

D R A F T

SUMMARY

Requires grantor that seeks mediation with trustee before foreclosure proceedings to provide mediation service provider with certain documents.

Makes beneficiary's duty to provide certain documents and to appear at mediation contingent on grantor's providing documents.

Specifies when grantor is at risk of default and would be eligible to seek mediation with beneficiary.

Specifies form of notice of determination that beneficiary must send to grantor if beneficiary determines that grantor is not eligible for foreclosure avoidance measure or if grantor fails to comply with foreclosure avoidance measure.

Revises definition of "beneficiary."

Modifies requirements for trustee to foreclose a trust deed by advertisement and sale.

Modifies requirements for providing notice of sale.

Modifies notice requirements for postponing trustee's sale.

Declares recorded trustee's deed prima facie evidence that all assignments required to be recorded are recorded. Declares instrument executed by beneficiary prima facie evidence that beneficiary is authorized to execute instrument.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to trust deeds; creating new provisions; amending ORS 86.705,
3 86.735, 86.750, 86.755, 86.780 and 86.790 and sections 2, 2a, 3, 4 and 4a,
4 chapter 112, Oregon Laws 2012; and declaring an emergency.

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

6 **SECTION 1.** Section 2, chapter 112, Oregon Laws 2012, is amended to
7 read:

8 **Sec. 2.** (1) As used in this section and sections 3 and 4a [*of this 2012*

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 *Act*], **chapter 112, Oregon Laws 2012**, “foreclosure avoidance measure”
2 means an agreement between a beneficiary and a grantor that uses one or
3 more of the following methods to modify an obligation that is secured by a
4 trust deed:

5 (a) The beneficiary defers or forbears from collecting one or more pay-
6 ments due on the obligation.

7 (b) The beneficiary modifies, temporarily or permanently, the payment
8 terms or other terms of the obligation.

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

10 (d) The [*grantor conducts*] **beneficiary approves** a short sale.

11 (e) The beneficiary provides the grantor with other assistance that ena-
12 bles the grantor to avoid a foreclosure.

13 (2)(a) Except as provided in paragraph (d) of this subsection, a beneficiary
14 that seeks to foreclose a residential trust deed under ORS 86.735 shall enter
15 into mediation with the grantor for the purpose of negotiating a foreclosure
16 avoidance measure in accordance with the provisions of this section.

17 (b) The Attorney General shall:

18 (A) Appoint a mediation service provider to coordinate a mediation pro-
19 gram and shall enter into an agreement to pay the mediation service provider
20 for the mediation service provider’s services from the Foreclosure Avoidance
21 Mediation Fund established in section 4, **chapter 112, Oregon Laws 2012**
22 [*of this 2012 Act*]. The appointment and the agreement are not subject to
23 ORS chapter 279A or 279B.

24 (B) Prescribe qualifications, training and experience requirements for
25 mediators by rule.

26 (C) Set the schedule of fees for the mediation by rule.

27 (c) The beneficiary and the grantor shall share the cost of the mediation,
28 except that the grantor’s portion of the cost may not exceed \$200. The
29 mediator may waive the grantor’s portion of the fee in accordance with rules
30 that the Attorney General adopts to describe circumstances that permit a
31 waiver.

1 (d) The requirement to enter into mediation with a grantor does not ap-
2 ply:

3 (A) To an individual, **partnership, corporation, limited liability com-**
4 **pany or other business entity, to** a financial institution[,] **or trust com-**
5 **pany** as **those terms are** defined in ORS 706.008, **to** a mortgage banker[,]
6 as defined in ORS 86A.100, **or to** a licensee[,] as defined in ORS 725.010, if
7 the individual, **partnership, corporation, limited liability company or**
8 **other business entity, financial institution, trust company, mortgage**
9 **banker or licensee** provides to the Attorney General a sworn affidavit that
10 states that during the preceding calendar year the individual, **partnership,**
11 **corporation, limited liability company or other business entity,** finan-
12 cial institution, **trust company,** mortgage banker or licensee did not com-
13 mence or cause an affiliate or agent of the individual, **partnership,**
14 **corporation, limited liability company or other business entity,** finan-
15 cial institution, **trust company,** mortgage banker or licensee to commence
16 more than a total of 250 actions to foreclose a residential trust deed by ad-
17 vertisement and sale under ORS 86.735 or a residential mortgage by suit
18 under ORS 88.010. An individual, **partnership, corporation, limited li-**
19 **ability company or other business entity,** financial institution, **trust**
20 **company,** mortgage banker or licensee that intends to claim an exemption
21 under this subparagraph shall file the affidavit **with the Attorney General**
22 either:

23 (i) [*Within 30 days after the operative date specified in section 11 of this*
24 *2012 Act to claim the exemption for calendar year 2012 and*] Not later than
25 January 31 in any [*subsequent*] calendar year in which the individual, **part-**
26 **nership, corporation, limited liability company or other business en-**
27 **tity,** financial institution, **trust company,** mortgage banker or licensee
28 intends to claim the exemption; or

29 (ii) At the time the individual, **partnership, corporation, limited li-**
30 **ability company or other business entity,** financial institution, **trust**
31 **company,** mortgage banker or licensee files a notice of default under ORS

1 86.735.

2 (B) If the grantor fails to confirm that the grantor will enter into medi-
3 ation by the date specified under subsection (3)(c) of this section.

4 (e) **The Attorney General shall maintain a publicly accessible index**
5 **of exemption affidavits filed under paragraph (d)(A) of this subsection**
6 **and shall make copies of the exemption affidavits available for any**
7 **person who desires a copy.**

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

11 (a) Schedules a date, time and location for the mediation. The date must
12 be not earlier than 45 days and not later than 90 days after the date on
13 which the notice of mediation was served or mailed as provided in ORS
14 86.740.

15 (b) Identifies **the mediator and identifies** and provides contact infor-
16 mation for the mediation service provider.

17 (c) Specifies a date at least 30 days before the scheduled date of the me-
18 diation by which the grantor must contact the mediation service provider **in**
19 **writing** to confirm that the grantor will enter into mediation. The notice
20 must state that the mediation service provider will deem the grantor to have
21 declined to enter into mediation if the grantor fails to confirm by the speci-
22 fied date.

