

# Senate Bill 1552

Sponsored by Senators BEYER, BATES, BOQUIST; Senators ATKINSON, COURTNEY, DINGFELDER, EDWARDS, HASS, MONNES ANDERSON, PROZANSKI, ROSENBAUM, SHIELDS, STEINER HAYWARD, VERGER (Pre-session 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.

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.

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 and 86.755; and declaring an emergency.

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

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

22 (b) **A mediation service provider shall supervise the mediation. The Attorney General by**  
23 **rule shall specify the identity of and prescribe qualifications, training and experience re-**  
24 **quirements for the mediation service provider and shall set the amount of the fee the medi-**  
25 **ation service provider may charge for the mediation.**

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

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

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

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

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

13 (c) Specifies a date at least 15 days before the scheduled date of the mediation by which  
14 the grantor must contact the mediation service provider to confirm that the grantor will  
15 enter into mediation. The notice must state that the mediation service provider will deem  
16 the grantor to have declined to enter into mediation if the grantor fails to confirm by the  
17 specified date.

18 (d) Lists the costs of the mediation and specifies the portion of the costs for which the  
19 grantor is responsible.

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

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

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

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

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

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

34 (ii) Documents that show the chain of title for the property that is subject to the resi-  
35 dential trust deed from the date of the original loan for which the beneficiary seeks fore-  
36 closure to the date of the notices given under ORS 86.740, including conveyances,  
37 endorsements and assignments of the residential trust deed, the note and the security in-  
38 strument, whether recorded or unrecorded;

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

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

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

44 (ii) An agreement by means of which the beneficiary pledged as collateral for a security  
45 the beneficiary issued or sold all or a portion of the ownership interest in the note or other

1 obligation; and

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

3 (c) The beneficiary or the beneficiary's agent that enters into mediation with the grantor  
4 must have or be able to obtain before the mediation concludes authority to accept or reject  
5 a proposal for a foreclosure avoidance measure and authority to enter with the grantor into  
6 an agreement for a foreclosure avoidance measure.

7 (5)(a) The beneficiary or the beneficiary's agent must enter into mediation under the  
8 supervision of the mediation service provider, in accordance with mediation guidelines the  
9 mediation service provider establishes and with the objective of reaching an agreement on a  
10 foreclosure avoidance measure.

11 (b) If the beneficiary or the beneficiary's agent agrees with the grantor on a foreclosure  
12 avoidance measure, the mediation service provider shall witness and sign an agreement that  
13 sets forth the terms of the foreclosure avoidance measure. The grantor may elect to pay the  
14 grantor's portion of the cost of mediation as part of and in accordance with any payment  
15 plan that is part of the foreclosure avoidance measure.

16 (c) If the beneficiary or the beneficiary's agent and the grantor do not agree on a fore-  
17 closure avoidance measure, the mediation service provider shall notify the Attorney General.  
18 The grantor shall bear the grantor's portion of the cost of the mediation.

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

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

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

31 (7)(a) A grantor that is at risk of default before the beneficiary or the trustee has filed  
32 a notice of default for recording under ORS 86.735 may notify the beneficiary or trustee in  
33 the trust deed or the beneficiary's or trustee's agent that the grantor wants to enter into  
34 mediation. Within 10 days after receiving the request, the beneficiary or trustee or the  
35 beneficiary's or trustee's agent shall respond to the grantor's request and shall notify the  
36 Attorney General and the mediation service provider identified in subsection (2)(b) of this  
37 section. The response to the grantor must include contact information for the Attorney  
38 General and the mediation service provider.

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

44 (c) Within 10 days after receiving notice of the request under paragraph (a) of this sub-  
45 section, the mediation service provider shall send a notice to the grantor and the beneficiary

1 that, except with respect to the date by which the mediation service provider must send the  
 2 notice, is otherwise in accordance with the provisions of subsection (3) of this section.

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

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

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

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

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

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

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

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

19 (d) A list of not-for-profit housing counselors approved by the United States Department  
 20 of Housing and Urban Development or an agency of this state.

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

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

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

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

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

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

35 **SECTION 4.** ORS 86.705 is amended to read:

36 86.705. As used in ORS 86.705 to 86.795:

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

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

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

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

44 (5) "Residential trust deed" means a trust deed on property upon which are situated four or  
 45 fewer residential units, one of which the grantor, the grantor's spouse or the grantor's minor or

1 dependent child occupies as a principal residence at the time a [*trust deed foreclosure is*  
2 *commenced*] **notice of default on the obligation secured by the trust deed is first recorded**  
3 **under ORS 86.735.**

4 (6) "Residential unit" means an improvement designed for residential use.

