in paragraph (b) of this subsection, a copy of the notice of sale must
43 be published in a newspaper of general circulation in each of the counties in which the property is
44 situated once a week for four successive weeks. The last publication must be made more than 20
45 days prior to the date the trustee conducts the sale.

1 (b) The copy of the notice of sale required to be published under paragraph (a) of this subsection
2 does not need to include the notice to tenants required under ORS 86.745 [(9)] (10).

3 (3) At or before the time the trustee conducts the sale, the trustee shall file for recording in the
4 official record of the county or counties in which the property described in the deed is situated the
5 following affidavits with respect to the notice of sale:

- 6 (a) An affidavit of mailing, if any;
- 7 (b) An affidavit of service, if any;
- 8 (c) An affidavit of service attempts and posting, if any; and
- 9 (d) An affidavit of publication.

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

13 **SECTION 5.** ORS 86.755 is amended to read:

14 86.755. (1)(a) [The] **A** trustee shall hold [the] **a** trustee's sale on the date and at the time and
15 place designated in the notice of sale **given under ORS 86.740**, which must be at a designated time
16 after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110 and at a des-
17 ignated place in the county or one of the counties where the property is situated. **Except as pro-**
18 **vided in paragraph (b) of this subsection**, the trustee may sell the property in one parcel or in
19 separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash. Any
20 person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the
21 trustee's sale. [The] **An** attorney for the trustee, or an agent that the trustee or the attorney des-
22 ignates, may conduct the sale and act in the sale as the trustee's auctioneer.

23 **(b) If the property subject to the trustee's sale is also subject to an affordable housing**
24 **covenant, the trustee shall sell the property to an eligible covenant holder for a bid of the**
25 **lesser of:**

26 **(A) The total sum of obligations that is owed and due to a person and is secured by a**
27 **trust deed, mortgage or lien on the property that is superior to the eligible covenant holder's**
28 **interest; or**

29 **(B) The highest bid received for the property other than a bid from the eligible covenant**
30 **holder.**

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

36 (3) The purchaser shall pay at the time of sale the price bid **or the price determined in ac-**
37 **cordance with subsection (1)(b) of this section**, and, within 10 days following payment, the trust-
38 tee shall execute and deliver the trustee's deed to the purchaser.

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

43 (5)(a) The purchaser at the trustee's sale is entitled to possession of the property on the 10th
44 day after the sale. A person that remains in possession after the 10th day under any interest, except
45 an interest prior to the trust deed, or an interest the grantor or a successor of the grantor created

1 voluntarily, is a tenant at sufferance. The purchaser may obtain possession of the property from a
2 tenant at sufferance by following the procedures set forth in ORS 105.105 to 105.168 or other appli-
3 cable judicial procedure.

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

10 (c) If the property purchased at the trustee's sale is a dwelling unit, as defined in ORS 90.100
11 (9), that the person holds under a tenancy that the grantor or a successor of the grantor created
12 voluntarily and in good faith, the purchaser may follow the procedures set forth in ORS 105.105 to
13 105.168 or other applicable judicial procedure to obtain possession if after the sale the purchaser
14 terminates the tenancy in a written notice given to the person:

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

20 (B) At least 30 days before the termination date specified in the notice, if:

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

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

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

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

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

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

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

41 (e) For the purposes of this subsection:

42 (A) A month-to-month tenancy or a week-to-week tenancy that a grantor or a successor of the
43 grantor first created after a notice of sale was served under ORS 86.750 is presumed not to be a
44 tenancy created in good faith.

45 (B) A fixed term tenancy that a grantor or a successor of the grantor created after a notice of

1 sale was served under ORS 86.750 is not a tenancy created in good faith.

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

5 (7)(a) Notwithstanding the provisions of subsection (5)(c) of this section and except as provided
6 in paragraph (b) of this subsection, the purchaser is not a landlord subject to the provisions of ORS
7 chapter 90 unless the purchaser:

8 (A) Accepts rent from the person who possesses the property under a tenancy described in
9 subsection (5)(c) of this section;

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

12 (C) Fails to terminate the tenancy as provided in subsection (5)(c) of this section within 30 days
13 after the date of the sale.

