

HOUSE AMENDMENTS TO A-ENGROSSED SENATE BILL 1552

By COMMITTEE ON RULES

March 5

1 On page 1 of the printed A-engrossed bill, line 5, delete “3 and 4” and insert “2a, 3, 4 and 4a”.

2 In line 7, delete “section 3” and insert “sections 3 and 4a”.

3 On page 2, line 11, after the period insert “The mediator may waive the grantor’s portion of the
4 fee in accordance with rules that the Attorney General adopts to describe circumstances that permit
5 a waiver.”.

6 In line 12, after “apply” insert a colon and delete the rest of the line and delete lines 13 through
7 19 and insert:

8 “(A) To an individual, a financial institution, as defined in ORS 706.008, a mortgage banker, as
9 defined in ORS 86A.100, or a licensee, as defined in ORS 725.010, if the individual, financial insti-
10 tution, mortgage banker or licensee provides to the Attorney General a sworn affidavit that states
11 that during the preceding calendar year the individual, financial institution, mortgage banker or
12 licensee did not commence or cause an affiliate or agent of the individual, financial institution,
13 mortgage banker or licensee to commence more than a total of 250 actions to foreclose a residential
14 trust deed by advertisement and sale under ORS 86.735 or a residential mortgage by suit under ORS
15 88.010. An individual, financial institution, mortgage banker or licensee that intends to claim an
16 exemption under this subparagraph shall file the affidavit either:

17 “(i) Within 30 days after the operative date specified in section 11 of this 2012 Act to claim the
18 exemption for calendar year 2012 and not later than January 31 in any subsequent calendar year in
19 which the individual, financial institution, mortgage banker or licensee intends to claim the ex-
20 emption; or

21 “(ii) At the time the individual, financial institution, mortgage banker or licensee files a notice
22 of default under ORS 86.735.”.

23 In line 29, delete “15” and insert “30”.

24 Delete lines 42 and 43 and insert:

25 “(b) The beneficiary or the beneficiary’s agent must appear in person at the location of the
26 mediation unless the mediator permits the beneficiary or the beneficiary’s agent to appear in an-
27 other manner for good cause shown. The fact that a beneficiary or beneficiary’s agent is located
28 outside this state does not alone constitute good cause for the purposes of this paragraph. The
29 beneficiary or the beneficiary’s agent must appear at the mediation with:”.

30 On page 4, line 6, delete “10” and insert “15”.

31 After line 22, insert:

32 “**SECTION 2a.** (1)(a) Except as provided in subsection (3) of this section, a grantor that
33 confirms under section 2 (3)(c) of this 2012 Act that the grantor will enter into mediation
34 shall consult a housing counselor approved by the United States Department of Housing and
35 Urban Development before the scheduled date of the mediation.

1 “(b) If, after consulting with the housing counselor, the grantor decides not to enter into
2 mediation, the grantor shall notify the mediation service provider that sent the notice under
3 section 2 (3) of this 2012 Act that the grantor no longer intends to enter into mediation. The
4 housing counselor shall inform the grantor of the requirement under this paragraph to notify
5 the mediation service provider. The mediation service provider shall notify the beneficiary
6 or the beneficiary’s agent of the grantor’s decision.

7 “(2) The notice of mediation described in section 3 of this 2012 Act must include a
8 statement that informs the grantor that the grantor must consult a housing counselor in
9 accordance with subsection (1) of this section. The statement must also notify the grantor
10 that the requirement to consult a housing counselor is subject to the provisions of sub-
11 section (3) of this section.

12 “(3) The requirement under subsection (1) of this section to consult a housing counselor
13 does not apply to a grantor that could not obtain an appointment to consult a housing
14 counselor within 30 days after receiving the notice described in subsection (2) of this section.
15 A grantor that intends to claim the exemption provided under this subsection shall obtain
16 from the mediation service provider and sign an affidavit that attests that the grantor could
17 not obtain an appointment to consult a housing counselor within the 30-day period. The At-
18 torney General by rule shall prescribe the form and contents of the affidavit.”.

19 On page 5, delete lines 21 through 27 and insert:

20 “(b) An individual, a financial institution, as defined in ORS 706.008, a mortgage banker, as de-
21 fined in ORS 86A.100, or a licensee, as defined in ORS 725.010, is not subject to the \$100 charge
22 described in paragraph (a) of this subsection if the individual, financial institution, mortgage banker
23 or licensee provides to the county clerk a sworn affidavit that states that during the preceding
24 calendar year the individual, financial institution, mortgage banker or licensee did not commence
25 or cause an affiliate or agent of the individual, financial institution, mortgage banker or licensee to
26 commence more than a total of 250 actions to foreclose a residential trust deed by advertisement
27 and sale under ORS 86.735 or a residential mortgage by suit under ORS 88.010. An individual, fi-
28 nancial institution, mortgage banker or licensee that intends to claim an exemption under this par-
29 agraph shall provide the affidavit either:

30 “(A) Within 30 days after the operative date specified in section 11 of this 2012 Act to claim the
31 exemption for calendar year 2012 and not later than January 31 in any subsequent calendar year in
32 which the individual, financial institution, mortgage banker or licensee intends to claim the ex-
33 emption; or

34 “(B) At the time the individual, financial institution, mortgage banker or licensee files a notice
35 of default under ORS 86.735.