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

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

11 **SECTION 5.** ORS 86.735 is amended to read:

12 86.735. [*The*] **A** trustee may foreclose a trust deed by advertisement and sale in the manner  
13 provided in ORS 86.740 to 86.755 if:

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

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

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

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

29 [(4)] (5) [*No*] **An** action has **not** been [*instituted*] **commenced** to recover the debt or any part  
30 of [*it*] **the debt** then remaining secured by the trust deed, or, if [*such*] **an** action has been  
31 [*instituted*] **commenced**, the action has been dismissed, except that:

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

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

42 **SECTION 6.** ORS 86.740 is amended to read:

43 86.740. (1)(a) **Except as provided in paragraph (b) of this subsection,** subsequent to recording  
44 notice of default as provided in ORS 86.735 and at least 120 days before the day the trustee conducts  
45 the sale, notice of the sale [*shall*] **with the contents described in ORS 86.745 must** be served

1 pursuant to ORCP 7 D(2) and 7 D(3) or mailed by both first class and certified mail with return re-  
 2 ceipt requested[.].

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

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

10 (a) The grantor in the trust deed.

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

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

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

17 **(e) The mediation service provider specified under rules the Attorney General adopts**  
 18 **under section 2 (2)(b) of this 2012 Act, if the notices are served or mailed under subsection**  
 19 **(1)(b) of this section.**

20 *[(2)]* **(3)** A notice served by mail under subsection (1) of this section is effective when the notice  
 21 is mailed.

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

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

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

41 *[(4)]* **(5)** If the owner of real property subject to foreclosure dies and the real property is also  
 42 subject to a transfer on death deed, as provided by ORS 93.948 to 93.979, *[notice of sale]* **the notices**  
 43 **required under this section** must be given *[under this section]* to the beneficiary designated under  
 44 the transfer on death deed.

45 **SECTION 7.** ORS 86.742 is amended to read:

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

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

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

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

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

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

19 (3) In an action against the trustee under subsection (2) of this section, *[any]* a defendant or  
 20 third party defendant may move for dismissal on the ground that the omitted person would not or  
 21 could not have cured the default and reinstated the trust deed if the omitted person had received  
 22 the notice required by ORS 86.740 [(1)(c)] (2)(c). The court shall hold a hearing on *[such]* **the** motion  
 23 *[prior to any]* **before** a hearing on *[any]* a motion for summary judgment, and *[prior to trial of]* **be-**  
 24 **fore trying** the action. The court shall deny the motion only if the omitted person produces affida-  
 25 vits or other evidence sufficient for a reasonable jury to find, applying a standard of clear and  
 26 convincing evidence, that the omitted person had the financial ability to cure the default under ORS  
 27 86.753 *[prior to]* **before** the date of the trustee's sale, and that the omitted person would have done  
 28 so had the omitted person received the notice required by ORS 86.740 [(1)(c)] (2)(c). If the court  
 29 grants the motion to dismiss *[it]*, **the court** shall award attorney fees *[pursuant to]* **under** subsection  
 30 (5) of this section.

31 (4) In *[any]* **an** action against the trustee or *[any other]* **another** party under this section the  
 32 omitted person shall plead that the omitted person did not have actual knowledge of the sale at least  
 33 25 days prior to the date the trustee conducted the sale, but thereafter the defendant *[shall have]*  
 34 **has** the burden of proving that the omitted person did have *[such]* notice.

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

38 (6) The remedies described in subsections (1) to (5) of this section *[shall be]* **are** the sole reme-  
 39 dies available to a person entitled to notice of foreclosure by advertisement and sale under ORS  
 40 86.740 [(1)(c)] (2)(c), who failed to receive *[such]* notice. *[Such a]* **The** person's failure to redeem or  
 41 to commence an action against the trustee within five years of the date of a trustee's sale under  
 42 ORS 86.755 *[shall bar]* **bars** any action under this section or any other applicable law.

43 **SECTION 8.** ORS 86.755 is amended to read:

44 86.755. (1)(a) A trustee shall hold a trustee's sale on the date and at the time and place desig-  
 45 nated in the notice of sale given under ORS 86.740. The designated time of the trustee's sale must

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

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

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

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

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

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

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

26 **(b) If the trustee postpones the sale date as provided in paragraph (a) of this subsection,**  
 27 **the trustee, in the manner provided for service of the notice of sale under ORS 86.740 (1),**  
 28 **shall cause notice of the postponement to be served on the grantor and on any person to**  
 29 **whom notice of the sale was given under ORS 86.745.**

30 (3) The purchaser shall pay at the time of sale the price bid or the price determined in accord-  
 31 ance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee shall  
 32 execute and deliver the trustee's deed to the purchaser.

