

House Bill 4147

Sponsored by Representative WITT; Representatives BARNHART, DEMBROW, HARKER, HOYLE (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 that each transfer, assignment or other conveyance of beneficial ownership or beneficial interest in note or other instrument that is evidence of obligation grantor owes and that is secured by trust deed on residential property must be recorded with county clerk within 15 calendar days in order for trustee to foreclose trust deed by advertisement and sale. Requires person that seeks to record transfer, assignment, conveyance or reconveyance of trust deed to inspect and correct mortgage record and to pay county clerk certain amount for each correction.

Requires notice of sale in trust deed foreclosure to include documentation that establishes beneficiary or beneficiary's agent as real party in interest with respect to loan to be foreclosed. Requires documentation to consist of true copy of original debt instrument and evidence of chain of title from date of original loan to date of notice of sale.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to documentation requirements for foreclosing residential property; creating new provisions; amending ORS 86.735, 86.745 and 86.750; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2012 Act is added to and made a part of ORS 93.780 to 93.800.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Beneficiary" has the meaning given that term in ORS 86.705.**

8 (b) **"Grantor" has the meaning given that term in ORS 86.705.**

9 (c) **"Trust deed" has the meaning given that term in ORS 86.705.**

10 (2) **Each transfer, assignment or other conveyance of beneficial ownership or a beneficial interest in a note or other instrument that is evidence of an obligation that a grantor owes to a beneficiary and that is secured by a trust deed on residential property must be recorded in accordance with the provisions of ORS 205.130 within 15 calendar days of the transfer, assignment or other conveyance. Recording a transfer, assignment or other conveyance under this subsection is subject to the fee provided for recording an instrument under ORS 205.320.**

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17 (3) **A person other than a grantor in a trust deed, as a condition of recording a transfer, assignment, conveyance or reconveyance of the estate of residential property described in a trust deed recorded for the residential property, shall inspect and correct any errors in or omissions of the information required to be recorded under subsection (2) of this section in the mortgage record that is filed with the county clerk. After correcting any errors or omissions, the person shall record an affidavit that states, under oath and subject to the penalty for perjury, that the mortgage record is complete and accurate to the best of the person's knowledge and belief.**

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24 (4) **For each correction described in subsection (3) of this section that is necessary to**

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 **make the mortgage record complete and accurate, the person other than the grantor that**
 2 **records the transfer, assignment, conveyance or reconveyance of the estate described in the**
 3 **trust deed shall pay to the county clerk an amount equivalent to the recording fee that would**
 4 **have been due to record a transfer, assignment or other conveyance of the beneficial interest**
 5 **in the note or other instrument that is evidence of the obligation, multiplied by the number**
 6 **of months that have passed since the date on which the transfer, assignment or other**
 7 **conveyance should have been recorded under subsection (2) of this section.**

8 **SECTION 3.** ORS 86.735 is amended to read:

9 86.735. *[The]* **A trustee may foreclose a trust deed by advertisement and sale in the manner**
 10 **provided in ORS 86.740 to 86.755 if:**

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

14 **(2) Each transfer, assignment or other conveyance of beneficial ownership or a beneficial**
 15 **interest in a note or other instrument that is evidence of an obligation that the grantor owes**
 16 **to the beneficiary and that is secured by the trust deed is recorded in accordance with sec-**
 17 **tion 2 of this 2012 Act;**

18 *[(2)]* **(3) There is a default by the grantor or other person *[owing]* that owes an obligation, the**
 19 **performance of which is secured by the trust deed, or by *[their]* the grantor's or other person's**
 20 **successors in interest with respect to any provision in the deed *[which]* that authorizes sale in the**
 21 **event of default of *[such]* the provision; *[and]***

22 *[(3)]* **(4) 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)]* **(5) *[No]* An action has not been instituted to recover the debt or any part of *[it]* the debt**
 27 **then remaining secured by the trust deed, or, if *[such]* an action has been instituted, the action has**
 28 **been dismissed, except that:**

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

34 (b) An action may be commenced for the judicial or nonjudicial foreclosure of the same trust
 35 deed as to any other property covered *[thereby]* **by the trust deed**, or any other trust deeds, mort-
 36 gages, security agreements or other consensual or nonconsensual security interests or liens *[secur-*
 37 *ing]* **that secure** repayment of the debt.

38 **SECTION 4.** ORS 86.745 is amended to read:

39 86.745. The notice of sale **required under ORS 86.740** shall:

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

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

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

44 **(4) Include documentation as an attachment that establishes that the beneficiary or the**
 45 **beneficiary's agent is the real party in interest with respect to the loan. The documentation**

1 **must consist of:**

2 (a) **A true copy of the original debt instrument that is the basis for the claimed right to**
 3 **foreclose the residential trust deed;**

4 (b) **Evidence of the chain of title, including conveyances, endorsements and assignments**
 5 **of the residential trust deed, note or security instrument from the date of the original loan**
 6 **on which the beneficiary seeks to foreclose to the date of the notice of sale;**

7 (c) **A copy of the affidavit recorded under section 2 (2) of this 2012 Act; and**

8 (d) **A statement that advises the grantor that:**

9 (A) **Section 2 of this 2012 Act requires that any transfer, assignment or other conveyance**
 10 **of beneficial ownership or a beneficial interest in the note or other instrument that is evi-**
 11 **dence of the grantor’s obligation to the beneficiary and that is secured by a trust deed on**
 12 **the residential property that is subject to foreclosure must be properly recorded in the**
 13 **mortgage records for the residential property; and**

14 (B) **The grantor may inspect the mortgage records to verify that the required informa-**
 15 **tion has been properly recorded in accordance with section 2 of this 2012 Act.**

16 [(4)] (5) State the default for which the foreclosure is made.

