

# D R A F T

## SUMMARY

Provides penalty of \$500 for trustee's failure to give notice of trustee's sale postponement in accordance with requirements. Provides that Attorney General may enforce penalty by order and shall pay proceeds of penalty into Foreclosure Avoidance Mediation Fund.

Provides that trustee is liable to purchaser for damages in amount of \$500 for failure to deliver trustee's deed within certain time after trustee's sale and of \$50 for each day in which trustee fails to deliver trustee's deed after date on which trustee should have delivered trustee's deed.

Permits trustee to void trustee's sale within 10 calendar days after trustee's sale if trustee notifies purchaser, refunds full purchase price and pays purchaser additional amount equivalent to five percent of purchase price. Permits purchaser to void trustee's sale within three calendar days if purchaser has not received trustee's deed and if purchaser notifies trustee and pays trustee five percent of purchase price. Provides that trustee may offer property subject to trustee's sale to person that offered next highest bid at trustee's sale or conduct another trustee's sale. Provides that void sale operates as postponement of trustee's sale for purposes of nonjudicial foreclosure and notice requirements for postponing trustee's sale.

Requires certain trustees of trust deed to maintain registered agent and registered office continuously in this state and file with Secretary of State statement that identifies trustee's registered agent and lists address of trustee's registered office.

## A BILL FOR AN ACT

1  
2 Relating to trustee's sales of foreclosed property; creating new provisions;  
3 and amending ORS 86.705, 86.755 and 86.790.

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

5 **SECTION 1.** ORS 86.755, as amended by section 9, chapter 112, Oregon  
6 Laws 2012, is amended to read:

7 86.755. (1)(a) A trustee shall hold a trustee's sale on the date and at the

1 time and place designated in the notice of sale given under ORS 86.740. The  
2 designated time of the trustee's sale must be after 9 a.m. and before 4 p.m.,  
3 based on the standard of time set forth in ORS 187.110, and the designated  
4 place of the trustee's sale must be in the county or one of the counties in  
5 which the property is situated. Except as provided in paragraph (b) of this  
6 subsection, the trustee may sell the property in one parcel or in separate  
7 parcels and shall sell the parcel or parcels at auction to the highest bidder  
8 for cash. Any person, including the beneficiary under the trust deed, but  
9 excluding the trustee, may bid at the trustee's sale. An attorney for the  
10 trustee, or an agent that the trustee or the attorney designates, may conduct  
11 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  
13 is subject to an affordable housing covenant is situated, the eligible covenant  
14 holder may purchase the property from the trustee at the trustee's sale for  
15 cash or cash equivalent in an amount that is the lesser of:

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

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

19 (c)(A) Except as provided in subparagraph (B) of this paragraph, if an  
20 eligible covenant holder purchases the property in accordance with para-  
21 graph (b) of this subsection, the sale forecloses and terminates all other in-  
22 terests in the property as provided in ORS 86.770 (1).

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

29 (2)(a) The trustee or the attorney for the trustee, or an agent that the  
30 trustee or the attorney conducting the sale designates, may postpone the sale  
31 for one or more periods that total not more than 180 days from the original

1 sale date, giving notice of each postponement by public proclamation made  
2 at the time and place set for sale. The trustee, the attorney or an agent that  
3 the trustee or the attorney designates may make the proclamation.

4 (b) If a person postpones the sale date as provided in paragraph (a) of this  
5 subsection, the trustee, in the manner provided for service of the notice of  
6 sale under ORS 86.740 (1), shall cause written notice of the new time, date  
7 and place for the sale to be served on the grantor and on any person to whom  
8 notice of the sale was given under ORS 86.745. The notice must be given at  
9 least 15 days before the new sale date. The person may postpone the sale  
10 once, for not more than two calendar days, without giving notice as provided  
11 in this paragraph. The person may not postpone the sale for more than two  
12 calendar days or more than once without giving notice as provided in this  
13 paragraph.

14 **(c) A trustee that must give a written notice to postpone a sale date**  
15 **under paragraph (b) of this subsection shall pay \$500 to the Attorney**  
16 **General if the trustee fails to give a notice that accurately states the**  
17 **information described in paragraph (b) of this subsection at least 15**  
18 **days before the new sale date. The Attorney General may issue an**  
19 **order to enforce the penalty set forth in this paragraph and shall de-**  
20 **posit moneys the Attorney General receives into the Foreclosure**  
21 **Avoidance Mediation Fund established under section 4, chapter 112,**  
22 **Oregon Laws 2012.**

23 (3)(a) The purchaser shall pay at the time of sale the price bid or the  
24 price determined in accordance with subsection (1)(b) of this section, and,  
25 within 10 days following payment, the trustee shall execute and deliver the  
26 trustee's deed to the purchaser.