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

16 (8)(a) Except as provided in paragraph (b) of this subsection, the purchaser is not liable to the
17 person who possesses the property under a tenancy described in subsection (5)(c) of this section for:

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

19 (B) Returning a security deposit.

20 (b) A purchaser that is a landlord under the provisions of subsection (7)(a) of this section is li-
21 able to the person who possesses the property under a tenancy described in subsection (5)(c) of this
22 section for:

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

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

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

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

33 (A) By registered or certified mail to:

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

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

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

43 (10) The amended notice of sale must:

44 (a) Be given at least 20 days [*prior to*] **before** the amended date of sale;

45 (b) Set an amended date of sale that may be the same as the original sale date, or date to which

1 the sale was postponed, provided the requirements of this subsection and ORS 86.740 and 86.750 are
2 satisfied;

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

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

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

6 (11) If the publication of the notice of sale was not completed before the date the foreclosure
7 proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other lawful
8 reason, after release from the stay, in addition to complying with the provisions of subsections (9)
9 and (10) of this section, the trustee shall complete the publication by publishing an amended notice
10 of sale that states that the notice has been amended following release from the stay and that con-
11 tains the amended date of sale. The amended notice must be published in a newspaper of general
12 circulation in each of the counties in which the property is situated once a week for four successive
13 weeks, except that the required number of publications must be reduced by the number of publica-
14 tions that were completed before the effective date of the stay. The last publication must be made
15 more than 20 days before the date the trustee conducts the sale.

16 **SECTION 6.** ORS 130.005 is amended to read:

17 130.005. (1) Except as provided in subsection (2) of this section, this chapter applies to express
18 trusts, whether charitable or noncharitable, and to trusts created pursuant to a statute or a judg-
19 ment that requires that the trust be administered in the manner of an express trust.

20 (2) This chapter does not apply to:

21 (a) A trust that is part of an employee benefit arrangement or an individual retirement account.

22 (b) A trust account established under a qualified tuition savings program pursuant to ORS
23 348.841 to 348.873.

24 (c) Trust accounts maintained on behalf of clients or customers by licensed service professionals,
25 including trust accounts maintained by attorneys pursuant to rules of professional conduct adopted
26 under ORS 9.490 and by real estate brokers pursuant to ORS 696.241.

27 (d) An endowment care fund established by a cemetery authority pursuant to ORS 97.810.

28 (e) Funds maintained by a public [*bodies*] **body**, as defined [*by*] **in** ORS 174.109, or other gov-
29 ernmental entities.

30 (f) Trust funds held for a single business transaction or an escrow arrangement.

31 (g) Trusts created by a depository agreement with a financial institution.

32 (h) Trusts created by an account agreement with a regulated financial services entity.

33 (i) An account maintained under the Oregon Uniform Transfers to Minors Act as set forth in
34 ORS 126.805 to 126.886.

35 (j) A fund maintained pursuant to court order in conjunction with a bankruptcy proceeding or
36 business liquidation.

37 (k) A business trust as described in ORS 128.560.

38 (L) A voting trust as described in ORS 60.254.

39 (m) Funds maintained to manage proceeds from class actions.

40 (n) A trust deed as defined in ORS 86.705 [(5)] or any other trust created solely to secure the
41 performance of an obligation.

42 (o) A trust established on behalf of a resident of a residential facility under ORS 443.880.

43 (p) A trust managed by a nonprofit association for persons with disabilities under 42 U.S.C.
44 1396p(d)(4)(C), as in effect on January 1, 2006, and under the rules of the Department of Human
45 Services.

1 (q) A resulting or constructive trust.

2 (r) A trust fund established for a purchaser who enters into a prearrangement sales contract,
3 as defined in ORS 97.923, or a preconstruction sales contract, as defined in ORS 97.923.

4 **SECTION 7.** ORS 456.280 is amended to read:

5 456.280. (1) A person may create an affordable housing covenant as a condition of giving or re-
6 ceiving a subsidy during ownership or upon [*conveyance of*] **conveying** real property, in the form of
7 a covenant, servitude, easement, condition or restriction in a deed, declaration, land sale contract,
8 trust deed, mortgage, security agreement, assignment, will, trust, rental agreement, lease or other
9 written instrument that is:

10 (a) Executed by the owner of the real property and the covenant holder; and

11 (b) Recorded in the deed and mortgage records of the county in which the real property is lo-
12 cated.