17 [(5)] (6) State the sum owing on the obligation that the trust deed secures.

18 [(6)] (7) State that the property will be sold to satisfy the obligation.

19 [(7)] (8) Set forth the date, time and place of the sale.

20 [(8)] (9) State that the right exists under ORS 86.753 to have the proceeding dismissed and the
 21 trust deed reinstated by paying the entire amount then due, together with costs, trustee’s fees and
 22 attorney fees, and by curing any other default complained of in the notice of default, at any time
 23 that is not later than five days before the date last set for the sale.

24 [(9)] (10) If the property includes one or more dwelling units that are subject to ORS chapter
 25 90, include a notice addressed clearly to any individual who occupies the property and who is or
 26 might be a residential tenant. The notice required under this subsection must:

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

29 (b) Include information concerning the right the individual has to notice under ORS 86.755 (6)(c);

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

31 (d) Be in substantially the following form:
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 34 **NOTICE TO RESIDENTIAL TENANTS**

35 The property in which you are living is in foreclosure. A foreclosure sale is scheduled for
 36 _____ (date). The date of this sale may be postponed. Unless the lender that is foreclosing on this
 37 property is paid before the sale date, the foreclosure will go through and someone new will own this
 38 property. After the sale, the new owner is required to provide you with contact information and
 39 notice that the sale took place.

40 The following information applies to you only if you are a bona fide tenant occupying and
 41 renting this property as a residential dwelling under a legitimate rental agreement. The information
 42 does not apply to you if you own this property or if you are not a bona fide residential tenant.

43 If the foreclosure sale goes through, the new owner will have the right to require you to move
 44 out. Before the new owner can require you to move, the new owner must provide you with written
 45 notice that specifies the date by which you must move out. If you do not leave before the move-out

1 date, the new owner can have the sheriff remove you from the property after a court hearing. You
2 will receive notice of the court hearing.

3 PROTECTION FROM EVICTION

4 IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING THIS PROPERTY AS A
5 RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROP-
6 erty AFTER THE FORECLOSURE SALE FOR:

- 7 • THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED TERM
8 LEASE; OR
- 9 • AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION
10 NOTICE.

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

14 You must be provided with at least 90 days' written notice after the foreclosure sale before you
15 can be required to move.

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

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

22 ABOUT YOUR TENANCY
23 BETWEEN NOW AND THE
24 FORECLOSURE SALE: RENT

25 YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY
26 IS SOLD OR UNTIL A COURT TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU
27 CAN BE EVICTED. BE SURE TO KEEP PROOF OF ANY PAYMENTS YOU MAKE.

28 SECURITY DEPOSIT

29 You may apply your security deposit and any rent you paid in advance against the current rent
30 you owe your landlord as provided in ORS 90.367. To do this, you must notify your landlord in
31 writing that you want to subtract the amount of your security deposit or prepaid rent from your rent
32 payment. You may do this only for the rent you owe your current landlord. If you do this, you must
33 do so before the foreclosure sale. The business or individual who buys this property at the foreclo-
34 sure sale is not responsible to you for any deposit or prepaid rent you paid to your landlord.

35 ABOUT YOUR TENANCY
36 AFTER THE FORECLOSURE SALE

37 The new owner that buys this property at the foreclosure sale may be willing to allow you to
38 stay as a tenant instead of requiring you to move out after 90 days or at the end of your fixed term
39 lease. After the sale, you should receive a written notice informing you that the sale took place and
40 giving you the new owner's name and contact information. You should contact the new owner if you
41 would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement
42 with you or does not notify you in writing within 30 days after the date of the foreclosure sale that
43 you must move out, the new owner becomes your new landlord and must maintain the property.
44 Otherwise:

- 45 • You do not owe rent;

1 • The new owner is not your landlord and is not responsible for maintaining the property on
2 your behalf; and

3 • You must move out by the date the new owner specifies in a notice to you.

4 The new owner may offer to pay your moving expenses and any other costs or amounts you and
5 the new owner agree on in exchange for your agreement to leave the premises in less than 90 days
6 or before your fixed term lease expires. You should speak with a lawyer to fully understand your
7 rights before making any decisions regarding your tenancy.