27 **(b) A trustee that fails to execute and deliver the trustee's deed to**  
28 **the purchaser as provided in paragraph (a) of this subsection, in ad-**  
29 **dition to and not in lieu of any other penalty provided by law, is liable**  
30 **for damages to the purchaser in the amount of:**

31 **(A) \$500 for failing to deliver the trustee's deed by the date specified**

1 in paragraph (a) of this subsection; and

2 (B) \$50 for each day, beginning at 12:01 a.m. on the day after the  
3 date on which the trustee should have delivered the trustee's deed,  
4 during which the trustee fails to deliver the trustee's deed.

5 (c) For purposes of this subsection, the trustee has delivered the  
6 trustee's deed on the earlier of any of the following dates, as applica-  
7 ble:

8 (A) Three days after the trustee deposits the trustee's deed as cer-  
9 tified mail with the United States Postal Service, properly addressed,  
10 with postage prepaid and return receipt requested.

11 (B) One day after the trustee deposits the trustee's deed with an  
12 overnight delivery service that is nationally recognized and that sup-  
13 plies a tracking number and a delivery receipt.

14 (C) When the purchaser receives the trustee's deed.

15 (4)(a) The trustee may void the trustee's sale if, within 10 calendar  
16 days after the sale date, the trustee:

17 (A) Notifies the purchaser of the trustee's election to void the sale  
18 in the manner provided for service of summons under ORCP 7 D(2) or  
19 in any commercially reasonable manner; and

20 (B) Tenders to the purchaser a full refund of the purchase price for  
21 the property and an additional payment equivalent to five percent of  
22 the purchase price.

23 (b)(A) The purchaser may void the trustee's sale if, within three  
24 calendar days after the date of the sale, the purchaser has not received  
25 the trustee's deed for the property and the purchaser:

26 (i) Notifies the trustee of the purchaser's election to void the sale;  
27 and

28 (ii) Pays the trustee a nonrefundable amount equivalent to five  
29 percent of the purchase price.

30 (B) A trustee that receives a notice from a purchaser under sub-  
31 paragraph (A) of this paragraph may offer the property to the bidder

1 **that offered the next highest bid for the property at the trustee's sale**  
2 **or may conduct another sale after giving notice in accordance with**  
3 **this section. With respect to the requirements for a foreclosure pro-**  
4 **ceeding under ORS 86.735 and the notice requirements set forth in this**  
5 **section, a void sale operates as a postponement of the trustee's sale.**

6 [(4)] (c) The trustee's deed [*shall convey*] **conveys** to the purchaser the  
7 interest in the property that the grantor had, or had the power to convey,  
8 at the time the grantor executed the trust deed, together with any interest  
9 the grantor or the grantor's successors in interest acquire after the execution  
10 of the trust deed.

11 **(d) If, within 15 days after the date of the trustee's sale, the pur-**  
12 **chaser records the trustee's deed in the county in which the property**  
13 **sold at the trustee's sale is located, the purchaser perfects the**  
14 **purchaser's interest in the property as of 9:00 a.m. on the date of the**  
15 **trustee's sale.**

16 (5)(a) If property purchased at the trustee's sale includes one or more  
17 dwelling units that are subject to ORS chapter 90, the purchaser must pro-  
18 vide written notice of **the** change in ownership to the occupants of each unit  
19 within 30 days after the date of sale and before or concurrently with service  
20 of a written termination notice authorized by subsection (6)(c)(B) of this  
21 section.

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

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

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

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

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

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

1 individual.

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

3 (A) Personal delivery to the tenant.

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

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

9 (D) If **the purchaser does not know** the names of the tenants [*are not*  
10 *known to the purchaser*], the notice may be addressed to “occupants.”

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

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15 NOTICE TO RESIDENTIAL TENANTS OF  
16 CHANGE IN OWNERSHIP

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

21

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

25 • THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE  
26 A FIXED TERM LEASE; OR

27 • AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRIT-  
28 TEN TERMINATION NOTICE.

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

1 than 90 days left.