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

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

27 (4)(a) If the grantor confirms by the date specified [*under*] **in** subsection
28 (3)(c) of this section that the grantor will enter into mediation, [*the benefi-*
29 *ciary or the beneficiary's agent shall*] **at least 20 days before the scheduled**
30 **date described in subsection (3)(a) of this section the grantor shall**
31 **provide the mediation service provider with:**

1 (A) An intake form, the contents and format of which the Attorney
2 General specifies by rule;

3 (B) Evidence of the grantor's income for the previous two full
4 months, such as:

5 (i) A record of wages or other pay the grantor received; or

6 (ii) A profit and loss statement, if available, if the grantor is self-
7 employed;

8 (C) Account statements for the grantor's bank account for the
9 previous two full months;

10 (D) A statement that shows how much income the grantor receives
11 from Social Security, disability, unemployment or other benefits and
12 that indicates how often and for how long the grantor receives and
13 will receive the benefits, if the grantor relies on income from the
14 benefits to pay the obligation secured by the grantor's residential trust
15 deed;

16 (E) A decree or judgment of dissolution or a legal separation
17 agreement, if the grantor must pay child support, spousal support or
18 related obligations;

19 (F) The most recent statement that shows the amount the grantor
20 paid for electricity, for heat, for natural gas and for other utilities;

21 (G) The most recent property tax statement or appraisal conducted
22 for the property that is described in the trust deed that the beneficiary
23 seeks to foreclose; and

24 (H) The grantor's tax returns for the previous two years.

25 (b) The mediation service provider shall provide the beneficiary or
26 beneficiary's agent with the material the grantor provides in accord-
27 ance with paragraph (a) of this subsection at least 15 days before the
28 scheduled date described in subsection (3)(a) of this section.

29 (c) If the grantor confirms by the date specified in subsection (3)(c)
30 of this section that the grantor will enter into mediation and the
31 grantor complies with the requirements set forth in paragraph (a) of

1 **this subsection, the beneficiary or the beneficiary's agent shall:**

2 **(A) Provide the mediation service provider, at least 15 days before**
3 **the scheduled date described in subsection (3)(a) of this section, with:**

4 **(i) The grantor's payment history for the obligation that is secured**
5 **by the residential trust deed that the beneficiary seeks to foreclose,**
6 **beginning with the most recent date on which the beneficiary's records**
7 **indicate that the obligation was not past due or otherwise in default;**

8 **(ii) A true copy of the original debt instrument that is the basis for**
9 **the right the beneficiary claims to foreclose the trust deed;**

10 **(iii) A copy of the authorization from the beneficiary to the**
11 **beneficiary's agent, if the beneficiary's agent will appear at the medi-**
12 **ation; and**

13 **(iv) A copy of any document that the beneficiary claims limits the**
14 **beneficiary's authority to agree to a foreclosure avoidance measure.**

15 **(B) Appear at the time and the location identified in the mediation ser-**
16 **vice provider's notice under subsection (3) of this section [*with the doc-***
17 ***umentation described in paragraph (b) of this subsection*].**

18 **(d) The mediation service provider shall provide the beneficiary or**
19 **beneficiary's agent with the material the grantor provides in accord-**
20 **ance with paragraph (a) of this subsection before the scheduled date**
21 **described in subsection (3)(a) of this section.**

22 **(e) If the grantor does not comply with the requirements set forth**
23 **in paragraph (a) of this subsection, the mediation service provider**
24 **shall deem the grantor to have declined to enter into mediation and**
25 **shall provide the beneficiary with the certificate described in sub-**
26 **section (6)(b) of this section without requiring the beneficiary to**
27 **comply with the requirements of paragraph (c) of this subsection.**

28 **[(b)] (f) If the beneficiary or beneficiary's agent must comply with**
29 **paragraph (c) of this subsection, the beneficiary or the beneficiary's agent**
30 **[*must*] shall appear in person at the location of the mediation unless the**
31 **mediator permits the beneficiary or the beneficiary's agent to appear in an-**

1 other manner for good cause shown. The fact that a beneficiary or
2 beneficiary's agent is located outside this state does not alone constitute
3 good cause for the purposes of this paragraph. [*The beneficiary or the*
4 *beneficiary's agent must appear at the mediation with:*]

5 [(A) *The grantor's complete payment history for the obligation that is se-*
6 *cured by the residential trust deed that the beneficiary seeks to foreclose;*]

7 [(B) *Evidence that the beneficiary is the real party in interest with respect*
8 *to the obligation, including but not limited to:*]

9 [(i) *A true copy of the original debt instrument that is the basis for the*
10 *right the beneficiary claims to foreclose the trust deed; and]*

11 [(ii) *Documents that show the chain of title for the property that is subject*
12 *to the residential trust deed from the date of the original loan for which the*
13 *beneficiary seeks foreclosure to the date of the notices given under ORS 86.740,*
14 *including conveyances, endorsements and assignments of the residential trust*
15 *deed, the note and the security instrument, whether recorded or unrecorded;*]

16 [(C) *A copy of the authorization from the beneficiary to the beneficiary's*
17 *agent, if the beneficiary's agent appears at the mediation;*]

18 [(D) *A copy of any of the following documents that apply to the note or*
19 *obligation that is secured by the trust deed:*]

20 [(i) *A servicing agreement the beneficiary entered into with another person;*
21 *or]*

22 [(ii) *An agreement by means of which the beneficiary pledged as collateral*
23 *for a security the beneficiary issued or sold all or a portion of the ownership*
24 *interest in the note or other obligation; and]*

25 [(E) *Other documentation the Attorney General specifies by rule.*]

26 [(c)] (g) The beneficiary or the beneficiary's agent that enters into medi-
27 ation with the grantor must have or be able to obtain, before the initial
28 mediation session concludes, authority to accept or reject a proposal for a
29 foreclosure avoidance measure and authority to enter with the grantor into
30 an agreement for a foreclosure avoidance measure.

31 (5)(a) The beneficiary or the beneficiary's agent **and the grantor** must

1 enter into mediation in accordance with mediation guidelines the Attorney
2 General establishes by rule.