36 “**SECTION 4a.** (1)(a) If a beneficiary determines that a grantor is not eligible for any
37 foreclosure avoidance measure or that the grantor has not complied with the terms of a
38 foreclosure avoidance measure to which the grantor has agreed, the beneficiary or the
39 beneficiary’s agent, at least 30 days before the date specified for the trustee’s sale in a notice
40 served under ORS 86.740 or 86.755 (2)(b), shall notify the grantor in writing of the
41 beneficiary’s determination and shall cause the notice to be served as provided in ORS 86.740
42 (1).

43 “(b) The notice must in plain language explain the basis for the beneficiary’s determi-
44 nation.

45 “(2) The beneficiary or the beneficiary’s agent shall mail a copy of the notice of the de-

1 termination described in subsection (1) of this section to the Department of Justice on the
2 same date on which the notice is served.

3 “(3)(a) At least 20 days before the date specified for the trustee’s sale in a notice served
4 under ORS 86.740 or 86.755 (2)(b), the beneficiary or the beneficiary’s agent shall:

5 “(A) Record in the mortgage records for the property that is subject to the trustee’s sale,
6 in the county or in one of the counties in which the property is located, an affidavit that
7 states that the beneficiary has complied with the requirements set forth in subsections (1)
8 and (2) of this section; and

9 “(B) Mail a copy of the affidavit to the department.

10 “(b) The affidavit described in paragraph (a) of this subsection must:

11 “(A) Identify the property that is the subject of the trustee’s sale;

12 “(B) Identify the grantor and, as of the date of the affidavit, the trustee and the benefi-
13 ciary;

14 “(C) State that the beneficiary or beneficiary’s agent has complied with the requirements
15 set forth in subsections (1) and (2) of this section; and

16 “(D) Include proof of service on the grantor for the notice described in subsection (1) of
17 this section.

18 “(4) The Attorney General by rule shall specify a form for and the contents of the notice
19 of the determination described in subsection (1) of this section and shall identify an address
20 to which the beneficiary or beneficiary’s agent must mail the copy of the notice under sub-
21 section (2) of this section and the affidavit under subsection (3) of this section.

22 “(5)(a) A beneficiary or an agent of the beneficiary that fails to comply with the pro-
23 visions of this section is liable to the grantor in the amount of \$500 plus the amount of the
24 grantor’s actual damages for each failure to comply with a provision of this section.

25 “(b) A grantor may bring an action against a beneficiary or an agent of the beneficiary
26 in a circuit court of this state to recover the amounts described in paragraph (a) of this
27 subsection. The grantor shall commence the action within two years after the date on which
28 the beneficiary or the beneficiary’s agent should have complied, but did not comply, with the
29 provisions of this section.

30 “(c) Notwithstanding an agreement to the contrary, a court may award reasonable at-
31 torney fees, costs and disbursements to a grantor that obtains a final judgment in the
32 grantor’s favor.”.

33 In line 40, delete the boldfaced material and insert “default that results in an action to foreclose
34 the obligation secured by the trust deed first occurs”.

35 On page 6, line 21, delete “and”.

36 After line 21, insert:

37 “(5)(a) The beneficiary or the beneficiary’s agent has complied with the provisions of section 4a
38 of this 2012 Act; and

39 “(b) The grantor is not in compliance with the terms of a foreclosure avoidance measure upon
40 which the beneficiary and the grantor have agreed; and”.

41 In line 22, delete “(5)” and insert “(6)”.

42 In line 36, delete “Except as provided in paragraph (b) of this subsection,”.

43 Delete lines 41 through 45 and insert:

44 “(b) If the sale is for the purpose of foreclosing a residential trust deed and the beneficiary in
45 the trust deed must enter into mediation with the grantor under section 2 (2)(a) of this 2012 Act, a

1 separate notice of mediation, in the form and with the contents described in section 3 of this 2012
2 Act, must be served or mailed in the manner provided in paragraph (a) of this subsection at least
3 60 days before the notice of sale described in paragraph (a) of this subsection is served or
4 mailed.”.

5 On page 7, delete line 1.

6 On page 9, line 23, before “notice” insert “written”.

7 In line 25, delete “30” and insert “15” and after the period insert “The person may postpone the
8 sale once, for not more than two calendar days, without giving notice as provided in this paragraph.
9 The person may not postpone the sale for more than two calendar days or more than once without
10 giving notice as provided in this paragraph.”.

11 On page 15, line 23, before “notice” insert “written”.

12 In line 25, delete “30” and insert “15” and after the period insert “The person may postpone the
13 sale once, for not more than two calendar days, without giving notice as provided in this paragraph.
14 The person may not postpone the sale for more than two calendar days or more than once without
15 giving notice as provided in this paragraph.”.

16 On page 20, line 36, delete “3 and 4” and insert “2a, 3, 4 and 4a”.

17 In line 42, delete “3 and 4” and insert “2a, 3, 4 and 4a”.

18 In line 44, delete “3 and 4” and insert “2a, 3, 4 and 4a”.

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