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

37 (5)(a) If property purchased at the trustee's sale includes one or more dwelling units that are  
 38 subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the  
 39 occupants of each unit within 30 days after the date of sale and before or concurrently with service  
 40 of a written termination notice authorized by subsection (6)(c)(B) of this section.

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

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

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

45 (C) Include the name, contact address and contact telephone number of the purchaser or the



1 purchaser's representative.

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

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

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

7 (A) Personal delivery to the tenant.

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

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

12 (D) If the names of the tenants are not known to the purchaser, the notice may be addressed  
13 to "occupants."

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

17 \_\_\_\_\_  
18  
19 NOTICE TO RESIDENTIAL TENANTS OF  
20 CHANGE IN OWNERSHIP

21 The property in which you are living has gone through foreclosure and was sold to a new owner  
22 on \_\_\_\_\_ (date). The contact information for the new owner or the owner's representative is  
23 \_\_\_\_\_ (name, address, telephone number).

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

- 27 • THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED TERM  
28 LEASE; OR
- 29 • AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION  
30 NOTICE.

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

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

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

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

42 IMPORTANT:

43 YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S REPRESENTATIVE AT  
44 THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER  
45 KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE

1 OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED  
 2 TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 90 DAYS LEFT. Written evidence  
 3 of your rental agreement can be a copy of your lease or rental agreement, or other documentation  
 4 of the existence of your rental agreement. Keep your original documents and a record of any infor-  
 5 mation you give to the new owner.

6 YOUR TENANCY  
 7 BETWEEN NOW  
 8 AND THE MOVE-OUT DATE

9 The new owner may be willing to allow you to stay as a tenant instead of requiring you to move  
 10 out after 90 days or at the end of your fixed term lease. You should contact the new owner if you  
 11 would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement  
 12 with you or does not notify you in writing within 30 days after the date of the foreclosure sale that  
 13 you must move out, the new owner becomes your new landlord and must maintain the property.  
 14 Otherwise:

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

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

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

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31  
 32 (6)(a) Except as provided in paragraph (b) or (c) of this subsection, the purchaser at the trustee's  
 33 sale is entitled to possession of the property on the 10th day after the sale. A person that remains  
 34 in possession after the 10th day under any interest, except an interest prior to the trust deed, or  
 35 an interest the grantor or a successor of the grantor created voluntarily, is a tenant at sufferance.  
 36 The purchaser may obtain possession of the property from a tenant at sufferance by following the  
 37 procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

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

44 (c) If the property purchased at the trustee's sale includes a dwelling unit that is subject to ORS  
 45 chapter 90 and an individual occupies the unit under a bona fide tenancy, the purchaser may obtain

1 possession by following the procedures set forth in ORS 105.105 to 105.168 and by using the com-  
2 plaint form provided in ORS 105.124 or 105.126:

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

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

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

8 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS  
9 90.100.

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

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

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

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

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

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

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

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

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

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

40 (h) As used in this subsection, "bona fide tenancy" means tenancy of a dwelling unit that is  
41 subject to ORS chapter 90 that results from an arm's-length transaction that occurred before the  
42 date of a foreclosure sale in which:

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

45 (B) The rent required is not substantially less than fair market rent for the dwelling unit, unless

1 the rent is reduced or subsidized due to a federal, state or local subsidy.

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

4 (a) Personal delivery to the tenant.

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

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

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

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

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

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

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

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

23 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and  
24 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not  
25 impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to  
26 this paragraph, "rent" refers to the amount paid by the tenant to the landlord for the right to oc-  
27 cupy the unit before the foreclosure.

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

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

32 (B) Returning a security deposit.

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

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

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

39 (11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement  
40 to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or  
41 (9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the pre-  
42 vailing party together with costs and disbursements.

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

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

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

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

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

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

13 (A) By registered or certified mail to:

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

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

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

23 (13) The amended notice of sale must:

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

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

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

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

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

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

41 **SECTION 9.** ORS 86.755, as amended by section 7, chapter 510, Oregon Laws 2011, is amended  
 42 to read:

43 86.755. (1)(a) A trustee shall hold a trustee’s sale on the date and at the time and place desig-  
 44 nated in the notice of sale given under ORS 86.740. The designated time of the trustee’s sale must  
 45 be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the

1 designated place of the trustee's sale must be in the county or one of the counties in which the  
 2 property is situated. Except as provided in paragraph (b) of this subsection, the trustee may sell the  
 3 property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the  
 4 highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding  
 5 the trustee, may bid at the trustee's sale. An attorney for the trustee, or an agent that the trustee  
 6 or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

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

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

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

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

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

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

25 **(b) If the trustee postpones the sale date as provided in paragraph (a) of this subsection,**  
 26 **the trustee, in the manner provided for service of the notice of sale under ORS 86.740 (1),**  
 27 **shall cause notice of the postponement to be served on the grantor and on any person to**  
 28 **whom notice of the sale was given under ORS 86.745.**

29 (3) The purchaser shall pay at the time of sale the price bid or the price determined in accord-  
 30 ance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee shall  
 31 execute and deliver the trustee's deed to the purchaser.