13 (2) The affordable housing covenant creates a real property right in an eligible covenant holder
14 to:

15 (a) Limit the use of real property to occupancy by low or moderate income households in rental
16 or owner-occupied housing;

17 (b) Restrict the rental rate or sale price of real property to ensure affordability by future low
18 and moderate income households; [*or*]

19 (c) Limit, restrict or condition the use and enjoyment of real property to create or retain rental
20 or owner-occupied affordable housing for occupancy by low or moderate income households[.]; **or**

21 **(d) Enforce a right of first refusal or an option to purchase real property in a trustee's**
22 **sale under terms set forth in ORS 86.755.**

23 (3) The affordable housing covenant may be conveyed, assigned, modified or terminated by a
24 written instrument recorded in the deed and mortgage records of the county in which the real
25 property is located. The affordable housing covenant may be:

26 (a) Conveyed or assigned by a written instrument executed by the conveying or assigning
27 covenant holder and the accepting covenant holder;

28 (b) Modified by a written instrument executed by the covenant holder and the owner of the real
29 property; or

30 (c) Terminated by a written instrument executed by the covenant holder and a third party with
31 the right to enforce the covenant.

32 (4) An affordable housing covenant is not invalid because a holder of the covenant is not an
33 eligible covenant holder. A covenant holder who is not an eligible covenant holder may not modify,
34 terminate or commence an action to enforce the covenant. However, the covenant holder may
35 convey or assign the covenant to an eligible covenant holder who may modify or terminate the
36 covenant or commence an action to enforce the covenant.

37 (5) An affordable housing covenant is unlimited in duration unless:

38 (a) The instrument creating the covenant provides otherwise;

39 (b) The duration of the covenant is modified [*prior to the expiration of its*] **before the** stated term
40 **of the covenant expires**; or

41 (c) The covenant is terminated.

42 (6) Upon termination of an affordable housing covenant for any reason [*prior to the expiration*
43 *of its*] **before the** stated term **of the covenant expires**, the covenant holder is entitled to receive
44 the difference between the fair market value of the real property immediately before termination and
45 the fair market value of the real property immediately after termination.

1 (7) **An affordable housing covenant does not impair** an interest in real property [*in existence*
2 *when an*] **that exists at the time the** affordable housing covenant is created [*is not impaired by the*
3 *affordable housing covenant*] unless the owner of the interest is a party to the affordable housing
4 covenant, subordinates the interest to the affordable housing covenant or otherwise agrees to be
5 bound by the affordable housing covenant.

6 (8) [*The*] **An instrument** [*creating*] **that creates** an affordable housing covenant may grant the
7 eligible covenant holder, or a designee of the eligible covenant holder, a right to enter the real
8 property to ensure compliance with the covenant and, if the right is granted, the instrument shall
9 designate the time and manner in which the eligible covenant holder or designee may enter the real
10 property.

11 (9) An affordable housing covenant holder may assign a third-party right of enforcement, by a
12 written instrument executed by the covenant holder and recorded in the deed and mortgage records
13 of the county in which the real property is located, to a person that qualifies [*to be*] **as** an eligible
14 covenant holder but that is not the holder of that covenant.

15 (10) An affordable housing covenant is automatically terminated if:

16 (a) The only holder of the covenant is a corporation, as defined in ORS 65.001, that is dissolved
17 without conveying or assigning the covenant; and

18 (b) No person is entitled to exercise a third-party right of enforcement pursuant to subsection
19 (9) of this section.

20 **SECTION 8. (1) The amendments to ORS 86.705, 86.745, 86.750 and 86.755 by sections 1 to**
21 **5 of this 2011 Act apply to notices of trustee's sales that are sent on or after the effective**
22 **date of this 2011 Act and to trustee's sales that occur on or after the effective date of this**
23 **2011 Act.**

24 **(2) The amendments to ORS 456.280 by section 7 of this 2011 Act apply to affordable**
25 **housing covenants that are created on or after the effective date of this 2011 Act.**

26 **SECTION 9. This 2011 Act being necessary for the immediate preservation of the public**
27 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
28 **on its passage.**

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