

House Bill 4140

Sponsored by Representative TOMEI; Representatives BAILEY, BARNHART, DEMBROW, DOHERTY, FREDERICK, GELSER, HARKER, HOYLE, HUNT, KENY-GUYER, KOMP, KOTEK, MATTHEWS, NATHANSON, READ, J SMITH, WITT (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**.

Requires beneficiary or beneficiary's agent under residential trust deed to send notice of mediation and enter into mediation with grantor for purpose of agreeing to foreclosure avoidance measure. Specifies form and content of notice of mediation, date by which notice must be sent and method of service.

Specifies duties of beneficiary or beneficiary's agent with respect to mediation. Requires beneficiary or beneficiary's agent to record certificate of compliance from mediation service provider in order to proceed with foreclosure of trust deed.

Establishes Foreclosure Avoidance Mediation Fund. Continuously appropriates moneys in fund to Attorney General to pay expenses of coordinating mediation program. Requires trustee or beneficiary that records notice of default to pay \$100 charge in addition to recording fee unless trustee or beneficiary provides certain affidavit.

Permits grantor that is at risk of default to request mediation with beneficiary or beneficiary's agent.

Requires trustee to notify certain persons if trustee postpones trustee's sale.

Provides that violation of requirement to notify certain persons of postponed trustee's sale and failure to comply with requirements for mediation are unlawful practices that are enforceable under unlawful trade practices law.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to foreclosures of residential trust deeds; creating new provisions; amending ORS 86.705,
3 86.735, 86.740, 86.742, 86.755 and 646.608; appropriating money; and declaring an emergency.

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

5 **SECTION 1. Sections 2, 3 and 4 of this 2012 Act are added to and made a part of ORS**
6 **86.705 to 86.795.**

7 **SECTION 2. (1) As used in this section and section 3 of this 2012 Act, "foreclosure**
8 **avoidance measure" means an agreement between a beneficiary and a grantor that uses one**
9 **or more of the following methods to modify an obligation that is secured by a trust deed:**

10 (a) **The beneficiary defers or forbears from collecting one or more payments due on the**
11 **obligation.**

12 (b) **The beneficiary modifies, temporarily or permanently, the payment terms or other**
13 **terms of the obligation.**

14 (c) **The beneficiary accepts a deed in lieu of foreclosure from the grantor.**

15 (d) **The grantor conducts a short sale.**

16 (e) **The beneficiary provides the grantor with other assistance that enables the grantor**
17 **to avoid a foreclosure.**

18 (2)(a) **Except as provided in paragraph (d) of this subsection, a beneficiary that seeks to**
19 **foreclose a residential trust deed under ORS 86.735 shall enter into mediation with the**
20 **grantor for the purpose of negotiating a foreclosure avoidance measure in accordance with**
21 **the provisions of this section.**

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 **(b) The Attorney General:**

2 **(A) Shall establish a price agreement with a mediation service provider to coordinate a**
3 **mediation program. The Attorney General may establish the price agreement by means of**
4 **an agreement under ORS chapter 190 or by means of a procurement under ORS 279B.075 or**
5 **279B.085 and may pay the mediation service provider for the mediation service provider's**
6 **coordination services from the Foreclosure Avoidance Mediation Fund established in section**
7 **4 of this 2012 Act.**

8 **(B) Shall prescribe qualifications, training and experience requirements for mediators by**
9 **rule.**

10 **(C) Shall set the amount of the fee for the mediation by rule.**

11 **(c) The beneficiary and the grantor shall share the cost of the mediation, except that the**
12 **grantor's portion of the cost may not exceed \$200.**

13 **(d) The requirement to enter into mediation with a grantor does not apply to a benefi-**
14 **ciary if the grantor fails to confirm that the grantor will enter into mediation by the date**
15 **specified under subsection (3)(c) of this section.**

16 **(3) Within 30 days after the date on which the beneficiary caused a notice of mediation**
17 **to be served or mailed as provided in ORS 86.740, the mediation service provider shall send**
18 **a notice to the grantor and the beneficiary that:**

19 **(a) Schedules a date, time and location for the mediation. The date must be not earlier**
20 **than 45 days and not later than 90 days after the date on which the notice of mediation was**
21 **served or mailed as provided in ORS 86.740.**

22 **(b) Identifies and provides contact information for the mediation service provider.**

23 **(c) Specifies a date at least 15 days before the scheduled date of the mediation by which**
24 **the grantor must contact the mediation service provider to confirm that the grantor will**
25 **enter into mediation. The notice must state that the mediation service provider will deem**
26 **the grantor to have declined to enter into mediation if the grantor fails to confirm by the**
27 **specified date.**

28 **(d) Lists the costs of the mediation and specifies the portion of the costs for which the**
29 **grantor is responsible.**

30 **(e) Provides any other information that the Attorney General requires by rule.**

31 **(4)(a) If the grantor confirms by the date specified under subsection (3)(c) of this section**
32 **that the grantor will enter into mediation, the beneficiary or the beneficiary's agent shall**
33 **appear at the time and the location identified in the mediation service provider's notice un-**
34 **der subsection (3) of this section with the documentation described in paragraph (b) of this**
35 **subsection.**

36 **(b) The beneficiary or the beneficiary's agent must appear at the location for the medi-**
37 **ation with:**

38 **(A) The grantor's complete payment history for the obligation that is secured by the**
39 **residential trust deed that the beneficiary seeks to foreclose;**

40 **(B) Evidence that the beneficiary is the real party in interest with respect to the obli-**
41 **gation, including but not limited to:**