3 (b) If the beneficiary or the beneficiary's agent agrees with the grantor
4 on a foreclosure avoidance measure, the beneficiary or beneficiary's agent
5 and the grantor shall set forth the terms of the foreclosure avoidance meas-
6 ure in a written agreement, a copy of which the beneficiary or beneficiary's
7 agent shall provide to the Attorney General. The beneficiary may elect to
8 pay the grantor's portion of the cost of the mediation or the grantor and the
9 beneficiary may agree to include the cost of the mediation as part of and in
10 accordance with any payment plan that is part of the foreclosure avoidance
11 measure.

12 (c) If the beneficiary or the beneficiary's agent and the grantor do not
13 agree on a foreclosure avoidance measure, the mediation service provider
14 shall, **within five days after the conclusion of the last mediation ses-**
15 **sion**, notify the Attorney General **in writing** that the mediation did not re-
16 sult in an agreement.

17 (6)(a) [*At the*] **Within five days after the** conclusion of the mediation,
18 if the beneficiary has complied with the requirements of subsections (4) and
19 (5) of this section, the mediation service provider shall provide the benefi-
20 ciary or the beneficiary's agent with a certificate of compliance in a form and
21 with contents that the Attorney General specifies by rule. The certificate
22 must state that the beneficiary has complied with the requirements of this
23 section.

24 (b) If the grantor does not confirm by the date specified under subsection
25 (3)(c) of this section that the grantor will enter into mediation **or the**
26 **grantor does not comply with the requirements of subsection (4)(a) of**
27 **this section**, the mediation service provider shall provide the beneficiary or
28 the beneficiary's agent with a certificate of compliance in a form and with
29 contents that the Attorney General specifies by rule. The certificate must
30 state that the grantor declined to enter into mediation with the beneficiary.

31 (c) **Within five days after the mediation service provider issues the**

1 **certificate of compliance under paragraph (a) or (b) of this subsection,**
2 the mediation service provider shall provide a copy of the certificate [*the*
3 *mediation service provider issues under paragraph (a) or (b) of this*
4 *subsection*] **of compliance** to the grantor and to the Attorney General.

5 (7)(a) A grantor that is at risk of [*default*] **defaulting on an obligation**
6 **secured by a residential trust deed** before the beneficiary or the trustee
7 has filed a notice of default for recording under ORS 86.735 **or before the**
8 **beneficiary has filed an action for the judicial foreclosure of the**
9 **grantor's trust deed** may notify the [*beneficiary or trustee*] **person to**
10 **whom the grantor was most recently directed to send payments** [*in the*
11 *trust deed*] or the beneficiary's or trustee's agent that the grantor wants to
12 enter [*into*] mediation. **Unless the beneficiary has claimed an exemption**
13 **in accordance with subsection (2)(d) of this section,** within 15 days after
14 receiving the request, the beneficiary or trustee or the beneficiary's or
15 trustee's agent shall respond to the grantor's request and shall notify the
16 Attorney General and the mediation service provider [*identified*] **described**
17 in subsection (2)(b) of this section. The response to the grantor must include
18 contact information for the Attorney General and the mediation service
19 provider. **If the beneficiary has claimed an exemption under subsection**
20 **(2)(d) of this section, within 15 days after receiving the grantor's re-**
21 **quest for mediation, the beneficiary or trustee or the beneficiary's or**
22 **trustee's agent shall inform the grantor in writing that the beneficiary**
23 **is exempt from the requirement to enter into mediation.**

24 (b) **For the purposes of paragraph (a) of this subsection, a grantor**
25 **is at risk of defaulting on an obligation if at the time the grantor re-**
26 **quests mediation the grantor has, for 30 days or more, failed to make**
27 **a required periodic payment or otherwise has failed to perform in ac-**
28 **cordance with the terms of the obligation that is secured by the trust**
29 **deed.**

30 [(b)] (c) A grantor that requests mediation under paragraph (a) of this
31 subsection may also notify the Attorney General and the mediation service

1 provider of the request. The Attorney General shall post on the Department
2 of Justice website contact information for the mediation service provider and
3 an address or method by which the grantor may notify the Attorney General.

4 [(c)] **(d) Unless the beneficiary has claimed an exemption under**
5 **subsection (2)(d) of this section**, within 10 days after receiving notice of
6 the request under paragraph (a) of this subsection, the mediation service
7 provider shall send a notice to the grantor and the beneficiary that, except
8 with respect to the date by which the mediation service provider must send
9 the notice, is otherwise in accordance with the provisions of subsection (3)
10 of this section.

11 **(e) If the beneficiary has claimed an exemption under subsection**
12 **(2)(d) of this section, within 10 days after receiving notification of the**
13 **grantor's request for mediation under paragraph (c) of this subsection,**
14 **the mediation service provider shall inform the grantor in writing that**
15 **the beneficiary is exempt from the requirement to enter into medi-**
16 **ation.**

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

20 **SECTION 2.** Section 2a, chapter 112, Oregon Laws 2012, is amended to
21 read:

22 **Sec. 2a.** (1)(a) Except as provided in subsection (3) of this section, a
23 grantor that confirms under section 2 (3)(c) [*of this 2012 Act*], **chapter 112,**
24 **Oregon Laws 2012**, that the grantor will enter into mediation shall consult
25 a housing counselor approved by the United States Department of Housing
26 and Urban Development **or an agency of this state** before the scheduled
27 date of the mediation.

28 (b) If, after consulting with the housing counselor, the grantor decides
29 not to enter into mediation, the grantor shall notify the mediation service
30 provider that sent the notice under section 2 (3) [*of this 2012 Act*], **chapter**
31 **112, Oregon Laws 2012**, that the grantor no longer intends to enter into

1 mediation. The housing counselor shall inform the grantor of the require-
2 ment under this paragraph to notify the mediation service provider. **Within**
3 **five days after the mediation service provider receives the notification**
4 **from the grantor**, the mediation service provider shall notify the benefi-
5 ciary or the beneficiary's agent **in writing** of the grantor's decision.

6 (2) The notice of mediation described in section 3 [*of this 2012 Act*],
7 **chapter 112, Oregon Laws 2012**, must include a statement that informs the
8 grantor that the grantor must consult a housing counselor in accordance
9 with subsection (1) of this section. The statement must also notify the
10 grantor that the requirement to consult a housing counselor is subject to the
11 provisions of subsection (3) of this section.

