

Minority Report
A-Engrossed
Senate Bill 1564

Ordered by the Senate February 14
Including Senate Minority Report Amendments dated February 14

Sponsored by nonconcurring members of the Senate Committee on General Government, Consumer and Small Business Protection: Senators BOQUIST, GEORGE

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.

Requires beneficiary to determine whether grantor qualifies for foreclosure avoidance measure or has not complied with terms of foreclosure avoidance measure to which grantor agreed. Requires beneficiary or beneficiary's agent to serve grantor with notice that explains basis for beneficiary's determination before trustee may conduct trustee's sale. Requires beneficiary or beneficiary's agent to record affidavit stating that beneficiary has complied with requirements to make determination and to notify grantor. Requires beneficiary or beneficiary's agent to mail copy of notice and affidavit to Department of Justice.

Requires trustee to serve grantor and certain other persons with notice if trustee postpones trustee's sale.

[Provides that violation of certain provisions of Act are unlawful practices enforceable under unlawful trade practices law.]

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to notice requirements for sale of property subject to a trust deed; creating new provisions;
3 amending ORS 86.705, 86.735 and 86.755; and declaring an emergency.

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

5 **SECTION 1.** ORS 86.705 is amended to read:

6 86.705. As used in ORS 86.705 to 86.795:

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

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

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

12 (4) **"Foreclosure avoidance measure" means an agreement between a beneficiary and a**
13 **grantor that uses one or more of the following methods to modify an obligation that is se-**
14 **cured by a trust deed:**

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

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

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

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

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

3 [(4)] (5) “Grantor” means the person that conveys an interest in real property by a trust deed
4 as security for the performance of an obligation.

5 [(5)] (6) “Residential trust deed” means a trust deed on property upon which are situated four
6 or fewer residential units, one of which the grantor, the grantor’s spouse or the grantor’s minor or
7 dependent child occupies as a principal residence at the time a [*trust deed foreclosure is*
8 *commenced*] **default on the obligation secured by the trust deed first occurs.**

9 [(6)] (7) “Residential unit” means an improvement designed for residential use.

10 [(7)] (8) “Trust deed” means a deed executed in conformity with ORS 86.705 to 86.795 that con-
11 veys an interest in real property to a trustee in trust to secure the performance of an obligation the
12 grantor or other person named in the deed owes to a beneficiary.

13 [(8)] (9) “Trustee” means a person, other than the beneficiary, to whom a trust deed conveys
14 an interest in real property, or the person’s successor in interest, or an employee of the beneficiary,
15 if the employee is qualified to be a trustee under ORS 86.790.

16 **SECTION 2.** ORS 86.735 is amended to read:

17 86.735. [*The*] **A** trustee may foreclose a trust deed by advertisement and sale in the manner
18 provided in ORS 86.740 to 86.755 if:

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

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

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

30 **(4)(a) The beneficiary or the beneficiary’s agent has complied with the provisions of sec-**
31 **tion 6 of this 2012 Act; and**

32 **(b) The grantor is not in compliance with the terms of a foreclosure avoidance measure**
33 **upon which the beneficiary and grantor have agreed; and**

34 [(4)] (5) [*No*] **An** action has **not** been [*instituted*] **commenced** to recover the debt or any part
35 of [*it*] **the debt** then remaining secured by the trust deed, or, if [*such*] **an** action has been
36 [*instituted*] **commenced**, the action has been dismissed, except that:

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

43 (b) An action may be commenced [*for the judicial or nonjudicial foreclosure of*] **to foreclose,**
44 **judicially or nonjudicially,** the same trust deed as to any other property covered [*thereby*] **by the**
45 **trust deed,** or any other trust deeds, mortgages, security agreements or other consensual or

1 nonconsensual security interests or liens [*securing*] **that secure** repayment of the debt.

2 **SECTION 3.** ORS 86.755 is amended to read:

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

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

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

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

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

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

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

30 **(b) If a person postpones the sale as provided in paragraph (a) of this subsection, the**
31 **trustee, in the manner provided for service of the notice of the sale under ORS 86.740 (1),**
32 **shall cause notice of the new time, date and place for the sale to be served on the grantor**
33 **and on any person to whom notice of the sale was given under ORS 86.745. The notice must**
34 **be given at least 30 days before the new sale date.**

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

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

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

(b) The notice required by this subsection must:

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

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

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

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

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

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

(A) Personal delivery to the tenant.

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

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

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

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

NOTICE TO RESIDENTIAL TENANTS OF
CHANGE IN OWNERSHIP

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

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

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

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

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

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

- Is the result of an arm's-length transaction;
- Requires the payment of rent that is not substantially less than fair market rent for the property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and

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

IMPORTANT:

YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S REPRESENTATIVE AT THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 90 DAYS LEFT. Written evidence of your rental agreement can be a copy of your lease or rental agreement, or other documentation of the existence of your rental agreement. Keep your original documents and a record of any information you give to the new owner.

YOUR TENANCY
BETWEEN NOW
AND THE MOVE-OUT DATE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (a) Personal delivery to the tenant.

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

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

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

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

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

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

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

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

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

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

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

37 (B) Returning a security deposit.