42 **(i) A true copy of the original debt instrument that is the basis for the right the benefi-**
43 **ciary claims to foreclose the trust deed; and**

44 **(ii) Documents that show the chain of title for the property that is subject to the resi-**
45 **dential trust deed from the date of the original loan for which the beneficiary seeks fore-**

1 closure to the date of the notices given under ORS 86.740, including conveyances,
 2 endorsements and assignments of the residential trust deed, the note and the security in-
 3 strument, whether recorded or unrecorded;

4 (C) A copy of the authorization from the beneficiary to the beneficiary's agent, if the
 5 beneficiary's agent appears at the mediation;

6 (D) A copy of any of the following documents that apply to the note or obligation that is
 7 secured by the trust deed:

8 (i) A servicing agreement the beneficiary entered into with another person; or

9 (ii) An agreement by means of which the beneficiary pledged as collateral for a security
 10 the beneficiary issued or sold all or a portion of the ownership interest in the note or other
 11 obligation; and

12 (E) Other documentation the Attorney General specifies by rule.

13 (c) The beneficiary or the beneficiary's agent that enters into mediation with the grantor
 14 must have or be able to obtain, before the initial mediation session concludes, authority to
 15 accept or reject a proposal for a foreclosure avoidance measure and authority to enter with
 16 the grantor into an agreement for a foreclosure avoidance measure.

17 (5)(a) The beneficiary or the beneficiary's agent must negotiate with the grantor in good
 18 faith under the supervision of the mediation service provider in accordance with mediation
 19 guidelines the mediation service provider establishes and with the objective of reaching an
 20 agreement on a foreclosure avoidance measure.

21 (b) If the beneficiary or the beneficiary's agent agrees with the grantor on a foreclosure
 22 avoidance measure, the beneficiary or beneficiary's agent and the grantor shall set forth the
 23 terms of the foreclosure avoidance measure in a written agreement, a copy of which the
 24 beneficiary or beneficiary's agent shall provide to the Attorney General. The beneficiary may
 25 elect to pay the grantor's portion of the cost of the mediation or the grantor and the bene-
 26 ficiary may agree to include the cost of the mediation as part of and in accordance with any
 27 payment plan that is part of the foreclosure avoidance measure.

28 (c) If the beneficiary or the beneficiary's agent and the grantor do not agree on a fore-
 29 closure avoidance measure, the mediation service provider shall notify the Attorney General
 30 that the mediation did not result in an agreement.

31 (6)(a) At the conclusion of the mediation, the mediation service provider shall provide the
 32 beneficiary or the beneficiary's agent with a certificate of compliance in a form and with
 33 contents that the Attorney General specifies by rule. The certificate must state that the
 34 beneficiary has complied with the requirements of this section.

35 (b) If the grantor does not confirm by the date specified under subsection (3)(c) of this
 36 section that the grantor will enter into mediation, the mediation service provider shall pro-
 37 vide the beneficiary or the beneficiary's agent with a certificate of compliance in a form and
 38 with contents that the Attorney General specifies by rule. The certificate must state that
 39 the grantor declined to enter into mediation with the beneficiary.

40 (c) The mediation service provider shall provide a copy of the certificate the mediation
 41 service provider issues under paragraph (a) or (b) of this subsection to the grantor and to
 42 the Attorney General.

43 (7)(a) A grantor that is at risk of default before the beneficiary or the trustee has filed
 44 a notice of default for recording under ORS 86.735 may notify the beneficiary or trustee in
 45 the trust deed or the beneficiary's or trustee's agent that the grantor wants to enter into

1 mediation. Within 10 days after receiving the request, the beneficiary or trustee or the
 2 beneficiary's or trustee's agent shall respond to the grantor's request and shall notify the
 3 Attorney General and the mediation service provider identified in subsection (2)(b) of this
 4 section. The response to the grantor must include contact information for the Attorney
 5 General and the mediation service provider.

6 (b) A grantor that requests mediation under paragraph (a) of this subsection may also
 7 notify the Attorney General and the mediation service provider of the request. The Attorney
 8 General shall post on the Department of Justice website contact information for the medi-
 9 ation service provider and an address or method by which the grantor may notify the At-
 10 torney General.

11 (c) Within 10 days after receiving notice of the request under paragraph (a) of this sub-
 12 section, the mediation service provider shall send a notice to the grantor and the beneficiary
 13 that, except with respect to the date by which the mediation service provider must send the
 14 notice, is otherwise in accordance with the provisions of subsection (3) of this section.

15 (d) A beneficiary or beneficiary's agent that receives a request under paragraph (a) of
 16 this subsection is subject to the same duties as are described in subsections (2), (4) and (5)
 17 of this section.

18 (e) A grantor that is at risk of default because the amount the grantor owes on the ob-
 19 ligation that is secured by the residential trust deed is greater than the value of the property
 20 that is subject to the residential trust deed by a ratio of 110 percent or more shall establish
 21 the value of the property at the mediation with documentation that consists of one or more
 22 of the following:

23 (A) The most recent property tax statement for the property.

24 (B) An appraisal of the property prepared by an appraiser certified or licensed under ORS
 25 chapter 674. The appraisal must have been prepared within 90 days preceding the date on
 26 which the grantor made a request under paragraph (a) of this subsection.

27 (C) A written broker's price opinion signed by an individual that is licensed under ORS
 28 chapter 696.

29 (8) A beneficiary's failure to comply with the requirements set forth for the beneficiary
 30 under subsections (2), (4), (5) and (7) of this section is an unlawful practice under ORS 646.608
 31 that is enforceable under ORS 646.632 and 646.638.