12 (3) The requirement under subsection (1) of this section to consult a
13 housing counselor does not apply to a grantor that could not obtain an ap-
14 pointment to consult a housing counselor within 30 days after receiving the
15 notice described in subsection (2) of this section. A grantor that intends to
16 claim the exemption provided under this subsection shall obtain from the
17 mediation service provider and sign an affidavit that attests that the grantor
18 could not obtain an appointment to consult a housing counselor within the
19 30-day period. The Attorney General by rule shall prescribe the form and
20 contents of the affidavit.

21 **SECTION 3.** Section 3, chapter 112, Oregon Laws 2012, is amended to
22 read:

23 **Sec. 3.** The notice of mediation required under ORS 86.740 (1)(b) must be
24 **substantially** in a form and with the contents the Attorney General specifies
25 by rule and must:

26 (1) List the **last-known** name, address, telephone number and other con-
27 tact information for the grantor or other person named in the residential
28 trust deed **or of the last person the beneficiary knows to have assumed**
29 **the grantor's obligations under the note and trust deed.**

30 (2) Specify the account number or other means by which the beneficiary
31 or trustee or an agent of the beneficiary or trustee identifies the obligation

1 that is secured by the residential trust deed.

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

4 (a) The beneficiary or an agent of the beneficiary that the beneficiary
5 authorizes to negotiate on the beneficiary's behalf;

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

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

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

13 (4) State that section 2, **chapter 112, Oregon Laws 2012**, [*of this 2012*
14 *Act*] requires the beneficiary to enter into mediation with the grantor for the
15 purpose of negotiating a foreclosure avoidance measure.

16 (5) List the documents the grantor must [*bring to the mediation. The At-*
17 *torney General by rule shall specify the documents the grantor must bring*]
18 **provide under section 2 (4)(a), chapter 112, Oregon Laws 2012.**

19 (6) State that the grantor **must appear in person and** may choose to
20 have an attorney or a housing counselor approved by the United States De-
21 partment of Housing and Urban Development **or an agency of this state**
22 represent the grantor at the mediation.

23 (7) State the costs of the mediation and specify the maximum cost for
24 which the grantor will be responsible.

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

28 (9) State that within 30 days after the date of the notice [*a*] **the** mediation
29 service provider will send another notice to the grantor with a date, time
30 and location for the mediation and with the other information specified in
31 section 2 (3) [*of this 2012 Act*], **chapter 112, Oregon Laws 2012.**

1 **SECTION 4.** Section 4, chapter 112, Oregon Laws 2012, is amended to
2 read:

3 **Sec. 4.** (1) The Foreclosure Avoidance Mediation Fund is established in
4 the State Treasury, separate and distinct from the General Fund. The fund
5 consists of moneys the Attorney General collects or receives for the purpose
6 of paying the expenses of coordinating a mediation program under section 2
7 [of this 2012 Act], **chapter 112, Oregon Laws 2012**, and related expenses.
8 The moneys in the fund are continuously appropriated to the Attorney Gen-
9 eral for the purposes of paying the expenses of coordinating the mediation
10 program and related expenses.

11 (2) The Attorney General may receive moneys for the purposes set forth
12 in subsection (1) of this section from any public or private source.

13 (3)(a) Except as provided in paragraph (b) of this subsection, a trustee or
14 beneficiary that files a notice of default under ORS 86.735 shall pay to the
15 county clerk that records the notice \$100 in addition to and not in lieu of
16 any fee that the county clerk charges for recording the notice of default.
17 The county clerk at the end of each month shall forward the proceeds of the
18 \$100 charge to the Attorney General for deposit into the fund described in
19 subsection (1) of this section.

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

1 **(b) The \$100 charge described in paragraph (a) of this subsection**
2 **does not apply to an individual, partnership, corporation, limited li-**
3 **ability company or other business entity, to a financial institution or**
4 **trust company as those terms are defined in ORS 706.008, to a mort-**
5 **gage banker as defined in ORS 86A.100, or to a licensee as defined in**
6 **ORS 725.010, if:**

7 **(A) The index maintained by the Attorney General under section 2**
8 **(2)(e), chapter 112, Oregon Laws 2012, shows that the individual, part-**
9 **nership, corporation, limited liability company or other business en-**
10 **tity, financial institution, trust company, mortgage banker or licensee**
11 **has filed an exemption affidavit under section 2 (2)(d)(A), chapter 112,**
12 **Oregon Laws 2012; or**

13 **(B) The individual, partnership, corporation, limited liability com-**
14 **pany or other business entity, financial institution, trust company,**
15 **mortgage banker or licensee provides to the county clerk a sworn af-**
16 **fidavit or a copy of the sworn affidavit the beneficiary provided to the**
17 **Attorney General pursuant to section 2 (2)(d)(A), chapter 112, Oregon**
18 **Laws 2012, that states that during the preceding calendar year the in-**
19 **dividual, partnership, corporation, limited liability company or other**
20 **business entity, financial institution, trust company, mortgage banker**
21 **or licensee did not commence or cause an affiliate or agent of the in-**
22 **dividual, partnership, corporation, limited liability company or other**
23 **business entity, financial institution, trust company, mortgage banker**
24 **or licensee to commence more than a total of 250 actions to foreclose**
25 **a residential trust deed by advertisement and sale under ORS 86.735**
26 **or a residential mortgage by suit under ORS 88.010. An individual,**
27 **partnership, corporation, limited liability company or other business**
28 **entity, financial institution, trust company, mortgage banker or**
29 **licensee that intends to claim an exemption under this paragraph shall**
30 **provide a copy of the affidavit either:**

31 **[(A)] (i) [Within 30 days after the operative date specified in section 11 of**

1 *this 2012 Act to claim the exemption for calendar year 2012 and]* Not later
2 than January 31 in any [*subsequent*] calendar year in which the individual,
3 **partnership, corporation, limited liability company or other business**
4 **entity**, financial institution, **trust company**, mortgage banker or licensee
5 intends to claim the exemption; or

6 [(B)] (ii) At the time the individual, **partnership, corporation, limited**
7 **liability company or other business entity**, financial institution, **trust**
8 **company**, mortgage banker or licensee files a notice of default under ORS
9 86.735.

