

B-Engrossed Senate Bill 519

Ordered by the House June 8
Including Senate Amendments dated April 18 and House Amendments
dated June 8

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, sale is subject to right of eligible covenant holder 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.]

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

[Declares emergency, effective on passage.]

Provides, in sale or judgment of foreclosure proceeding, that if trustee sells property upon which single residential unit that is subject to affordable housing covenant is situated, eligible covenant holder may purchase property from trustee for lesser of total sum of obligations secured by trust deed or mortgage on property or highest bid received for property other than bid from eligible covenant holder.

A BILL FOR AN ACT

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

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 86.795[*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 86.795[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**

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 *property is conveyed by*] a trust deed **conveys an interest in real property**, or [*such*] **the** person's
2 successor in interest[. *The term includes a person who is*], or an employee of the beneficiary, if the
3 [*person*] **employee** is qualified to be a trustee under ORS 86.790.

4 **SECTION 2.** ORS 86.755 is amended to read:

5 86.755. (1)(a) [*The*] **A** trustee shall hold [*the*] **a** trustee's sale on the date and at the time and
6 place designated in the notice of sale **given under ORS 86.740**, which must be at a designated time
7 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-
8 ignated place in the county or one of the counties where the property is situated. **Except as pro-**
9 **vided in paragraph (b) of this subsection**, the trustee may sell the property in one parcel or in
10 separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash. Any
11 person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the
12 trustee's sale. [*The*] **An** attorney for the trustee, or an agent that the trustee or the attorney des-
13 ignates, may conduct the sale and act in the sale as the trustee's auctioneer.

14 **(b) If the trustee sells property upon which a single residential unit that is subject to an**
15 **affordable housing covenant is situated, the eligible covenant holder may purchase the**
16 **property from the trustee at the trustee's sale for cash or cash equivalent in an amount that**
17 **is the lesser of:**

18 **(A) The sum of the amounts payable under ORS 86.765 (1) and (2); or**

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

21 **(c)(A) Except as provided in subparagraph (B) of this paragraph, if an eligible covenant**
22 **holder purchases the property in accordance with paragraph (b) of this subsection, the sale**
23 **forecloses and terminates all other interests in the property as provided in ORS 86.770 (1).**

24 **(B) If an interest in the property exists that is prior to the eligible covenant holder's**
25 **interest, other than the interest set forth in the trust deed that was the subject of the**
26 **foreclosure proceeding under ORS 86.735, notwithstanding the provisions of ORS 86.770 (1)**
27 **the sale does not foreclose and terminate the prior interest and the eligible covenant holder's**
28 **title to the property is subject to the prior interest.**

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

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

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

41 (5)(a) The purchaser at the trustee's sale is entitled to possession of the property on the 10th
42 day after the sale. A person that remains in possession after the 10th day under any interest, except
43 an interest prior to the trust deed, or an interest the grantor or a successor of the grantor created
44 voluntarily, is a tenant at sufferance. The purchaser may obtain possession of the property from a
45 tenant at sufferance by following the procedures set forth in ORS 105.105 to 105.168 or other appli-

1 cable judicial procedure.

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

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

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

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

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

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

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

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

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

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

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

39 (e) For the purposes of this subsection:

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

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

45 (6) A purchaser shall serve a notice under subsection (5) of this section by first class mail and

1 not by certified or registered mail or a form of mail that may delay or hinder actual delivery of mail
2 to the addressee. The notice is effective three days after the notice is mailed.

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

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

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

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

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

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

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

17 (B) Returning a security deposit.

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

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

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

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

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

31 (A) By registered or certified mail to:

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

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

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

41 (10) The amended notice of sale must:

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

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

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

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

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

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

14 **SECTION 3.** ORS 130.005 is amended to read:

15 130.005. (1) Except as provided in subsection (2) of this section, this chapter applies to express
16 trusts, whether charitable or noncharitable, and to trusts created pursuant to a statute or a judg-
17 ment that requires that the trust be administered in the manner of an express trust.

18 (2) This chapter does not apply to:

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

20 (b) A trust account established under a qualified tuition savings program pursuant to ORS
21 348.841 to 348.873.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (q) A resulting or constructive trust.

45 (r) A trust fund established for a purchaser who enters into a prearrangement sales contract,

1 as defined in ORS 97.923, or a preconstruction sales contract, as defined in ORS 97.923.

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

3 456.280. (1) A person may create an affordable housing covenant as a condition of giving or re-
4 ceiving a subsidy during ownership or upon [*conveyance of*] **conveying** real property, in the form of
5 a covenant, servitude, easement, condition or restriction in a deed, declaration, land sale contract,
6 trust deed, mortgage, security agreement, assignment, will, trust, rental agreement, lease or other
7 written instrument that is:

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

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

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

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

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

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

19 **(d) Purchase real property at a trustee's sale under terms set forth in ORS 86.755.**

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

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

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

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

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

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

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

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

38 (c) The covenant is terminated.

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

43 (7) **An affordable housing covenant does not impair** an interest in real property [*in existence*
44 *when an*] **that exists at the time the** affordable housing covenant is created [*is not impaired by the*
45 *affordable housing covenant*] unless the owner of the interest is a party to the affordable housing

1 covenant, subordinates the interest to the affordable housing covenant or otherwise agrees to be
2 bound by the affordable housing covenant.

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

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

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

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

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

17 **SECTION 5. (1) The amendments to ORS 86.705 and 86.755 by sections 1 and 2 of this 2011**
18 **Act apply to trustee's sales for which notice was sent on or after the effective date of this**
19 **2011 Act.**

20 **(2) The amendments to ORS 456.280 by section 4 of this 2011 Act apply to affordable**
21 **housing covenants that are created on or after the effective date of this 2011 Act.**

22