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

36 (5)(a) If property purchased at the trustee's sale includes one or more dwelling units that are  
 37 subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the  
 38 occupants of each unit within 30 days after the date of sale and before or concurrently with service  
 39 of a written termination notice authorized by subsection (6)(c)(B) of this section.

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

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

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

44 (C) Include the name, contact address and contact telephone number of the purchaser or the  
 45 purchaser's representative.

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

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

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

6 (A) Personal delivery to the tenant.

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

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

11 (D) If the names of the tenants are not known to the purchaser, the notice may be addressed  
12 to "occupants."

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

16 \_\_\_\_\_

17  
18 NOTICE TO RESIDENTIAL TENANTS OF  
19 CHANGE IN OWNERSHIP

20 The property in which you are living has gone through foreclosure and was sold to a new owner  
21 on \_\_\_\_\_ (date). The contact information for the new owner or the owner's representative is  
22 \_\_\_\_\_ (name, address, telephone number).

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

- 26 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF  
27 YOU HAVE A FIXED TERM LEASE; OR
- 28 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION  
29 NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO- WEEK RENTAL AGREEMENT.

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

33 You must be provided with at least 30 days' written notice after the foreclosure sale before you  
34 can be required to move.

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

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

41 IMPORTANT:

42 YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S REPRESENTATIVE AT  
43 THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER  
44 KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE  
45 OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED

1 TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 30 DAYS LEFT. Written evidence  
 2 of your rental agreement can be a copy of your lease or rental agreement, or other documentation  
 3 of the existence of your rental agreement. Keep your original documents and a record of any infor-  
 4 mation you give to the new owner.

5 YOUR TENANCY  
 6 BETWEEN NOW  
 7 AND THE MOVE-OUT DATE

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

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

16 The new owner may offer to pay your moving expenses and any other costs or amounts you and  
 17 the new owner agree on in exchange for your agreement to leave the premises in less than 30 or  
 18 60 days. You should speak with a lawyer to fully understand your rights before making any decisions  
 19 regarding your tenancy.

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

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28  
 29  
 30 (6)(a) Except as provided in paragraph (b) or (c) of this subsection, the purchaser at the trustee's  
 31 sale is entitled to possession of the property on the 10th day after the sale. A person that remains  
 32 in possession after the 10th day under any interest, except an interest prior to the trust deed, or  
 33 an interest the grantor or a successor of the grantor created voluntarily, is a tenant at sufferance.  
 34 The purchaser may obtain possession of the property from a tenant at sufferance by following the  
 35 procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

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

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



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

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

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

6 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS  
7 90.100.

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

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

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

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

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

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

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

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

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

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

38 (h) As used in this subsection, "bona fide tenancy" means tenancy of a dwelling unit that is  
39 subject to ORS chapter 90 that results from an arm's-length transaction that occurred before the  
40 date of a foreclosure sale in which:

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

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

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

1 following methods:

2 (a) Personal delivery to the tenant.

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

4 (c) First class mail to the tenant at the dwelling unit and attachment of a second notice copy.

5 The second notice copy must be attached in a secure manner to the main entrance to the portion  
6 of the premises in the possession of the tenant.

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

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

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

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

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

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

21 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and  
22 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not  
23 impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to  
24 this paragraph, "rent" refers to the amount paid by the tenant to the landlord for the right to oc-  
25 cupy the unit before the foreclosure.

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

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

30 (B) Returning a security deposit.

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

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

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

37 (11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement  
38 to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or  
39 (9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the pre-  
40 vailing party together with costs and disbursements.

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

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

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

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

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

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

11 (A) By registered or certified mail to:

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

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

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

21 (13) The amended notice of sale must:

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

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

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

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

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

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

39 **SECTION 10. Sections 2 and 3 of this 2012 Act and the amendments to ORS 86.705, 86.735,**  
40 **86.740, 86.742 and 86.755 by sections 4 to 9 of this 2012 Act apply to requests for mediation**  
41 **that a grantor sends and notices of sale and mediation that a trustee or beneficiary or an**  
42 **agent of a trustee or beneficiary sends on or after the effective date of this 2012 Act.**

43 **SECTION 11. 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.**

