

Senate Bill 519

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 **as introduced**.

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 86.745,
3 86.750, 86.755, 88.060 and 456.280; 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*] **required under ORS 86.740 must:**

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 is subject to an affordable housing covenant, as defined in ORS 456.270,**
21 **or if a public body, as defined in ORS 174.109, holds an interest in the property that is junior**
22 **to the interest that the beneficiary in the trust deed holds, state that the sale is subject to**
23 **the right of an eligible covenant holder, as defined in ORS 456.270, or the public body to**
24 **purchase the property as provided in ORS 86.755 (1)(b).**

25 [(9)] **(10)** If the property includes one or more dwelling units, as defined in ORS 90.100, include
26 a notice addressed clearly to any person who occupies the property and who is or might be a resi-
27 dential tenant. The notice required under this subsection must:

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

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

6 (d) Be in substantially the following form:
7 _____
8

9 NOTICE TO RESIDENTIAL TENANTS

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

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

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

22 FEDERAL LAW REQUIRES
23 YOU TO BE NOTIFIED

24 IF YOU ARE OCCUPYING AND RENTING THIS PROPERTY AS A RESIDENTIAL DWELL-
25 ING UNDER A LEGITIMATE RENTAL AGREEMENT, FEDERAL LAW REQUIRES THE BUYER
26 TO GIVE YOU NOTICE IN WRITING A CERTAIN NUMBER OF DAYS BEFORE THE BUYER
27 CAN REQUIRE YOU TO MOVE OUT. THE FEDERAL LAW THAT REQUIRES THE BUYER TO
28 GIVE YOU THIS NOTICE IS EFFECTIVE UNTIL DECEMBER 31, 2012. Under federal law, the
29 buyer must give you at least 90 days' notice in writing before requiring you to move out. If you are
30 renting this property under a fixed-term lease (for example, a six-month or one-year lease), you may
31 stay until the end of your lease term. If the buyer wants to move in and use this property as the
32 buyer's primary residence, the buyer can give you written notice and require you to move out after
33 90 days, even if you have a fixed-term lease with more than 90 days left.

34 STATE LAW NOTIFICATION REQUIREMENTS

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

45 If you are renting under a month-to-month or week-to-week rental agreement, the buyer must

1 give you at least 30 days' notice in writing before requiring you to move out.

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

10 **ABOUT YOUR SECURITY DEPOSIT**

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

17 **ABOUT YOUR TENANCY**

18 **AFTER THE FORECLOSURE SALE**

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

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

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

41 _____
 42
 43 **SECTION 2.** ORS 86.750, as amended by section 3, chapter 28, Oregon Laws 2010, and section
 44 2, chapter 40, Oregon Laws 2010, is amended to read:

45 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in

1 ORS 86.745 must be served upon an occupant of the property described in the trust deed in the
 2 manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before
 3 the day the trustee conducts the sale.

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

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

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

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

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

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

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

- 30 (a) An affidavit of mailing, if any;
- 31 (b) An affidavit of service, if any;
- 32 (c) An affidavit of service attempts and posting, if any; and
- 33 (d) An affidavit of publication.

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

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

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

44 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in
 45 ORS 86.745 must be served upon an occupant of the property described in the trust deed in the

1 manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before
2 the day the trustee conducts the sale.

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

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

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

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

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

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

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

- 29 (a) An affidavit of mailing, if any;
- 30 (b) An affidavit of service, if any;
- 31 (c) An affidavit of service attempts and posting, if any; and
- 32 (d) An affidavit of publication.

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

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

37 86.755. (1)(a) [The] **A** trustee shall hold [the] **a** trustee's sale on the date and at the time and
38 place designated in the notice of sale **given under ORS 86.740**, which must be at a designated time
39 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-
40 ignated place in the county or one of the counties where the property is situated. **Except as pro-**
41 **vided in paragraph (b) of this subsection**, the trustee may sell the property in one parcel or in
42 separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash. Any
43 person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the
44 trustee's sale. [The] **An** attorney for the trustee, or an agent that the trustee or the attorney des-
45 ignates, may conduct the sale and act in the sale as the trustee's auctioneer.

1 **(b) If the property subject to the trustee's sale is also subject to an affordable housing**
 2 **covenant, as defined in ORS 456.270, or if a public body, as defined in ORS 174.109, holds an**
 3 **interest in the property that is junior to the interest that the beneficiary in the trust deed**
 4 **holds, the trustee shall first offer to sell the property to an eligible covenant holder, as de-**
 5 **defined in ORS 456.270, or the public body for the lesser of:**

6 **(A) The total sum of the obligations secured by the trust deed or a mortgage on the**
 7 **property that is owed and due to all persons that have an interest in the property; or**

8 **(B) The highest bid received for the property other than a bid from the eligible covenant**
 9 **holder or the public body.**

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

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

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

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

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

34 (c) If the property purchased at the trustee's sale is a dwelling unit, as defined in ORS 90.100
 35 (9), that the person holds under a tenancy that the grantor or a successor of the grantor created
 36 voluntarily and in good faith, the purchaser may follow the procedures set forth in ORS 105.105 to
 37 105.168 or other applicable judicial procedure to obtain possession if after the sale the purchaser
 38 terminates the tenancy in a written notice given to the person:

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

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

45 (i) The tenancy is a month-to-month tenancy or week-to-week tenancy, as those terms are defined

1 in ORS 90.100, and at least 30 days before the date first set for the trustee's sale the person provided
 2 the trustee with a copy of the rental agreement that established the tenancy or with other written
 3 evidence of the existence of a rental agreement, if the person cannot provide the rental agreement;
 4 or

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

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

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

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

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

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

20 (e) For the purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

43 (B) Returning a security deposit.