32 **SECTION 3.** The notice of mediation required under ORS 86.740 (1)(b) must be in a form
 33 and with the contents the Attorney General specifies by rule and must:

34 (1) List the name, address, telephone number and other contact information for the
 35 grantor or other person named in the residential trust deed.

36 (2) Specify the account number or other means by which the beneficiary or trustee or
 37 an agent of the beneficiary or trustee identifies the obligation that is secured by the resi-
 38 dential trust deed.

39 (3) Provide the address, telephone number and other contact information for:

40 (a) The beneficiary or an agent of the beneficiary that the beneficiary authorizes to ne-
 41 gotiate on the beneficiary's behalf;

42 (b) The Oregon State Bar's Lawyer Referral Service;

43 (c) Service agencies or other providers that offer free or low-cost legal services from a
 44 list of agencies or providers that the Attorney General adopts by rule; and

45 (d) A list of not-for-profit housing counselors approved by the United States Department

1 of Housing and Urban Development or an agency of this state.

2 (4) State that section 2 of this 2012 Act requires the beneficiary to enter into mediation
3 with the grantor for the purpose of negotiating a foreclosure avoidance measure.

4 (5) List the documents the grantor must bring to the mediation. The Attorney General
5 by rule shall specify the documents the grantor must bring.

6 (6) State that the grantor may choose to have an attorney or a housing counselor ap-
7 proved by the United States Department of Housing and Urban Development represent the
8 grantor at the mediation.

9 (7) State that the grantor must pay a portion of the costs of the mediation and specify
10 the maximum cost for which the grantor will be responsible.

11 (8) State that the mediation and mediation communications, as defined in ORS 36.110, are
12 confidential in accordance with and to the extent provided in ORS 36.220 to 36.238.

13 (9) State that within 30 days after the date of the notice a mediation service provider
14 will send another notice to the grantor with a date, time and location for the mediation and
15 with the other information specified in section 2 (3) of this 2012 Act.

16 **SECTION 4.** (1) The Foreclosure Avoidance Mediation Fund is established in the State
17 Treasury, separate and distinct from the General Fund. The fund consists of moneys the
18 Attorney General collects or receives for the purpose of paying the expenses of coordinating
19 a mediation program under section 2 of this 2012 Act and related expenses. The moneys in
20 the fund are continuously appropriated to the Attorney General for the purposes of paying
21 the expenses of coordinating the mediation program and related expenses.

22 (2) The Attorney General may receive moneys for the purposes set forth in subsection
23 (1) of this section from any public or private source.

24 (3)(a) Except as provided in paragraph (b) of this subsection, a trustee or beneficiary that
25 files a notice of default under ORS 86.735 shall pay to the county clerk that records the no-
26 tice \$100 in addition to and not in lieu of any fee that the county clerk charges for recording
27 the notice of default. The county clerk at the end of each month shall forward the proceeds
28 of the \$100 charge to the Attorney General for deposit into the fund described in subsection
29 (1) of this section.

30 (b) A trustee or beneficiary is not subject to the \$100 charge described in paragraph (a)
31 of this subsection if the trustee or beneficiary provides to the county clerk a sworn affidavit
32 that states that, during a period of one year that includes and precedes the date on which
33 the trustee or beneficiary presents the notice of default for recording, the trustee or bene-
34 ficiary or an affiliate of the trustee or beneficiary has not commenced more than a total of
35 250 actions to foreclose a residential trust deed by advertisement and sale under ORS 86.735
36 or a residential mortgage by suit under ORS 88.010.

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

38 86.705. As used in ORS 86.705 to 86.795:

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

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

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

44 (4) "Grantor" means the person that conveys an interest in real property by a trust deed as
45 security for the performance of an obligation.

1 (5) “Residential trust deed” means a trust deed on property upon which are situated four or
 2 fewer residential units, one of which the grantor, the grantor’s spouse or the grantor’s minor or
 3 dependent child occupies as a principal residence at the time a [*trust deed foreclosure is*
 4 *commenced*] **default on the obligation secured by the trust deed first occurs.**

5 (6) “Residential unit” means an improvement designed for residential use.

6 (7) “Trust deed” means a deed executed in conformity with ORS 86.705 to 86.795 that conveys
 7 an interest in real property to a trustee in trust to secure the performance of an obligation the
 8 grantor or other person named in the deed owes to a beneficiary.

9 (8) “Trustee” means a person, other than the beneficiary, to whom a trust deed conveys an in-
 10 terest in real property, or the person’s successor in interest, or an employee of the beneficiary, if
 11 the employee is qualified to be a trustee under ORS 86.790.

12 **SECTION 6.** ORS 86.735 is amended to read:

13 86.735. [*The*] **A** trustee may foreclose a trust deed by advertisement and sale in the manner
 14 provided in ORS 86.740 to 86.755 if:

15 (1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any
 16 appointment of a successor trustee are recorded in the mortgage records in the counties in which
 17 the property described in the deed is situated; [*and*]

18 (2) There is a default by the grantor or other person [*owing*] **that owes** an obligation, the per-
 19 formance of which is secured by the trust deed, or by [*their*] **the grantor’s or other person’s** suc-
 20 cessors in interest with respect to [*any*] **a** provision in the deed [*which*] **that** authorizes sale in the
 21 event of default of [*such*] **the** provision; [*and*]

22 (3) The trustee or beneficiary has filed for record in the county clerk’s office in each county
 23 where the trust property, or some part of [*it*] **the trust property**, is situated, a notice of default
 24 containing the information required by ORS 86.745 and containing the trustee’s or beneficiary’s
 25 election to sell the property to satisfy the obligation; [*and*]