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

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

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

12 **IMPORTANT:**

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

23 **YOUR TENANCY**  
24 **BETWEEN NOW**  
25 **AND THE MOVE-OUT DATE**

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

1 new landlord and must maintain the property. Otherwise:

- 2 • You do not owe rent;
- 3 • The new owner is not your landlord and is not responsible for main-  
4 taining the property; and
- 5 • You must move out by the date the new owner specifies in a notice to  
6 you.

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

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

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23 (6)(a) Except as provided in paragraph (b) or (c) of this subsection, the  
24 purchaser at the trustee's sale is entitled to possession of the property on  
25 the 10th day after the sale. A person that remains in possession after the  
26 10th day under any interest, except an interest prior to the trust deed, or  
27 an interest the grantor or a successor of the grantor created voluntarily, is  
28 a tenant at sufferance. The purchaser may obtain possession of the property  
29 from a tenant at sufferance by following the procedures set forth in ORS  
30 105.105 to 105.168 or other applicable judicial procedure.

31 (b) Except as provided in paragraph (c) of this subsection, at any time



1 after the trustee's sale the purchaser may follow the procedures set forth in  
2 ORS 105.105 to 105.168 or other applicable judicial procedure to obtain pos-  
3 session of the property from a person that holds possession under an interest  
4 that the grantor or a successor of the grantor created voluntarily if, not  
5 earlier than 30 days before the date first set for the sale, the person was  
6 served with not less than 30 days' written notice of the requirement to sur-  
7 render or deliver possession of the property.

8 (c) If the property purchased at the trustee's sale includes a dwelling unit  
9 that is subject to ORS chapter 90 and an individual occupies the unit under  
10 a bona fide tenancy, the purchaser may obtain possession by following the  
11 procedures set forth in ORS 105.105 to 105.168 and by using the complaint  
12 form provided in ORS 105.124 or 105.126:

13 (A) [*Upon expiration of*] **After** the fixed term of the tenancy **expires**, if  
14 the bona fide tenancy is a fixed term tenancy as defined in ORS 90.100; or

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

17 (i) A fixed term tenancy and the purchaser intends to occupy, as the  
18 purchaser's primary residence, the dwelling unit that is subject to the fixed  
19 term tenancy; or

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

22 (d) If a purchaser gives a 90-day written termination notice pursuant to  
23 paragraph (c) of this subsection, the purchaser may include in the notice a  
24 request that a tenant with a fixed term tenancy provide written evidence of  
25 the existence of the tenancy to the purchaser at an address described in the  
26 notice. Written evidence includes a copy of the rental agreement or another  
27 document that shows the existence of the fixed term tenancy. [*Failure of the*  
28 *tenant*] **The tenant's failure** to provide the requested written evidence be-  
29 fore the purchaser files an action for possession based on a 90-day notice:

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

1 (B) Prevents the tenant from recovering prevailing party attorney fees or  
2 costs and disbursements pursuant to subsection (11)(b) of this section. The  
3 90-day notice must describe the provisions of this paragraph.

4 (e) A purchaser may not commence a proceeding under ORS 105.105 to  
5 105.168 that is authorized under this subsection before the later of:

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

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

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

13 (D) The date on which the term of a fixed term tenancy ends, if the  
14 property is a dwelling unit and the purchaser has not terminated the tenancy  
15 in accordance with paragraph (c) of this subsection.

16 (f) A purchaser [*seeking*] **that seeks** to obtain possession pursuant to ORS  
17 105.105 to 105.168 must attach proof of service of a written termination no-  
18 tice required by paragraph (c) of this subsection to the pleadings.

19 (g) In an action to obtain possession, violation of the procedures required  
20 by subsection (5) of this section or paragraph (c) of this subsection is a de-  
21 fense for a bona fide tenant seeking to retain possession.

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

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

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

31 (7) A purchaser shall serve a notice under subsection (6) of this section

1 by one or more of the 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  
5 a second notice copy. The second notice copy must be attached in a secure  
6 manner to the main entrance to the portion of the premises in the possession  
7 of the tenant.

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

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

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

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

20 or

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

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

25 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375,  
26 105.165, 659A.421 and 659A.425. The application of ORS 90.375 to a purchaser  
27 that does not become a landlord does not impose an affirmative duty to pay  
28 for or provide services. For the purpose of damages pursuant to this para-  
29 graph, "rent" refers to the amount [*paid by*] the tenant **pays** to the landlord  
30 for the right to occupy the unit before the foreclosure.