10 **SECTION 5.** Section 4a, chapter 112, Oregon Laws 2012, is amended to
11 read:

12 **Sec. 4a.** (1)(a) If a beneficiary **that has entered into mediation with**
13 **a grantor under section 2, chapter 112, Oregon Laws 2012**, determines
14 that a grantor is not eligible for any foreclosure avoidance measure or **de-**
15 **termines after completing mediation with a grantor** that the grantor has
16 not complied with the terms of a foreclosure avoidance measure to which the
17 grantor has agreed, the beneficiary or the beneficiary's agent, at least [30]
18 **25** days before [*the date specified for*] the trustee's sale [*in a notice served*
19 *under ORS 86.740 or 86.755 (2)(b)*], shall notify the grantor in writing of the
20 beneficiary's determination and shall cause the notice to be served **or mailed**
21 as provided in ORS 86.740 (1).

22 (b) The notice must, in plain language, explain the basis for the
23 beneficiary's determination.

24 [(2) *The beneficiary or the beneficiary's agent shall mail a copy of the notice*
25 *of the determination described in subsection (1) of this section to the Depart-*
26 *ment of Justice on the same date on which the notice is served.*]

27 [(3)(a)] (2)(a) **If a beneficiary makes a determination under sub-**
28 **section (1)(a) of this section**, at least 20 days before the date specified for
29 the trustee's sale in a notice served under ORS 86.740 or 86.755 (2)(b)[,] the
30 beneficiary or the beneficiary's agent shall[:]

31 [(A)] record in the mortgage records for the property that is subject to

1 the trustee’s sale, in the county or in one of the counties in which the
2 property is located, an affidavit that states that the beneficiary has complied
3 with the requirements set forth in subsections (1) and (2) of this section[;
4 and]

5 [(B) Mail a copy of the affidavit to the department].

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

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

8 (B) Identify the grantor and, as of the date of the affidavit, the trustee
9 and the beneficiary;

10 (C) State that the beneficiary or beneficiary’s agent has complied with the
11 requirements set forth in [subsections (1) and (2)] **subsection (1)** of this
12 section; and

13 (D) Include proof of service on **or mailing to** the grantor for the notice
14 described in subsection (1) of this section.

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

20 **(3) The notice described in subsection (1) of this section must be in**
21 **substantially this form:**

22 _____

23 **NOTICE OF DETERMINATION**
24 **YOU ARE AT RISK OF FORECLOSURE**
25 **YOU MAY LOSE YOUR PROPERTY**
26 **IF YOU DO NOT TAKE IMMEDIATE ACTION**

27
28 **Lender’s Name:** _____

29 **Homeowner’s Name:** _____

30 **Property Address:** _____

31

1 **Your lender has determined that:**

2

3 **[] You are not eligible for:**

- 4 • **A forbearance agreement**
- 5 • **A temporary or permanent loan**
- 6 **modification**
- 7 • **A short sale**
- 8 • **A deed in lieu of foreclosure**
- 9 • **Any other foreclosure avoidance measure**

10

11 **Your lender considered these other foreclosure**
12 **avoidance measures, but these measures are not**
13 **available:**

14

15

16

17 **The basis for your lender's determination is**
18 **(must be described specifically and in plain**
19 **language):**

20

21

22

23 **[] You have not complied with the terms of**
24 **an agreement with your lender for a**
25 **forbearance, temporary or permanent loan**
26 **modification, short sale, deed in lieu of**
27 **foreclosure or other foreclosure avoidance**
28 **measure.**

29

30 **The basis for your lender's determination is**
31 **(must be described specifically and in plain**

1 **language):**

2 _____

3 _____

4

5 **Government agencies and nonprofit organizations can give you infor-**
6 **mation about foreclosure and help you decide what to do. For the**
7 **name and telephone number of an agency or organization near you,**
8 **please call _____.** If you need help finding a lawyer, call
9 **the Oregon State Bar’s Lawyer Referral Service at**
10 **_____ or visit online at _____.** If you have
11 **a low income, you might be eligible for assistance at no cost. For more**
12 **information and a directory of legal aid programs, visit**
13 **_____.**

14

15 **(Beneficiary or Beneficiary’s Agent)**

16

17 **By: _____ Date: _____**

18 _____

19 [(5)(a)] **(4)(a)** A beneficiary [*or an agent of the beneficiary*] that **is subject**
20 **to and** fails to **substantially** comply with the provisions of this section is
21 liable to the grantor in the amount of \$500 plus the amount of the grantor’s
22 actual damages for each failure to comply with a provision of this section.

23 (b) A grantor may bring an action against a beneficiary [*or an agent of*
24 *the beneficiary*] in a circuit court of this state to recover the amounts de-
25 scribed in paragraph (a) of this subsection. The grantor shall commence the
26 action within two years after the date on which the beneficiary [*or the*
27 *beneficiary’s agent*] should have complied, but did not comply, with the pro-
28 visions of this section. **The remedy provided for the grantor under this**
29 **subsection shall be the grantor’s exclusive remedy for a beneficiary’s**
30 **violation of this section.**

31 (c) Notwithstanding an agreement to the contrary, a court may award

1 reasonable attorney fees, costs and disbursements to [*a grantor that obtains*
2 *a final judgment in the grantor's favor*] **the prevailing party in an action**
3 **the grantor brings under paragraph (b) of this subsection.**

4 **SECTION 6.** ORS 86.705, as amended by section 5, chapter 112, Oregon
5 Laws 2012, 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
8 ORS 456.270.

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

13 (3) "Eligible covenant holder" has the meaning given that term in ORS
14 456.270.

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

17 (5) "Residential trust deed" means a trust deed on property upon which
18 are situated four or fewer residential units, one of which the grantor, the
19 grantor's spouse or the grantor's minor or dependent child occupies as a
20 principal residence at the time a **trust deed foreclosure is commenced**
21 [*default that results in an action to foreclose the obligation secured by the trust*
22 *deed first occurs*].