26 (4) **The beneficiary or the beneficiary’s agent has filed for recording in the official records**
 27 **of the county or counties in which the property that is subject to the residential trust deed**
 28 **is located the certificate of compliance the beneficiary received under section 2 of this 2012**
 29 **Act; and**

30 [(4)] (5) [*No*] **An** action has **not** been [*instituted*] **commenced** to recover the debt or any part
 31 of [*it*] **the debt** then remaining secured by the trust deed, or, if [*such*] **an** action has been
 32 [*instituted*] **commenced**, the action has been dismissed, except that:

33 (a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action may
 34 be [*instituted*] **commenced** to appoint a receiver or to obtain a temporary restraining order during
 35 foreclosure of a trust deed by advertisement and sale, except that a receiver [*shall*] **may** not be
 36 appointed with respect to a single-family residence [*which is occupied as the principal residence of*]
 37 **that** the grantor, the grantor’s spouse or the grantor’s minor or dependent child **occupies as a**
 38 **principal residence.**

39 (b) An action may be commenced [*for the judicial or nonjudicial foreclosure of*] **to foreclose,**
 40 **judicially or nonjudicially,** the same trust deed as to any other property covered [*thereby*] **by the**
 41 **trust deed,** or any other trust deeds, mortgages, security agreements or other consensual or
 42 nonconsensual security interests or liens [*securing*] **that secure** repayment of the debt.

43 **SECTION 7.** ORS 86.740 is amended to read:

44 86.740. (1)(a) **Except as provided in paragraph (b) of this subsection,** subsequent to recording
 45 notice of default as provided in ORS 86.735 and at least 120 days before the day the trustee conducts

1 the sale, notice of the sale *[shall]* **with the contents described in ORS 86.745 must** be served
 2 pursuant to ORCP 7 D(2) and 7 D(3) or mailed by both first class and certified mail with return re-
 3 ceipt requested[.].

4 **(b) If the sale is for the purpose of foreclosing a residential trust deed, the notice of sale**
 5 **must be served or mailed in the manner provided in paragraph (a) of this subsection at least**
 6 **180 days before the date of the sale. A separate notice of mediation, in the form and with the**
 7 **contents described in section 3 of this 2012 Act, must accompany the notice of sale.**

8 **(2) The notices described in subsection (1) of this section must be served or mailed** to the
 9 last-known address of the following persons or *[their]* **the legal representatives of the persons,** if
 10 any:

11 (a) The grantor in the trust deed.

12 (b) Any successor in interest to the grantor whose interest appears of record, or of whose in-
 13 terest the trustee or the beneficiary has actual notice.

14 (c) Any person, including the Department of Revenue or *[any other]* **another** state agency,
 15 *[having]* **that has** a lien or interest subsequent to the trust deed if the lien or interest appears of
 16 record or the beneficiary has actual notice of the lien or interest.

17 (d) *[Any]* **A person** *[requesting]* **that requests** notice as provided in ORS 86.785.

18 **(e) The mediation service provider with whom the Attorney General establishes a price**
 19 **agreement under section 2 (2)(b) of this 2012 Act, if the notices are served or mailed under**
 20 **subsection (1)(b) of this section.**

21 *[(2)]* **(3)** A notice served by mail under subsection (1) of this section is effective when the notice
 22 is mailed.

23 *[(3)(a)]* **(4)(a)** The disability, insanity or death of *[any]* **a person to whom** *[notice of sale]* **the**
 24 **notices required under this section** must be given *[under this section]* does not delay or impair in
 25 any way the trustee's right under a trust deed to foreclose under the deed. If the disability, insanity
 26 or death occurs *[prior to the recording of]* **before the notice of default is recorded,** the *[notice*
 27 *shall]* **notices required under this section must** be given instead to the guardian, the conservator
 28 of the estate of the person or the administrator or personal representative of the person*[, as the case*
 29 *may be,]* in the manner and by the time set forth in this section.

30 (b) If the disability, insanity or death of *[any]* **a person to whom** *[notice of sale]* **the notices**
 31 **required under this section** must be given *[under this section]* occurs on or after the *[recording*
 32 *of]* notice of default **is recorded,** the trustee shall, if and when the trustee has knowledge of the
 33 disability, insanity or death, promptly give the guardian, **the** conservator of the estate or the ad-
 34 ministrator or personal representative*[, as the case may be, the notice provided in ORS 86.745. This*
 35 *notice shall be given]* **required notices by sending the notices** by first class and certified mail with
 36 return receipt requested[,] to the last-known address of the guardian, conservator or administrator
 37 or personal representative.

38 (c) *[In the event]* **If** there is no administrator or personal representative of the estate of the
 39 person to whom *[notice of sale must be given]* **the notices required** under this section **must be**
 40 **given,** the *[notice]* **notices** may be given instead to the heirs at law or devisees of the deceased
 41 person in the manner and by the time set forth in this section.

42 *[(4)]* **(5)** If the owner of real property subject to foreclosure dies and the real property is also
 43 subject to a transfer on death deed, as provided by ORS 93.948 to 93.979, *[notice of sale]* **the notices**
 44 **required under this section** must be given *[under this section]* to the beneficiary designated under
 45 the transfer on death deed.