31 (10)(a) Except as provided in paragraph (b) of this subsection, the pur-

1 chaser is not liable to the individual who possesses the property under a  
2 tenancy described in subsection (6)(c) of this section for:

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

4 (B) Returning a security deposit.

5 (b) A purchaser that is a landlord under the provisions of subsection (9)(a)  
6 of this section is liable to the individual who possesses the property under  
7 a tenancy described in subsection (6)(c) of this section for:

8 (A) Damage to the property or diminution in rental value that occurs af-  
9 ter the date of the trustee's sale; or

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

12 (11)(a) Except as provided in paragraph (b) of this subsection and not-  
13 withstanding an agreement to the contrary, in an action or defense arising  
14 pursuant to subsection (6)(c), (d), (f) or (g), (7) or (9)(c) of this section, rea-  
15 sonable attorney fees at trial and on appeal may be awarded to the prevailing  
16 party together with costs and disbursements.

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

21 (A) Did not know, and did not have reasonable cause to know, of the ex-  
22 istence of a fixed term tenancy when commencing the action for possession;  
23 and

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

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

28 (12)(a) Notwithstanding subsection (2) of this section, except when a  
29 beneficiary has participated in obtaining a stay, foreclosure proceedings that  
30 are stayed by order of the court, by proceedings in bankruptcy or for any  
31 other lawful reason shall, after release from the stay, continue as if unin-

1 interrupted, if within 30 days after release the trustee sends amended notice  
2 of sale by registered or certified mail to the last-known address of the per-  
3 sons listed in ORS 86.740 and 86.750 (1).

4 (b) In addition to the notice required under paragraph (a) of this sub-  
5 section, the trustee shall send amended notice of sale:

6 (A) By registered or certified mail to:

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

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

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

17 (13) The amended notice of sale must:

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

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

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

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

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

26 (14) If the publication of the notice of sale was not completed before the  
27 date the foreclosure proceedings were stayed by order of the court, by pro-  
28 ceedings in bankruptcy or for any other lawful reason, after release from the  
29 stay, in addition to complying with the provisions of subsections (12) and (13)  
30 of this section, the trustee shall complete the publication by publishing an  
31 amended notice of sale that states that the notice has been amended follow-

1 ing release from the stay and that contains the amended date of sale. The  
2 amended notice must be published in a newspaper of general circulation in  
3 each of the counties in which the property is situated once a week for four  
4 successive weeks, except that the required number of publications must be  
5 reduced by the number of publications that were completed before the effec-  
6 tive date of the stay. The last publication must be made more than 20 days  
7 before the date the trustee conducts the sale.

8 **SECTION 2.** ORS 86.755, as amended by section 7, chapter 510, Oregon  
9 Laws 2011, and section 10, chapter 112, Oregon Laws 2012, is amended to  
10 read:

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

23 (b) If the trustee sells property upon which a single residential unit that  
24 is subject to an affordable housing covenant is situated, the eligible covenant  
25 holder may purchase the property from the trustee at the trustee's sale for  
26 cash or cash equivalent in an amount that is the lesser of:

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

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

30 (c)(A) Except as provided in subparagraph (B) of this paragraph, if an  
31 eligible covenant holder purchases the property in accordance with para-

1 graph (b) of this subsection, the sale forecloses and terminates all other in-  
2 terests in the property as provided in ORS 86.770 (1).

3 (B) If an interest in the property exists that is prior to the eligible  
4 covenant holder's interest, other than the interest set forth in the trust deed  
5 that was the subject of the foreclosure proceeding under ORS 86.735, not-  
6 withstanding the provisions of ORS 86.770 (1) the sale does not foreclose and  
7 terminate the prior interest and the eligible covenant holder's title to the  
8 property is subject to the prior interest.

9 (2)(a) The trustee or the attorney for the trustee, or an agent that the  
10 trustee or the attorney conducting the sale designates, may postpone the sale  
11 for one or more periods that total not more than 180 days from the original  
12 sale date, giving notice of each postponement by public proclamation made  
13 at the time and place set for sale. The trustee, the attorney or an agent that  
14 the trustee or the attorney designates may make the proclamation.