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

24 (7) "Trust deed" means a deed executed in conformity with ORS 86.705 to
25 86.795 that conveys an interest in real property to a trustee in trust to secure
26 the performance of an obligation the grantor or other person named in the
27 deed owes to a beneficiary **or a person for whom the beneficiary is acting**
28 **as agent or nominee.**

29 (8) "Trustee" means a person, other than the beneficiary, to whom a trust
30 deed conveys an interest in real property, or the person's successor in in-
31 terest, or an employee of the beneficiary, if the employee is qualified to be

1 a trustee under ORS 86.790.

2 **SECTION 7.** ORS 86.735, as amended by section 6, chapter 112, Oregon
3 Laws 2012, is amended to read:

4 86.735. (1) A trustee may foreclose a trust deed by advertisement and sale
5 in the manner provided in ORS 86.740 to 86.755 if:

6 [(1)] (a) The trust deed, [*any assignments of the trust deed by the trustee*
7 *or the beneficiary and*] any appointment of a successor trustee **and any as-**
8 **signment that changes the designation of the beneficiary of the trust**
9 **deed** are recorded in the mortgage records in the counties in which the
10 property described in the deed is situated;

11 [(2)] *There is a default by the grantor or other person that owes an obli-*
12 *gation, the performance of which is secured by the trust deed, or by the*
13 *grantor's or other person's successors in interest with respect to a provision in*
14 *the deed that authorizes sale in the event of default of the provision;]*

15 (b) **The grantor or other person, or the grantor's or other person's**
16 **successor in interest, defaults on an obligation for which the trust**
17 **deed secures performance and with respect to which a provision in the**
18 **deed authorizes sale in the event of default;**

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

24 [(4)] (d) The beneficiary or the beneficiary's agent has filed for recording
25 in the official records of the county or counties in which the property that
26 is subject to the residential trust deed is located the certificate of compliance
27 the beneficiary received under section 2, chapter 112, Oregon Laws 2012, if
28 the beneficiary must enter into mediation with the grantor under section 2
29 (2)(a), chapter 112, Oregon Laws 2012;

30 [(5)(a)] (e) The beneficiary or the beneficiary's agent has complied with
31 the provisions of section 4a, chapter 112, Oregon Laws 2012, **if the pro-**

1 **visions apply to the beneficiary; and**

2 *[(b) The grantor is not in compliance with the terms of a foreclosure*
3 *avoidance measure upon which the beneficiary and the grantor have agreed;*
4 *and]*

5 *[(6)]* **(f)** An action has not been commenced to recover the debt or any
6 part of the debt then remaining secured by the trust deed, or, if an action
7 has been commenced, the action has been dismissed, except that:

8 *[(a)]* **(A)** Subject to ORS 86.010 and the procedural requirements of ORCP
9 79 and 80, an action may be commenced to appoint a receiver or to obtain
10 a temporary restraining order during foreclosure of a trust deed by adver-
11 tisement and sale, except that a receiver may not be appointed with respect
12 to a single-family residence that the grantor, the grantor's spouse or the
13 grantor's minor or dependent child occupies as a principal residence.

14 *[(b)]* **(B)** An action may be commenced to foreclose, judicially or
15 nonjudicially, the same trust deed as to any other property covered by the
16 trust deed, or any other trust deeds, mortgages, security agreements or other
17 consensual or nonconsensual security interests or liens that secure repay-
18 ment of the debt.

19 **(2) For purposes of subsection (1) of this section, the negotiation,**
20 **transfer or assignment of a note does not constitute an assignment**
21 **that changes the designation of the beneficiary of the trust deed.**

22 **SECTION 8.** ORS 86.750 is amended to read:

23 86.750. (1)(a) *[Except as provided in paragraph (b) of this subsection,]* The
24 notice prescribed in ORS 86.745 must be served upon an occupant of the
25 property described in the trust deed in the manner in which a summons is
26 served *[pursuant to]* **under ORCP 7 D(2) and 7 D(3) or mailed by both first**
27 **class and certified mail with return receipt requested,** at least 120 days
28 before the day the trustee conducts the sale, **to the last-known address**
29 **of the occupant.**

30 *[(b)(A) If service cannot be effected on an occupant as provided in para-*
31 *graph (a) of this subsection on the first attempt, the person that attempts to*

1 *effect service shall post a copy of the notice in a conspicuous place on the*
2 *property on the date of the first attempt. The person that attempts to effect*
3 *service shall make a second attempt to effect service on a day that is at least*
4 *two days after the first attempt.]*

5 *[(B) If service cannot be effected on an occupant as provided in paragraph*
6 *(a) of this subsection on the second attempt, the person that attempts to effect*
7 *service shall post a copy of the notice in a conspicuous place on the property*
8 *on the date of the second attempt. The person that attempts to effect service*
9 *shall make a third attempt to effect service on a day that is at least two days*
10 *after the second attempt.]*

11 *[(C) If service cannot be effected on an occupant as provided in paragraph*
12 *(a) of this subsection on the third attempt, the person that attempts to effect*
13 *service shall send a copy of the notice, bearing the word “occupant” as the*
14 *addressee, to the property address by first class mail with postage prepaid.]*

15 [(c)] (b) Service on an occupant is effected on the earlier of the date that
16 notice is served as provided in paragraph (a) of this subsection or the
17 [first] date on which notice is [posted as described in paragraph (b)(A) of this
18 subsection] **mailed**.

19 (2)(a) Except as provided in paragraph (b) of this subsection, a copy of the
20 notice of sale must be published in a newspaper of general circulation in
21 each of the counties in which the property is situated once a week for four
22 successive weeks. The last publication must be made more than 20 days
23 prior to the date the trustee conducts the sale.

24 (b) The copy of the notice of sale required to be published under para-
25 graph (a) of this subsection does not need to include the notice to tenants
26 required under ORS 86.745 (9).

27 (3) At or before the time the trustee conducts the sale, the trustee shall
28 file for recording in the official record of the county or counties in which
29 the property described in the deed is situated the following affidavits with
30 respect to the notice of sale:

31 (a) An affidavit of mailing, if any;

1 (b) An affidavit of service, if any; **and**

2 [(c) *An affidavit of service attempts and posting, if any; and*]

3 [(d)] (c) An affidavit of publication.