SECTION 8. ORS 86.742 is amended to read:

86.742. (1) If the trustee fails to give notice of the sale to *[any]* a person entitled to notice under ORS 86.740 [(1)(c)] **(2)(c)**, and *[such]* **the** person did not have actual notice of the sale at least 25 days *[prior to]* **before** the date **on which** the trustee conducted the sale, *[such]* **the** omitted person *[shall have]* **has** the same rights *[possessed by]* **that** the holder of a junior lien or interest who was omitted as a party defendant in a judicial foreclosure proceeding **possesses**, and the purchaser at the trustee's sale or the purchaser's heirs, assigns or transferees, *[shall have]* **have** the same rights *[possessed by]* **that** a purchaser at a sheriff's sale following a judicial foreclosure **possesses**.

(2) The omitted person may also commence an action against the trustee in the circuit court in the county where the real property is located. In an action against the trustee, the omitted person *[shall be]* **is** entitled to damages *[upon proof]* **if the omitted person proves** that:

(a) The trustee did not give notice of the sale to the omitted person in the manner required by ORS 86.740 [(1)(c)] **(2)(c)** and 86.750;

(b) A search of the record under the name of the grantor as *[it]* **the grantor's name** appears on the trust deed, or **as** the name of the grantor's successor in interest **appears**, would have revealed the omitted person's interest;

(c) The omitted person could and would have cured the default under ORS 86.753; and

(d) The omitted person sustained actual damages as a result of *[such]* **the** person's loss of the opportunity to cure the default under ORS 86.753 (1).

(3) In an action against the trustee under subsection (2) of this section, *[any]* a defendant or third party defendant may move for dismissal on the ground that the omitted person would not or could not have cured the default and reinstated the trust deed if the omitted person had received the notice required by ORS 86.740 [(1)(c)] **(2)(c)**. The court shall hold a hearing on *[such]* **the** motion *[prior to any]* **before** a hearing on *[any]* a motion for summary judgment, and *[prior to trial of]* **before trying** the action. The court shall deny the motion only if the omitted person produces affidavits or other evidence sufficient for a reasonable jury to find, applying a standard of clear and convincing evidence, that the omitted person had the financial ability to cure the default under ORS 86.753 *[prior to]* **before** the date of the trustee's sale, and that the omitted person would have done so had the omitted person received the notice required by ORS 86.740 [(1)(c)] **(2)(c)**. If the court grants the motion to dismiss *[it]*, **the court** shall award attorney fees *[pursuant to]* **under** subsection (5) of this section.

(4) In *[any]* **an** action against the trustee or *[any other]* **another** party under this section the omitted person shall plead that the omitted person did not have actual knowledge of the sale at least 25 days prior to the date the trustee conducted the sale, but thereafter the defendant *[shall have]* **has** the burden of proving that the omitted person did have *[such]* notice.

(5) In *[all suits]* **an action** brought under this section, the applicable court may, upon entering judgment, allow to the prevailing party as a part of the costs a reasonable amount for attorney fees at trial and on appeal.

(6) The remedies described in subsections (1) to (5) of this section *[shall be]* **are** the sole remedies available to a person entitled to notice of foreclosure by advertisement and sale under ORS 86.740 [(1)(c)] **(2)(c)**, who failed to receive *[such]* notice. *[Such a]* **The** person's failure to redeem or to commence an action against the trustee within five years of the date of a trustee's sale under ORS 86.755 *[shall bar]* **bars** any action under this section or any other applicable law.

SECTION 9. ORS 86.755 is amended to read:

86.755. (1)(a) A trustee shall hold a trustee's sale on the date and at the time and place desig-

1 nated in the notice of sale given under ORS 86.740. The designated time of the trustee's sale must
 2 be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the
 3 designated place of the trustee's sale must be in the county or one of the counties in which the
 4 property is situated. Except as provided in paragraph (b) of this subsection, the trustee may sell the
 5 property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the
 6 highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding
 7 the trustee, may bid at the trustee's sale. An attorney for the trustee, or an agent that the trustee
 8 or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

9 (b) If the trustee sells property upon which a single residential unit that is subject to an af-
 10 fordable housing covenant is situated, the eligible covenant holder may purchase the property from
 11 the trustee at the trustee's sale for cash or cash equivalent in an amount that is the lesser of:

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

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

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

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

22 (2)(a) The trustee or the attorney for the trustee, or an agent that the trustee or the attorney
 23 conducting the sale designates, may postpone the sale for one or more periods that total not more
 24 than 180 days from the original sale date, giving notice of each *[adjournment]* **postponement** by
 25 public proclamation made at the time and place set for sale. The trustee, the attorney or an agent
 26 that the trustee or the attorney designates may make the proclamation.

27 **(b) If a person postpones the sale date as provided in paragraph (a) of this subsection,**
 28 **the trustee, in the manner provided for service of the notice of sale under ORS 86.740 (1),**
 29 **shall cause notice of the new time, date and place for the sale to be served on the grantor**
 30 **and on any person to whom notice of the sale was given under ORS 86.745. The notice must**
 31 **be given at least 30 days before the new sale date. A failure to serve notice under this par-**
 32 **agraph is an unlawful practice under ORS 646.608 that is enforceable under ORS 646.632 and**
 33 **646.638.**

34 (3) The purchaser shall pay at the time of sale the price bid or the price determined in accord-
 35 ance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee shall
 36 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) If property purchased at the trustee's sale includes one or more dwelling units that are
 42 subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the
 43 occupants of each unit within 30 days after the date of sale and before or concurrently with service
 44 of a written termination notice authorized by subsection (6)(c)(B) of this section.

45 (b) The notice required by this subsection must:

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

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

4 (C) Include the name, contact address and contact telephone number of the purchaser or the
5 purchaser’s representative.