15 (b) If a person postpones the sale date as provided in paragraph (a) of this  
16 subsection, the trustee, in the manner provided for service of the notice of  
17 sale under ORS 86.740 (1), shall cause written notice of the new time, date  
18 and place for the sale to be served on the grantor and on any person to whom  
19 notice of the sale was given under ORS 86.745. The notice must be given at  
20 least 15 days before the new sale date. The person may postpone the sale  
21 once, for not more than two calendar days, without giving notice as provided  
22 in this paragraph. The person may not postpone the sale for more than two  
23 calendar days or more than once without giving notice as provided in this  
24 paragraph.

25 **(c) A trustee that must give a written notice to postpone a sale date**  
26 **under paragraph (b) of this subsection shall pay \$500 to the Attorney**  
27 **General if the trustee fails to give a notice that accurately states the**  
28 **information described in paragraph (b) of this subsection at least 15**  
29 **days before the new sale date. The Attorney General may issue an**  
30 **order to enforce the penalty set forth in this paragraph and shall de-**  
31 **posit moneys the Attorney General receives into the Foreclosure**

1 **Avoidance Mediation Fund established under section 4, chapter 112,**  
2 **Oregon Laws 2012.**

3 (3)(a) The purchaser shall pay at the time of sale the price bid or the  
4 price determined in accordance with subsection (1)(b) of this section, and,  
5 within 10 days following payment, the trustee shall execute and deliver the  
6 trustee's deed to the purchaser.

7 (b) **A trustee that fails to execute and deliver the trustee's deed to**  
8 **the purchaser as provided in paragraph (a) of this subsection, in ad-**  
9 **dition to and not in lieu of any other penalty provided by law, is liable**  
10 **for damages to the purchaser in the amount of:**

11 (A) **\$500 for failing to deliver the trustee's deed by the date specified**  
12 **in paragraph (a) of this subsection; and**

13 (B) **\$50 for each day, beginning at 12:01 a.m. on the day after the**  
14 **date on which the trustee should have delivered the trustee's deed,**  
15 **during which the trustee fails to deliver the trustee's deed.**

16 (c) **For purposes of this subsection, the trustee has delivered the**  
17 **trustee's deed on the earlier of any of the following dates, as applica-**  
18 **ble:**

19 (A) **Three days after the trustee deposits the trustee's deed as cer-**  
20 **tified mail with the United States Postal Service, properly addressed,**  
21 **with postage prepaid and return receipt requested.**

22 (B) **One day after the trustee deposits the trustee's deed with an**  
23 **overnight delivery service that is nationally recognized and that sup-**  
24 **plies a tracking number and a delivery receipt.**

25 (C) **When the purchaser receives the trustee's deed.**

26 (4)(a) **The trustee may void the trustee's sale if, within 10 calendar**  
27 **days after the sale date, the trustee:**

28 (A) **Notifies the purchaser of the trustee's election to void the sale**  
29 **in the manner provided for service of summons under ORCP 7 D(2) or**  
30 **in any commercially reasonable manner; and**

31 (B) **Tenders to the purchaser a full refund of the purchase price for**



1 **the property and an additional payment equivalent to five percent of**  
2 **the purchase price.**

3 **(b)(A) The purchaser may void the trustee's sale if, within three**  
4 **calendar days after the date of the sale, the purchaser has not received**  
5 **the trustee's deed for the property and the purchaser:**

6 **(i) Notifies the trustee of the purchaser's election to void the sale;**  
7 **and**

8 **(ii) Pays the trustee a nonrefundable amount equivalent to five**  
9 **percent of the purchase price.**

10 **(B) A trustee that receives a notice from a purchaser under sub-**  
11 **paragraph (A) of this paragraph may offer the property to the bidder**  
12 **that offered the next highest bid for the property at the trustee's sale**  
13 **or may conduct another sale after giving notice in accordance with**  
14 **this section. With respect to the requirements for a foreclosure pro-**  
15 **ceeding under ORS 86.735 and the notice requirements set forth in this**  
16 **section, a void sale operates as a postponement of the trustee's sale.**

17 **[(4)] (c) The trustee's deed [shall convey] conveys to the purchaser the**  
18 **interest in the property that the grantor had, or had the power to convey,**  
19 **at the time the grantor executed the trust deed, together with any interest**  
20 **the grantor or the grantor's successors in interest acquire after the execution**  
21 **of the trust deed.**

22 **(d) If, within 15 days after the date of the trustee's sale, the pur-**  
23 **chaser records the trustee's deed in the county in which the property**  
24 **sold at the trustee's sale is located, the purchaser perfects the**  
25 **purchaser's interest in the property as of 9:00 a.m. on the date of the**  
26 **trustee's sale.**

27 **(5)(a) If property purchased at the trustee's sale includes one or more**  
28 **dwelling units that are subject to ORS chapter 90, the purchaser must pro-**  
29 **vide written notice of the change in ownership to the occupants of each unit**  
30 **within 30 days after the date of sale and before or concurrently with service**  
31 **of a written termination notice authorized by subsection (6)(c)(B) of this**

1 section.