4 (4) At or before the time the trustee conducts the sale, the trustee shall
5 file for recording in the official record of the county or counties in which
6 the property described in the deed is situated an affidavit of mailing with
7 respect to the notice to the grantor required under ORS 86.737.

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

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

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

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

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

29 (c)(A) Except as provided in subparagraph (B) of this paragraph, if an
30 eligible covenant holder purchases the property in accordance with para-
31 graph (b) of this subsection, the sale forecloses and terminates all other in-

1 terests in the property as provided in ORS 86.770 (1).

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

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

14 (b)(A) **Except as provided in subparagraphs (B) and (C) of this par-**
15 **agraph**, if a person postpones the sale date [*as provided in*] **under** paragraph
16 (a) of this subsection, the trustee, in the manner provided for [*service of*
17 *the*] **giving a** notice of sale under ORS 86.740 (1), shall cause written notice
18 of the new time, date and place for the sale to be served on **or mailed to**
19 the grantor and [*on*] any person [*to whom notice of the sale was given*] **who**
20 **was given a notice of sale** under ORS 86.745. The **postponement** notice
21 must be given at least 15 days before the new sale date. [*The person may*
22 *postpone the sale once, for not more than two calendar days, without giving*
23 *notice as provided in this paragraph. The person may not postpone the sale for*
24 *more than two calendar days or more than once without giving notice as pro-*
25 *vided in this paragraph.*]

26 (B) **The person conducting the sale may, on the day previously**
27 **scheduled for the sale, postpone the time set for the sale one or more**
28 **times to a later time that day, giving notice of each postponement by**
29 **public proclamation made at the time and place previously set for the**
30 **sale.**

31 (C) **The person conducting the sale may postpone the sale once be-**

1 **yond the originally scheduled sale date for not more than two calendar**
2 **days, giving notice of the postponement by public proclamation made**
3 **at the time and place originally set for the sale.**

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

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

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

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

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

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

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

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

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

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

31 (A) Personal delivery to the tenant.

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

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

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

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

11

12 NOTICE TO RESIDENTIAL TENANTS OF
13 CHANGE IN OWNERSHIP

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

18

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

22 • THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE
23 A FIXED TERM LEASE; OR

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

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

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

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

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

9 **IMPORTANT:**

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

20 **YOUR TENANCY**
21 **BETWEEN NOW**
22 **AND THE MOVE-OUT DATE**

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

- 30 • You do not owe rent;
- 31 • The new owner is not your landlord and is not responsible for main-

1 taining the property; and

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

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

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

19

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

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

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

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

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

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

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

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

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

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

29 (B) Prevents the tenant from recovering prevailing party attorney fees or
30 costs and disbursements pursuant to subsection (11)(b) of this section. The
31 90-day notice must describe the provisions of this paragraph.

1 (e) A purchaser may not commence a proceeding under ORS 105.105 to
2 105.168 that is authorized under this subsection before the later of:

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

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

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

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

13 (f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to
14 105.168 must attach proof of service of a written termination notice required
15 by paragraph (c) of this subsection to the pleadings.

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

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

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

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

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

30 (a) Personal delivery to the tenant.

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

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

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

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

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

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

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

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

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

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

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

1 (B) Returning a security deposit.

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

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

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

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

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

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

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

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

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

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

3 (A) By registered or certified mail to:

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

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

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

14 (13) The amended notice of sale must:

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

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

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

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

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

23 (14) If the publication of the notice of sale was not completed before the
24 date the foreclosure proceedings were stayed by order of the court, by pro-
25 ceedings in bankruptcy or for any other lawful reason, after release from the
26 stay, in addition to complying with the provisions of subsections (12) and (13)
27 of this section, the trustee shall complete the publication by publishing an
28 amended notice of sale that states that the notice has been amended follow-
29 ing release from the stay and that contains the amended date of sale. The
30 amended notice must be published in a newspaper of general circulation in
31 each of the counties in which the property is situated once a week for four

1 successive weeks, except that the required number of publications must be
2 reduced by the number of publications that were completed before the effec-
3 tive date of the stay. The last publication must be made more than 20 days
4 before the date the trustee conducts the sale.

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

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

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

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

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

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

31 (B) If an interest in the property exists that is prior to the eligible

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

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

12 (b)(A) **Except as provided in subparagraphs (B) and (C) of this par-**
13 **agraph,** if a person postpones the sale date [*as provided in*] **under** paragraph
14 (a) of this subsection, the trustee, in the manner provided for [*service of*
15 *the*] **giving a** notice of sale under ORS 86.740 (1), shall cause written notice
16 of the new time, date and place for the sale to be served on **or mailed to**
17 the grantor and [*on*] any person [*to whom notice of the sale was given*] **who**
18 **was given a notice of sale** under ORS 86.745. The **postponement** notice
19 must be given at least 15 days before the new sale date. [*The person may*
20 *postpone the sale once, for not more than two calendar days, without giving*
21 *notice as provided in this paragraph. The person may not postpone the sale for*
22 *more than two calendar days or more than once without giving notice as pro-*
23 *vided in this paragraph.*]

24 (B) **The person conducting the sale may, on the day previously**
25 **scheduled for the sale, postpone the time set for the sale one or more**
26 **times to a later time that day, giving notice of each postponement by**
27 **public proclamation made at the time and place previously set for the**
28 **sale.**

29 (C) **The person conducting the sale may postpone the sale once be-**
30 **yond the originally scheduled sale date for not more than two calendar**
31 **days, giving notice of the postponement by public proclamation made**

1 **at the time and place originally set for the sale.**

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

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

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

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

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

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

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

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

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

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

29 (A) Personal delivery to the tenant.

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

31 (C) First class mail to the tenant at the dwelling unit and attachment of

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

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

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

9
10 NOTICE TO RESIDENTIAL TENANTS OF
11 CHANGE IN OWNERSHIP

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

16
17 IF YOU ARE A BONA FIDE TENANT RENTING THIS PROPERTY AS
18 A RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE
19 LIVING IN THIS PROPERTY AFTER THE FORECLOSURE SALE FOR:

- 20 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMI-
21 NATION NOTICE, IF YOU HAVE A FIXED TERM LEASE; OR
22 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRIT-
23 TEN TERMINATION NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR
24 WEEK-TO-WEEK RENTAL AGREEMENT.