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

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

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

11 (A) Personal delivery to the tenant.

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

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

16 (D) If the names of the tenants are not known to the purchaser, the notice may be addressed
17 to “occupants.”

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

21 _____

22
23 NOTICE TO RESIDENTIAL TENANTS OF
24 CHANGE IN OWNERSHIP

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

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

- 31 • THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED TERM
32 LEASE; OR
- 33 • AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION
34 NOTICE.

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

38 You must be provided with at least 90 days’ written notice after the foreclosure sale before you
39 can be required to move.

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

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

1 days before the date first set for the sale, the person was served with not less than 30 days' written
 2 notice of the requirement to surrender or deliver possession of the property.

3 (c) If the property purchased at the trustee's sale includes a dwelling unit that is subject to ORS
 4 chapter 90 and an individual occupies the unit under a bona fide tenancy, the purchaser may obtain
 5 possession by following the procedures set forth in ORS 105.105 to 105.168 and by using the com-
 6 plaint form provided in ORS 105.124 or 105.126:

7 (A) Upon expiration of the fixed term of the tenancy, if the bona fide tenancy is a fixed term
 8 tenancy as defined in ORS 90.100; or

9 (B) At least 90 days after service of a written termination notice if the bona fide tenancy is:

10 (i) A fixed term tenancy and the purchaser intends to occupy, as the purchaser's primary resi-
 11 dence, the dwelling unit that is subject to the fixed term tenancy; or

12 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS
 13 90.100.

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

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

23 (B) Prevents the tenant from recovering prevailing party attorney fees or costs and disburse-
 24 ments pursuant to subsection (11)(b) of this section. The 90-day notice must describe the provisions
 25 of this paragraph.

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

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

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

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

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

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

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

44 (h) As used in this subsection, "bona fide tenancy" means tenancy of a dwelling unit that is
 45 subject to ORS chapter 90 that results from an arm's-length transaction that occurred before the

1 date of a foreclosure sale in which:

2 (A) The mortgagor or the child, spouse or parent of the mortgagor under the contract is not the
3 tenant; and

4 (B) The rent required is not substantially less than fair market rent for the dwelling unit, unless
5 the rent is reduced or subsidized due to a federal, state or local subsidy.

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

8 (a) Personal delivery to the tenant.

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

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

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

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

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

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

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

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

27 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and
28 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not
29 impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to
30 this paragraph, "rent" refers to the amount paid by the tenant to the landlord for the right to oc-
31 cupy the unit before the foreclosure.

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

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

36 (B) Returning a security deposit.

37 (b) A purchaser that is a landlord under the provisions of subsection (9)(a) of this section is li-
38 able to the individual who possesses the property under a tenancy described in subsection (6)(c) of
39 this section for:

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

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

43 (11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement
44 to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or
45 (9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the pre-

1 prevailing party together with costs and disbursements.

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

5 (A) Did not know, and did not have reasonable cause to know, of the existence of a fixed term
6 tenancy when commencing the action for possession; and

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

8 (c) As used in this subsection, "prevailing party" means the party in whose favor final judgment
9 is rendered.

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

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

17 (A) By registered or certified mail to:

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

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

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

27 (13) The amended notice of sale must:

28 (a) Be given at least 20 days before the amended date of sale;

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

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

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

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

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

45 **SECTION 10.** ORS 86.755, as amended by section 7, chapter 510, Oregon Laws 2011, is amended

1 to read:

2 86.755. (1)(a) A trustee shall hold a trustee’s sale on the date and at the time and place desig-
 3 nated in the notice of sale given under ORS 86.740. The designated time of the trustee’s sale must
 4 be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the
 5 designated place of the trustee’s sale must be in the county or one of the counties in which the
 6 property is situated. Except as provided in paragraph (b) of this subsection, the trustee may sell the
 7 property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the
 8 highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding
 9 the trustee, may bid at the trustee’s sale. An attorney for the trustee, or an agent that the trustee
 10 or the attorney designates, may conduct the sale and act in the sale as the trustee’s auctioneer.

11 (b) If the trustee sells property upon which a single residential unit that is subject to an af-
 12 fordable housing covenant is situated, the eligible covenant holder may purchase the property from
 13 the trustee at the trustee’s sale for cash or cash equivalent in an amount that is the lesser of:

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

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

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

19 (B) If an interest in the property exists that is prior to the eligible covenant holder’s interest,
 20 other than the interest set forth in the trust deed that was the subject of the foreclosure proceeding
 21 under ORS 86.735, notwithstanding the provisions of ORS 86.770 (1) the sale does not foreclose and
 22 terminate the prior interest and the eligible covenant holder’s title to the property is subject to the
 23 prior interest.

24 (2)(a) The trustee or the attorney for the trustee, or an agent that the trustee or the attorney
 25 conducting the sale designates, may postpone the sale for one or more periods that total not more
 26 than 180 days from the original sale date, giving notice of each *[adjournment]* **postponement** by
 27 public proclamation made at the time and place set for sale. The trustee, the attorney or an agent
 28 that the trustee or the attorney designates may make the proclamation.

29 **(b) If a person postpones the sale date as provided in paragraph (a) of this subsection,**
 30 **the trustee, in the manner provided for service of the notice of sale under ORS 86.740 (1),**
 31 **shall cause notice of the new time, date and place for the sale to be served on the grantor**
 32 **and on any person to whom notice of the sale was given under ORS 86.745. The notice must**
 33 **be given at least 30 days before the new sale date. A failure to serve notice under this par-**
 34 **agraph is an unlawful practice under ORS 646.608 that is enforceable under ORS 646.632 and**
 35 **646.638.**

36 (3) The purchaser shall pay at the time of sale the price bid or the price determined in accord-
 37 ance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee shall
 38 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) If property purchased at the trustee’s sale includes one or more dwelling units that are
 44 subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the
 45 occupants of each unit within 30 days after the date of sale and before or concurrently with service

1 of a written termination notice authorized by subsection (6)(c)(B) of this section.