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

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18 **SECTION 5.** ORS 86.745, as amended by section 6, chapter 510, Oregon Laws 2011, is amended
19 to read:

20 86.745. The notice of sale **required under ORS 86.740** shall:

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

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

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

25 **(4) Include documentation as an attachment that establishes that the beneficiary or the**
26 **beneficiary's agent is the real party in interest with respect to the loan. The documentation**
27 **must consist of:**

28 **(a) A true copy of the original debt instrument that is the basis for the claimed right to**
29 **foreclose the residential trust deed;**

30 **(b) Evidence of the chain of title, including conveyances, endorsements and assignments**
31 **of the residential trust deed, note or security instrument from the date of the original loan**
32 **on which the beneficiary seeks to foreclose to the date of the notice of sale;**

33 **(c) A copy of the affidavit recorded under section 2 (2) of this 2012 Act; and**

34 **(d) A statement that advises the grantor that:**

35 **(A) Section 2 of this 2012 Act requires that any transfer, assignment or other conveyance**
36 **of beneficial ownership or a beneficial interest in the note or other instrument that is evi-**
37 **dence of the grantor's obligation to the beneficiary and that is secured by a trust deed on**
38 **the residential property that is subject to foreclosure must be properly recorded in the**
39 **mortgage records for the residential property; and**

40 **(B) The grantor may inspect the mortgage records to verify that the required informa-**
41 **tion has been properly recorded in accordance with section 2 of this 2012 Act.**

42 [(4)] (5) State the default for which the foreclosure is made.

43 [(5)] (6) State the sum owing on the obligation that the trust deed secures.

44 [(6)] (7) State that the property will be sold to satisfy the obligation.

45 [(7)] (8) Set forth the date, time and place of the sale.

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 ABOUT YOUR TENANCY
 4 BETWEEN NOW AND THE
 5 FORECLOSURE SALE: RENT

6 YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY
 7 IS SOLD OR UNTIL A COURT TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU
 8 CAN BE EVICTED. BE SURE TO KEEP PROOF OF ANY PAYMENTS YOU MAKE.

9 SECURITY DEPOSIT

10 You may apply your security deposit and any rent you paid in advance against the current rent
 11 you owe your landlord as provided in ORS 90.367. To do this, you must notify your landlord in
 12 writing that you want to subtract the amount of your security deposit or prepaid rent from your rent
 13 payment. You may do this only for the rent you owe your current landlord. If you do this, you must
 14 do so before the foreclosure sale. The business or individual who buys this property at the foreclo-
 15 sure sale is not responsible to you for any deposit or prepaid rent you paid to your landlord.

16 ABOUT YOUR TENANCY
 17 AFTER THE FORECLOSURE SALE

18 The new owner that buys this property at the foreclosure sale may be willing to allow you to
 19 stay as a tenant instead of requiring you to move out after 30 or 60 days. After the sale, you should
 20 receive a written notice informing you that the sale took place and giving you the new owner's
 21 name and contact information. You should contact the new owner if you would like to stay. If the
 22 new owner accepts rent from you, signs a new residential rental agreement with you or does not
 23 notify you in writing within 30 days after the date of the foreclosure sale that you must move out,
 24 the new owner becomes your new landlord and must maintain the property. Otherwise:

- 25 • You do not owe rent;
- 26 • The new owner is not your landlord and is not responsible for maintaining the property on
 27 your behalf; and
- 28 • You must move out by the date the new owner specifies in a notice to you.

29 The new owner may offer to pay your moving expenses and any other costs or amounts you and
 30 the new owner agree on in exchange for your agreement to leave the premises in less than 30 or
 31 60 days. You should speak with a lawyer to fully understand your rights before making any decisions
 32 regarding your tenancy.

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

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 43 **SECTION 6.** ORS 86.750 is amended to read:

44 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice [*prescribed in*]
 45 **and documentation required under** ORS 86.745 must be served upon an occupant of the property

1 described in the trust deed in the manner in which a summons is served pursuant to ORCP 7 D(2)
 2 and 7 D(3) at least 120 days before 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) or the doc-
 26 umentation described in ORS 86.745 (4).**

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 **SECTION 7. (1) Subject to the provisions of subsection (2) of this section, section 2 of this
 38 2012 Act and the amendments to ORS 86.735, 86.745 and 86.750 by sections 3, 4, 5 and 6 of this
 39 2012 Act apply to:**

- 40 (a) **A notice of sale sent on or after the effective date of this 2012 Act;**
- 41 (b) **A foreclosure by advertisement and sale that occurs on or after the effective date of
 42 this 2012 Act; and**
- 43 (c) **A recording of a transfer, assignment, conveyance or reconveyance of the estate of
 44 residential property described in a trust deed previously recorded for the residential property
 45 that occurs on or after the effective date of this 2012 Act.**

1 **(2) The provisions of section 2 (3) and (4) of this 2012 Act that require a person to inspect**
2 **and correct mortgage records, state in an affidavit that the mortgage record is accurate and**
3 **complete and pay a fee for each correction apply regardless of whether the transfer, as-**
4 **ignment or other conveyance described in section 2 (2) of this 2012 Act occurred before, on**
5 **or after the effective date of this 2012 Act.**

6 **SECTION 8. This 2012 Act being necessary for the immediate preservation of the public**
7 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**
8 **on its passage.**

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