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

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

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

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

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

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

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

14 (A) Personal delivery to the tenant.

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

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

20 (D) If **the purchaser does not know** the names of the tenants [*are not*  
21 *known to the purchaser*], the notice may be addressed to "occupants."

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

25

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26 NOTICE TO RESIDENTIAL TENANTS OF  
27 CHANGE IN OWNERSHIP

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

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

- 4 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMI-  
5 NATION NOTICE, IF YOU HAVE A FIXED TERM LEASE; OR
- 6 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRIT-  
7 TEN TERMINATION NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR  
8 WEEK-TO-WEEK RENTAL AGREEMENT.

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

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

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

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

23 **IMPORTANT:**

24 YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S  
25 REPRESENTATIVE AT THE ADDRESS LISTED ON THIS NOTICE AS  
26 SOON AS POSSIBLE TO LET THE NEW OWNER KNOW IF YOU ARE A  
27 BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE  
28 OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF  
29 YOU HAVE A FIXED TERM RENTAL AGREEMENT OR LEASE WITH  
30 MORE THAN 30 DAYS LEFT. Written evidence of your rental agreement  
31 can be a copy of your lease or rental agreement, or other documentation of

1 the existence of your rental agreement. Keep your original documents and  
2 a record of any information you give to the new owner.

3 YOUR TENANCY

4 BETWEEN NOW

5 AND THE MOVE-OUT DATE

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

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

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

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

1 assistance is included with this notice.

2

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

11 (b) Except as provided in paragraph (c) of this subsection, at any time  
12 after the trustee's sale the purchaser may follow the procedures set forth in  
13 ORS 105.105 to 105.168 or other applicable judicial procedure to obtain pos-  
14 session of the property from a person that holds possession under an interest  
15 that the grantor or a successor of the grantor created voluntarily if, not  
16 earlier than 30 days before the date first set for the sale, the person was  
17 served with not less than 30 days' written notice of the requirement to sur-  
18 render or deliver possession of the property.

19 (c) If the property purchased at the trustee's sale includes a dwelling unit  
20 that is subject to ORS chapter 90 and an individual occupies the unit under  
21 a bona fide tenancy, the purchaser may obtain possession by following the  
22 procedures set forth in ORS 105.105 to 105.168 and by using the complaint  
23 form provided in ORS 105.124 or 105.126:

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

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

28 (i) A fixed term tenancy and the purchaser intends to occupy, as the  
29 purchaser's primary residence, the dwelling unit that is subject to the fixed  
30 term tenancy; or

31 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms

1 are defined in ORS 90.100.

2 (d) If a purchaser gives a 30-day written termination notice pursuant to  
3 paragraph (c) of this subsection, the purchaser may include in the notice a  
4 request that a tenant with a fixed term tenancy provide written evidence of  
5 the existence of the tenancy to the purchaser at an address described in the  
6 notice. Written evidence includes a copy of the rental agreement or another  
7 document that shows the existence of the fixed term tenancy. [*Failure of the*  
8 *tenant*] **The tenant's failure** to provide the requested written evidence be-  
9 fore the purchaser files an action for possession based on a 30-day notice:

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

12 (B) Prevents the tenant from recovering prevailing party attorney fees or  
13 costs and disbursements pursuant to subsection (11)(b) of this section. The  
14 30-day notice must describe the provisions of this paragraph.

15 (e) A purchaser may not commence a proceeding under ORS 105.105 to  
16 105.168 that is authorized under this subsection before the later of:

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

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

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

24 (D) The date on which the term of a fixed term tenancy ends, if the  
25 property is a dwelling unit and the purchaser has not terminated the tenancy  
26 in accordance with paragraph (c) of this subsection.

27 (f) A purchaser [*seeking*] **that seeks** to obtain possession pursuant to ORS  
28 105.105 to 105.168 must attach proof of service of a written termination no-  
29 tice required by paragraph (c) of this subsection to the pleadings.