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

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

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

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

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

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

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

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

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

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

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

18 (A) By registered or certified mail to:

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

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

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

28 (13) The amended notice of sale must:

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

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

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

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

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

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

1 **SECTION 4.** ORS 86.755, as amended by section 7, chapter 510, Oregon Laws 2011, is amended
2 to read:

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

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

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

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

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

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

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

30 **(b) If a person postpones the sale as provided in paragraph (a) of this subsection, the**
31 **trustee, in the manner provided for service of the notice of the sale under ORS 86.740 (1),**
32 **shall cause notice of the new time, date and place for the sale to be served on the grantor**
33 **and on any person to whom notice of the sale was given under ORS 86.745. The notice must**
34 **be given at least 30 days before the new sale date.**

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

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

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

- 1 (b) The notice required by this subsection must:
- 2 (A) Explain that the dwelling unit has been sold at a foreclosure sale and that the purchaser
- 3 at that sale is the new owner.
- 4 (B) Include the date on which the foreclosure sale took place.
- 5 (C) Include the name, contact address and contact telephone number of the purchaser or the
- 6 purchaser’s representative.
- 7 (D) Provide information about the rights of bona fide residential tenants as provided in sub-
- 8 sections (6)(c) and (e) and (9)(a) of this section.
- 9 (E) Include contact information for the Oregon State Bar and a person or organization that
- 10 provides legal help to individuals at no charge to the individual.
- 11 (c) The notice must be served by one or more of the following methods:
- 12 (A) Personal delivery to the tenant.
- 13 (B) First class mail to the tenant at the dwelling unit.
- 14 (C) First class mail to the tenant at the dwelling unit and attachment of a second notice copy.
- 15 The second notice copy must be attached in a secure manner to the main entrance to the portion
- 16 of the premises in the possession of the tenant.
- 17 (D) If the names of the tenants are not known to the purchaser, the notice may be addressed
- 18 to “occupants.”
- 19 (d) A notice that contains the information required under paragraph (b)(B) and (C) of this sub-
- 20 section meets the requirements of paragraph (b) of this subsection if the notice is in substantially
- 21 the following form:

22 _____

23

24 **NOTICE TO RESIDENTIAL TENANTS OF**

25 **CHANGE IN OWNERSHIP**

26 The property in which you are living has gone through foreclosure and was sold to a new owner

27 on _____ (date). The contact information for the new owner or the owner’s representative is

28 _____ (name, address, telephone number).

29 **IF YOU ARE A BONA FIDE TENANT RENTING THIS PROPERTY AS A RESIDENTIAL**

30 **DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE**

31 **FORECLOSURE SALE FOR:**

- 32 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF
- 33 YOU HAVE A FIXED TERM LEASE; OR
- 34 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION
- 35 NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO- WEEK RENTAL AGREEMENT.

36 If the new owner wants to move in and use this property as a primary residence, the new owner

37 can give you written notice and require you to move out after 30 days, even though you have a fixed

38 term lease with more than 30 days left.

39 You must be provided with at least 30 days’ written notice after the foreclosure sale before you

40 can be required to move.

41 A bona fide tenant is a residential tenant who is not the borrower (property owner), or a child,

42 spouse or parent of the borrower, and whose rental agreement:

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

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

IMPORTANT:

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

YOUR TENANCY
BETWEEN NOW
AND THE MOVE-OUT DATE

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

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

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

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

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

(b) Except as provided in paragraph (c) of this subsection, at any time after the trustee's sale the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure to obtain possession of the property from a person that holds possession under an interest that the grantor or a successor of the grantor created voluntarily if, not earlier than 30

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 date of a foreclosure sale in which:

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

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

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

8 (a) Personal delivery to the tenant.

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

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

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

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

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

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

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

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

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

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

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

36 (B) Returning a security deposit.

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

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

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

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

1 vailing party together with costs and disbursements.

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

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

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

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

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

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

17 (A) By registered or certified mail to:

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

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

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

27 (13) The amended notice of sale must:

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

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

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

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

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

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

45 **SECTION 5. Section 6 of this 2012 Act is added to and made a part of ORS 86.705 to 86.795.**

1 **SECTION 6.** (1)(a) If the beneficiary determines that the grantor is not eligible for any
2 foreclosure avoidance measure or that the grantor has not complied with the terms of a
3 foreclosure avoidance measure to which the grantor has agreed, the beneficiary or the
4 beneficiary's agent, at least 30 days before the date specified for the trustee's sale in a notice
5 served under ORS 86.740 or 86.755 (2)(b), shall notify the grantor in writing of the
6 beneficiary's determination and shall cause the notice to be served as provided in ORS 86.740
7 (1).

8 (b) The notice must in plain language explain the basis for the beneficiary's determi-
9 nation.

10 (2) The beneficiary or the beneficiary's agent shall mail a copy of the notice of the de-
11 termination described in subsection (1) of this section to the Department of Justice on the
12 same date on which the notice is served.

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

15 (A) Record in the mortgage records for the property that is subject to the trustee's sale,
16 in the county or in one of the counties in which the property is located, an affidavit that
17 states that the beneficiary has complied with the requirements set forth in subsections (1)
18 and (2) of this section; and

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

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

21 (A) Identify the property that is the subject of the trustee's sale;

22 (B) Identify the grantor and, as of the date of the affidavit, the trustee and the benefi-
23 ciary;

24 (C) State that the beneficiary or beneficiary's agent has complied with the requirements
25 set forth in subsections (1) and (2) of this section; and

26 (D) Include proof of service on the grantor for the notice described in subsection (1) of
27 this section.

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

32 **SECTION 7.** Section 6 of this 2012 Act and the amendments to ORS 86.705, 86.735 and
33 86.755 by sections 1 to 4 of this 2012 Act apply to notices of sale sent on or after the effective
34 date of this 2012 Act.

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

38