2 (b) The notice required by this subsection must:

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

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

6 (C) Include the name, contact address and contact telephone number of the purchaser or the
7 purchaser’s representative.

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

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

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

13 (A) Personal delivery to the tenant.

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

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

18 (D) If the names of the tenants are not known to the purchaser, the notice may be addressed
19 to “occupants.”

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

23 _____
24

25 NOTICE TO RESIDENTIAL TENANTS OF
26 CHANGE IN OWNERSHIP

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

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

- 33 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF
34 YOU HAVE A FIXED TERM LEASE; OR
- 35 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION
36 NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO- WEEK RENTAL AGREEMENT.

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

40 You must be provided with at least 30 days’ written notice after the foreclosure sale before you
41 can be required to move.

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

- 44 • Is the result of an arm’s-length transaction;
- 45 • Requires the payment of rent that is not substantially less than fair market rent for the

1 property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and

- 2 • Was entered into prior to the date of the foreclosure sale.

3 IMPORTANT:

4 YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S REPRESENTATIVE AT
 5 THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER
 6 KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE
 7 OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED
 8 TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 30 DAYS LEFT. Written evidence
 9 of your rental agreement can be a copy of your lease or rental agreement, or other documentation
 10 of the existence of your rental agreement. Keep your original documents and a record of any infor-
 11 mation you give to the new owner.

12 YOUR TENANCY
 13 BETWEEN NOW
 14 AND THE MOVE-OUT DATE

15 The new owner may be willing to allow you to stay as a tenant instead of requiring you to move
 16 out after 30 or 60 days. You should contact the new owner if you would like to stay. If the new
 17 owner accepts rent from you, signs a new residential rental agreement with you or does not notify
 18 you in writing within 30 days after the date of the foreclosure sale that you must move out, the new
 19 owner becomes your new landlord and must maintain the property. Otherwise:

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

23 The new owner may offer to pay your moving expenses and any other costs or amounts you and
 24 the new owner agree on in exchange for your agreement to leave the premises in less than 30 or
 25 60 days. You should speak with a lawyer to fully understand your rights before making any decisions
 26 regarding your tenancy.

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

35
 36
 37 (6)(a) Except as provided in paragraph (b) or (c) of this subsection, the purchaser at the trustee's
 38 sale is entitled to possession of the property on the 10th day after the sale. A person that remains
 39 in possession after the 10th day under any interest, except an interest prior to the trust deed, or
 40 an interest the grantor or a successor of the grantor created voluntarily, is a tenant at sufferance.
 41 The purchaser may obtain possession of the property from a tenant at sufferance by following the
 42 procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

43 (b) Except as provided in paragraph (c) of this subsection, at any time after the trustee's sale
 44 the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable
 45 judicial procedure to obtain possession of the property from a person that holds possession under

1 an interest that the grantor or a successor of the grantor created voluntarily if, not earlier than 30
 2 days before the date first set for the sale, the person was served with not less than 30 days' written
 3 notice of the requirement to surrender or deliver possession of the property.

4 (c) If the property purchased at the trustee's sale includes a dwelling unit that is subject to ORS
 5 chapter 90 and an individual occupies the unit under a bona fide tenancy, the purchaser may obtain
 6 possession by following the procedures set forth in ORS 105.105 to 105.168 and by using the com-
 7 plaint form provided in ORS 105.124 or 105.126:

8 (A) At least 60 days after service of a written termination notice, if the bona fide tenancy is a
 9 fixed term tenancy as defined in ORS 90.100; or

10 (B) At least 30 days after service of a written termination notice if the bona fide tenancy is:

11 (i) A fixed term tenancy and the purchaser intends to occupy, as the purchaser's primary resi-
 12 dence, the dwelling unit that is subject to the fixed term tenancy; or

13 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS
 14 90.100.

15 (d) If a purchaser gives a 30-day written termination notice pursuant to paragraph (c) of this
 16 subsection, the purchaser may include in the notice a request that a tenant with a fixed term
 17 tenancy provide written evidence of the existence of the tenancy to the purchaser at an address
 18 described in the notice. Written evidence includes a copy of the rental agreement or another docu-
 19 ment that shows the existence of the fixed term tenancy. Failure of the tenant to provide the re-
 20 quested written evidence before the purchaser files an action for possession based on a 30-day
 21 notice:

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

24 (B) Prevents the tenant from recovering prevailing party attorney fees or costs and disburse-
 25 ments pursuant to subsection (11)(b) of this section. The 30-day notice must describe the provisions
 26 of this paragraph.

27 (e) 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 (f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to 105.168 must attach
 40 proof of service of a written termination notice required by paragraph (c) of this subsection to the
 41 pleadings.

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

45 (h) As used in this subsection, "bona fide tenancy" means tenancy of a dwelling unit that is

1 subject to ORS chapter 90 that results from an arm’s-length transaction that occurred before the
 2 date of a foreclosure sale in which:

3 (A) The mortgagor or the child, spouse or parent of the mortgagor under the contract is not the
 4 tenant; and

5 (B) The rent required is not substantially less than fair market rent for the dwelling unit, unless
 6 the rent is reduced or subsidized due to a federal, state or local subsidy.