30 (g) In an action to obtain possession, violation of the procedures required  
31 by subsection (5) of this section or paragraph (c) of this subsection is a de-

1 fense for a bona fide tenant seeking to retain possession.

2 (h) As used in this subsection, “bona fide tenancy” means tenancy of a  
3 dwelling unit that is subject to ORS chapter 90 that results from an arm’s-  
4 length transaction that occurred before the date of a foreclosure sale in  
5 which:

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

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

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

13 (a) Personal delivery to the tenant.

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

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

19 (8) If the notice under subsection (6) of this section is served by mail  
20 pursuant to subsection (7)(b) of this section, the minimum period for com-  
21 pliance must be extended by three days and the notice must include the ex-  
22 tension in the period stated in the notice.

23 (9)(a) Notwithstanding the provisions of subsection (6)(c) of this section  
24 and except as provided in paragraph (b) of this subsection, the purchaser is  
25 not a landlord subject to the provisions of ORS chapter 90 unless the pur-  
26 chaser:

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

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

31 or

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

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

5 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375,  
6 105.165, 659A.421 and 659A.425. The application of ORS 90.375 to a purchaser  
7 that does not become a landlord does not impose an affirmative duty to pay  
8 for or provide services. For the purpose of damages pursuant to this para-  
9 graph, "rent" refers to the amount [*paid by*] the tenant **pays** to the landlord  
10 for the right to occupy the unit before the foreclosure.

11 (10)(a) Except as provided in paragraph (b) of this subsection, the pur-  
12 chaser is not liable to the individual who possesses the property under a  
13 tenancy described in subsection (6)(c) of this section for:

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

15 (B) Returning a security deposit.

16 (b) A purchaser that is a landlord under the provisions of subsection (9)(a)  
17 of this section is liable to the individual who possesses the property under  
18 a tenancy described in subsection (6)(c) of this section for:

19 (A) Damage to the property or diminution in rental value that occurs af-  
20 ter the date of the trustee's sale; or

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

23 (11)(a) Except as provided in paragraph (b) of this subsection and not-  
24 withstanding an agreement to the contrary, in an action or defense arising  
25 pursuant to subsection (6)(c), (d), (f) or (g), (7) or (9)(c) of this section, rea-  
26 sonable attorney fees at trial and on appeal may be awarded to the prevailing  
27 party together with costs and disbursements.

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



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

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

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

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

15 (b) In addition to the notice required under paragraph (a) of this sub-  
16 section, the trustee shall 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  
19 place set for the sale that was stayed; and

20 (ii) The address provided by each member of the Oregon State Bar who  
21 by registered or certified mail requests the amended notice of sale and in-  
22 cludes with the request the notice of default or an identification number for  
23 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  
25 at least 8.5 by 11 inches in size; or

26 (B) By posting a true copy or a link to a true copy of the amended notice  
27 of sale on the trustee’s 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  
31 date, or date to which the sale was postponed, provided the requirements of

1 this subsection and ORS 86.740 and 86.750 are satisfied;

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

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

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

6 (14) If the publication of the notice of sale was not completed before the  
7 date the foreclosure proceedings were stayed by order of the court, by pro-  
8 ceedings in bankruptcy or for any other lawful reason, after release from the  
9 stay, in addition to complying with the provisions of subsections (12) and (13)  
10 of this section, the trustee shall complete the publication by publishing an  
11 amended notice of sale that states that the notice has been amended follow-  
12 ing release from the stay and that contains the amended date of sale. The  
13 amended notice must be published in a newspaper of general circulation in  
14 each of the counties in which the property is situated once a week for four  
15 successive weeks, except that the required number of publications must be  
16 reduced by the number of publications that were completed before the effec-  
17 tive date of the stay. The last publication must be made more than 20 days  
18 before the date the trustee conducts the sale.

19 **SECTION 3.** ORS 86.790 is amended to read:

20 86.790. (1) The trustee of a trust deed under ORS 86.705 to 86.795 [*shall*  
21 *not be*]:

22 (a) **Is not** required to comply with the provisions of ORS chapters 707  
23 and 709.

24 (b) [*and shall*] **Must** be:

25 [(a)] (A) [*Any*] **An** attorney who is an active member of the Oregon State  
26 Bar;

27 [(b)] (B) A financial institution or trust company, as defined in ORS  
28 706.008, that is authorized to do business under the laws of Oregon or the  
29 United States;

30 [(c)] (C) A title insurance company **or a subsidiary, affiliate, insurance**  
31 **producer or branch of the title insurance company that is** authorized

1 to insure title to real property in this state[, *its subsidiaries, affiliates, in-*  
2 *surance producers or branches*];

3 [(d)] **(D)** The United States or any agency [*thereof*] **of the United**  
4 **States**; or

5 [(e)] **(E)** An escrow [*agents*] **agent who is** licensed under ORS 696.505 to  
6 696.590.