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

1 section for:

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

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

5 (9)(a) Notwithstanding subsection (2) of this section, except when a beneficiary has participated
6 in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by proceedings
7 in bankruptcy or for any other lawful reason shall, after release from the stay, continue as if unin-
8 terrupted, if within 30 days after release the trustee sends amended notice of sale by registered or
9 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) The amended notice of sale must:

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

40 **SECTION 5.** ORS 88.060 is amended to read:

41 88.060. *[The]* **A judgment of foreclosure and sale** may be enforced by execution as an ordinary
42 judgment for the recovery of money, except as in this section otherwise provided:

43 (1) *[When]* **If a court issues a judgment of foreclosure and sale** *[is given]*, an execution may
44 issue *[thereon]* **on the judgment** against the property adjudged to be sold. If the judgment is in favor
45 of the plaintiff only, the execution may issue as in ordinary cases, but if *[it]* **the judgment** is in

1 favor of different persons, not united in interest, [it] **the judgment** shall issue upon the joint request
 2 of [such] **the** persons or upon the order of the court or judge [thereof] on the motion of any of
 3 [them] **the persons**.

4 (2) [When] **If** the judgment is also against **any of** the defendants [or any one of them] in
 5 person[,] and the proceeds of the sale of the property upon which the lien is foreclosed are not
 6 sufficient to satisfy the judgment as to the sum remaining unsatisfied, the judgment may be enforced
 7 by execution as in ordinary cases. [When in such case] **If** the judgment is in favor of different per-
 8 sons not united in interest, [it shall be deemed] **and the proceeds of the sale of the property upon**
 9 **which the lien is foreclosed are not sufficient to satisfy the judgment as to the sum re-**
 10 **maining unsatisfied, the judgment is** a separate judgment as to such persons, and may be en-
 11 forced accordingly.

12 (3) **If the property subject to the judgment is also subject to an affordable housing**
 13 **covenant, as defined in ORS 456.270, or if a public body, as defined in ORS 174.109, holds an**
 14 **interest in the property that is junior to the interest that the plaintiff holds, the judgment**
 15 **shall provide that execution against the property is subject to the right of an eligible**
 16 **covenant holder, as defined in ORS 456.270, or the public body to purchase the property for**
 17 **the lesser of:**

18 (a) **The total sum of the obligations secured by a mortgage or lien on the property that**
 19 **is owed and due to all persons that are parties to the judgment; or**

20 (b) **The highest bid received for the property at the execution sale other than a bid from**
 21 **the eligible covenant holder or the public body.**

22 **SECTION 6.** ORS 456.280 is amended to read:

23 456.280. (1) A person may create an affordable housing covenant as a condition of giving or re-
 24 ceiving a subsidy during ownership or upon [conveyance of] **conveying** real property, in the form of
 25 a covenant, servitude, easement, condition or restriction in a deed, declaration, land sale contract,
 26 trust deed, mortgage, security agreement, assignment, will, trust, rental agreement, lease or other
 27 written instrument that is:

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

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

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

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

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

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

39 **(d) Enforce a right of first refusal or an option to purchase real property in a trustee's**
 40 **sale or upon execution of a judgment of foreclosure and sale under terms set forth in ORS**
 41 **86.755 and 88.060.**

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

45 (a) Conveyed or assigned by a written instrument executed by the conveying or assigning

1 covenant holder and the accepting covenant holder;

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

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

6 (4) An affordable housing covenant is not invalid because a holder of the covenant is not an
7 eligible covenant holder. A covenant holder who is not an eligible covenant holder may not modify,
8 terminate or commence an action to enforce the covenant. However, the covenant holder may
9 convey or assign the covenant to an eligible covenant holder who may modify or terminate the
10 covenant or commence an action to enforce the covenant.

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

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

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

15 (c) The covenant is terminated.

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

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

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

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

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

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

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

39 **SECTION 7. (1) The amendments to ORS 86.745, 86.750 and 86.755 by sections 1 to 4 of this**
40 **2011 Act apply to notices of trustee's sales that are sent on or after the effective date of this**
41 **2011 Act and to trustee's sales that occur on or after the effective date of this 2011 Act.**

42 **(2) The amendments to ORS 88.060 by section 5 of this 2011 Act apply to judgments of**
43 **foreclosure or sale that are issued on or after the effective date of this 2011 Act.**

44 **(3) The amendments to ORS 456.280 by section 6 of this 2011 Act apply to affordable**
45 **housing covenants that are created on or after the effective date of this 2011 Act.**

1 **SECTION 8. This 2011 Act being necessary for the immediate preservation of the public**
2 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
3 **on its passage.**

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