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

9 (a) Personal delivery to the tenant.

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

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

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

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

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

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

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

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

28 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and
 29 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not
 30 impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to
 31 this paragraph, “rent” refers to the amount paid by the tenant to the landlord for the right to oc-
 32 cupy the unit before the foreclosure.

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

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

37 (B) Returning a security deposit.

38 (b) A purchaser that is a landlord under the provisions of subsection (9)(a) of this section is li-
 39 able to the individual who possesses the property under a tenancy described in subsection (6)(c) of
 40 this section for:

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

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

44 (11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement
 45 to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or

1 (9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the pre-
 2 vailing party together with costs and disbursements.

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

6 (A) Did not know, and did not have reasonable cause to know, of the existence of a fixed term
 7 tenancy when commencing the action for possession; and

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

9 (c) As used in this subsection, “prevailing party” means the party in whose favor final judgment
 10 is rendered.

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

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

18 (A) By registered or certified mail to:

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

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

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

28 (13) The amended notice of sale must:

29 (a) Be given at least 20 days before the amended date of sale;

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

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

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

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

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

SECTION 11. ORS 646.608 is amended to read:

646.608. (1) A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person does any of the following:

(a) Passes off real estate, goods or services as those of another.

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.

(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.

(d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.

(e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

(f) Represents that real estate or goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

(g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another.

(h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.

(i) Advertises real estate, goods or services with intent not to provide them as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

(j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.

(k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.

(L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.

(m) Performs service on or dismantles any goods or real estate when not authorized by the owner or apparent owner thereof.

(n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.

(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon occurrence of an event subsequent to the time the customer enters into the transaction.

(p) Makes any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service.

(q) Promises to deliver real estate, goods or services within a certain period of time with intent not to deliver them as promised.

(r) Organizes or induces or attempts to induce membership in a pyramid club.

(s) Makes false or misleading representations of fact concerning the offering price of, or the

1 person's cost for real estate, goods or services.

2 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
3 known material defect or material nonconformity.

4 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

5 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
6 ORS 698.640, whether in a commercial or noncommercial situation.

7 (w) Manufactures mercury fever thermometers.

8 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
9 law, or is:

10 (A) Prescribed by a person licensed under ORS chapter 677; and

11 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
12 on the proper cleanup of mercury should breakage occur.

13 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
14 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
15 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
16 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
17 graph, "thermostat" means a device commonly used to sense and, through electrical communication
18 with heating, cooling or ventilation equipment, control room temperature.

19 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
20 mercury light switches.

21 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

22 (bb) Violates ORS 646A.070 (1).

23 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

24 (dd) Violates the provisions of ORS 128.801 to 128.898.

25 (ee) Violates ORS 646.883 or 646.885.

26 (ff) Violates ORS 646.569.

27 (gg) Violates the provisions of ORS 646A.142.

28 (hh) Violates ORS 646A.360.

29 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

30 (jj) Violates ORS 646.563.

31 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

32 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
33 thereto.

34 (mm) Violates ORS 646A.210 or 646A.214.

35 (nn) Violates any provision of ORS 646A.124 to 646A.134.

36 (oo) Violates ORS 646A.095.

37 (pp) Violates ORS 822.046.

38 (qq) Violates ORS 128.001.

39 (rr) Violates ORS 646.649 (2) to (4).

40 (ss) Violates ORS 646A.090 (2) to (4).

41 (tt) Violates ORS 87.686.

42 (uu) Violates ORS 646.651.

43 (vv) Violates ORS 646A.362.

44 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

45 (xx) Violates ORS 180.440 (1) or 180.486 (1).

- 1 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 2 (zz) Violates ORS 87.007 (2) or (3).
- 3 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 4 (bbb) Engages in an unlawful practice under ORS 646.648.
- 5 (ccc) Violates ORS 646A.365.
- 6 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 7 (eee) Sells a gift card in violation of ORS 646A.276.
- 8 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 9 (ggg) Violates ORS 646A.430 to 646A.450.
- 10 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 11 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 12 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 13 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 14 subject of the violation.
- 15 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 16 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 17 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 18 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 19 (nnn) Violates ORS 646A.082.
- 20 (ooo) Violates ORS 646.647.
- 21 (ppp) Violates ORS 646A.115.
- 22 (qqq) Violates a provision of ORS 646A.405.
- 23 (rrr) Violates ORS 646A.092.
- 24 (sss) Violates a provision of ORS 646.644.
- 25 (ttt) Violates a provision of ORS 646A.295.

26 **(uuu) Violates ORS 86.755 (2)(b) or fails to comply with a provision of section 2 (2), (4),**
27 **(5) or (7) of this 2012 Act.**

28 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
29 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

30 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
31 need not prove competition between the parties or actual confusion or misunderstanding.

32 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
33 torney General has first established a rule in accordance with the provisions of ORS chapter 183
34 declaring the conduct to be unfair or deceptive in trade or commerce.

35 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
36 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
37 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

38 **SECTION 12. Sections 2, 3 and 4 of this 2012 Act and the amendments to ORS 86.705,**
39 **86.735, 86.740, 86.742, 86.755 and 646.608 by sections 5 to 11 of this 2012 Act apply to requests**
40 **for mediation that a grantor sends and notices of sale and mediation that a trustee or ben-**
41 **eficiary or an agent of a trustee or beneficiary sends on or after the effective date of this**
42 **2012 Act.**

43 **SECTION 13. This 2012 Act being necessary for the immediate preservation of the public**
44 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**
45 **on its passage.**