7 **(c) Shall, if the trustee is a person described in paragraph (b)(B) or**  
8 **(C) of this subsection, maintain a registered agent and a registered**  
9 **office continuously in this state and file with the Secretary of State a**  
10 **statement that identifies the person's registered agent and lists the**  
11 **address of the person's registered office.**

12 (2) An attorney who is a trustee under subsection [(1)(a)] **(1)(b)(A)** of this  
13 section may represent the beneficiary in addition to performing the duties  
14 of trustee.

15 (3) At any time after the trust deed is executed, the beneficiary may ap-  
16 point in writing another qualified trustee. If the appointment of the succes-  
17 sor trustee is recorded in the mortgage records of the county or counties in  
18 which the trust deed is recorded, the successor trustee [*shall be vested with*  
19 *all*] **has** the powers of the original trustee.

20 (4) A trustee or successor trustee is a necessary and proper party to any  
21 proceeding to determine the validity of or enjoin any private or judicial  
22 proceeding to foreclose a trust deed, but a trustee or successor trustee is  
23 neither a necessary nor a proper party to any proceeding to determine title  
24 to the property subject to the trust deed, or to any proceeding to impose,  
25 enforce or foreclose any other lien on the subject property.

26 (5) [*Nothing in*] **The provisions of ORS 86.705 to 86.795** [*imposes*] **do not**  
27 **impose** a duty on the trustee or successor trustee to notify any person of  
28 any proceeding with respect to [*such*] **the** person, except a proceeding [*ini-*  
29 *tiated by*] **that** the trustee or successor trustee **initiates**.

30 (6) A trustee or the attorney for the trustee or any agent [*designated by*]  
31 **that** the trustee or the attorney **designates** may announce and accept a bid

1 from the beneficiary whether or not the beneficiary is present at the sale.

2 (7) The trustee or successor trustee [*shall have no*] **does not have a**  
3 fiduciary duty or fiduciary obligation to the grantor or other persons **that**  
4 **have** [*having*] an interest in the property subject to the trust deed. The  
5 trustee or successor trustee [*shall not be*] **is not** relieved of the duty to re-  
6 convey the property subject to the trust deed to the grantor [*upon request for*  
7 *reconveyance by*] **when** the beneficiary **requests a reconveyance**.

8 **SECTION 4.** ORS 86.705, as amended by section 5, chapter 112, Oregon  
9 Laws 2012, is amended to read:

10 86.705. As used in ORS 86.705 to 86.795:

11 (1) “Affordable housing covenant” has the meaning given that term in  
12 ORS 456.270.

13 (2) “Beneficiary” means a person named or otherwise designated in a trust  
14 deed as the person for whose benefit a trust deed is given, or the person’s  
15 successor in interest, and who is not the trustee unless the beneficiary is  
16 qualified to be a trustee under ORS 86.790 [(1)(d)] **(1)(b)(D)**.

17 (3) “Eligible covenant holder” has the meaning given that term in ORS  
18 456.270.

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

21 (5) “Residential trust deed” means a trust deed on property upon which  
22 are situated four or fewer residential units, one of which the grantor, the  
23 grantor’s spouse or the grantor’s minor or dependent child occupies as a  
24 principal residence at the time a default that results in an action to foreclose  
25 the obligation secured by the trust deed first occurs.

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

27 (7) “Trust deed” means a deed executed in conformity with ORS 86.705 to  
28 86.795 that conveys an interest in real property to a trustee in trust to secure  
29 the performance of an obligation the grantor or other person named in the  
30 deed owes to a beneficiary.

31 (8) “Trustee” means a person, other than the beneficiary, to whom a trust

1 deed conveys an interest in real property, or the person's successor in in-  
2 terest, or an employee of the beneficiary, if the employee is qualified to be  
3 a trustee under ORS 86.790.

4 **SECTION 5. The amendments to ORS 86.705, 86.755 and 86.790 by**  
5 **sections 1 to 4 of this 2013 Act apply to trustee's sales that occur on**  
6 **or after the effective date of this 2013 Act.**

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