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

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

31 A bona fide tenant is a residential tenant who is not the borrower

1 (property owner), or a child, spouse or parent of the borrower, and whose
2 rental agreement:

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

8 **IMPORTANT:**

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

19 **YOUR TENANCY**

20 **BETWEEN NOW**

21 **AND THE MOVE-OUT DATE**

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

- 29 • You do not owe rent;
- 30 • The new owner is not your landlord and is not responsible for main-
31 taining the property; and

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

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

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

18

19 (6)(a) Except as provided in paragraph (b) or (c) of this subsection, the
20 purchaser at the trustee's sale is entitled to possession of the property on
21 the 10th day after the sale. A person that remains in possession after the
22 10th day under any interest, except an interest prior to the trust deed, or
23 an interest the grantor or a successor of the grantor created voluntarily, is
24 a tenant at sufferance. The purchaser may obtain possession of the property
25 from a tenant at sufferance by following the procedures set forth in ORS
26 105.105 to 105.168 or other applicable judicial procedure.

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

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

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

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

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

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

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

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

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

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

31 (e) A purchaser may not commence a proceeding under ORS 105.105 to

1 105.168 that is authorized under this subsection before the later of:

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

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

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

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

12 (f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to
13 105.168 must attach proof of service of a written termination notice required
14 by paragraph (c) of this subsection to the pleadings.

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

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

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

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

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

29 (a) Personal delivery to the tenant.

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

31 (c) First class mail to the tenant at the dwelling unit and attachment of

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

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

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

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

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

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

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

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

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

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

31 (B) Returning a security deposit.

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

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

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

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

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

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

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

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

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

31 (b) In addition to the notice required under paragraph (a) of this sub-

1 section, the trustee shall send amended notice of sale:

2 (A) By registered or certified mail to:

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

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

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

13 (13) The amended notice of sale must:

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

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

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

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

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

22 (14) If the publication of the notice of sale was not completed before the
23 date the foreclosure proceedings were stayed by order of the court, by pro-
24 ceedings in bankruptcy or for any other lawful reason, after release from the
25 stay, in addition to complying with the provisions of subsections (12) and (13)
26 of this section, the trustee shall complete the publication by publishing an
27 amended notice of sale that states that the notice has been amended follow-
28 ing release from the stay and that contains the amended date of sale. The
29 amended notice must be published in a newspaper of general circulation in
30 each of the counties in which the property is situated once a week for four
31 successive weeks, except that the required number of publications must be

1 reduced by the number of publications that were completed before the effec-
2 tive date of the stay. The last publication must be made more than 20 days
3 before the date the trustee conducts the sale.

4 **SECTION 11.** ORS 86.780 is amended to read:

5 86.780. (1)(a) [*When the*] **If a trustee's deed is recorded in the deed records**
6 **of the county or counties where the property described in the deed is situ-**
7 **ated, the recitals contained in the deed and in the [*affidavits*] **documents****
8 **required to be recorded under [*ORS 86.750 (3) and (4) shall be*] **ORS 86.705****
9 **to 86.795 are prima facie evidence [*in any court*] of the truth of the matters**
10 **set forth [*therein*] in the recitals, but the recitals [*shall be*] are conclusive**
11 **in favor of a purchaser for value in good faith relying upon [*them*] the re-**
12 **citals.**

13 (b) **A trustee's deed recorded as provided in paragraph (a) of this**
14 **subsection is prima facie evidence that all assignments of the trust**
15 **deed that are required to be recorded under ORS 86.735 are recorded,**
16 **but the recording is conclusive in favor of a purchaser for value in**
17 **good faith that relies upon the recording of the trustee's deed.**

18 (2) **A trustee's sale that forecloses a trust deed in which a nominee**
19 **is designated as beneficiary and that is completed before the effective**
20 **date of this 2013 Act is not void or voidable by reason of the absence**
21 **in the record of an assignment of the trust deed unless the assignment**
22 **changes the designation of the beneficiary of the trust deed.**

23 (3) **An instrument that a beneficiary executes is prima facie evi-**
24 **dence that the beneficiary has authorization to execute the instrument**
25 **from the person that owns or holds the debt or other obligation that**
26 **the trust deed secures. The instrument is conclusive in favor of a**
27 **purchaser for value in good faith that relies on the instrument unless,**
28 **before the purchaser's reliance begins, the beneficiary has recorded**
29 **an instrument withdrawing or repudiating the instrument it previ-**
30 **ously executed.**

31 **SECTION 12.** ORS 86.790 is amended to read:

1 86.790. (1) The trustee of a trust deed under ORS 86.705 to 86.795 shall
2 not be required to comply with the provisions of ORS chapters 707 and 709
3 and shall be:

4 (a) Any attorney who is an active member of the Oregon State Bar;

5 (b) A financial institution or trust company, as defined in ORS 706.008,
6 that is authorized to do business under the laws of Oregon or the United
7 States;

8 (c) A title insurance company authorized to insure title to real property
9 in this state, its subsidiaries, affiliates, insurance producers or branches;

10 (d) The United States or any agency thereof; or

11 (e) Escrow agents licensed under ORS 696.505 to 696.590.

12 **(2) The person named or otherwise designated as the beneficiary in**
13 **a trust deed may not be the trustee under the trust deed unless the**
14 **person is qualified to be a trustee under subsection (1)(d) of this sec-**
15 **tion.**

16 [(2)] (3) An attorney who is a trustee under subsection (1)(a) of this sec-
17 tion may represent the beneficiary in addition to performing the duties of
18 trustee.

19 [(3)] (4) At any time after the trust deed is executed, the beneficiary may
20 appoint in writing another qualified trustee. If the appointment of the suc-
21 cessor trustee is recorded in the mortgage records of the county or counties
22 in which the trust deed is recorded, the successor trustee shall be vested
23 with all the powers of the original trustee.

24 [(4)] (5) A trustee or successor trustee is a necessary and proper party to
25 any proceeding to determine the validity of or enjoin any private or judicial
26 proceeding to foreclose a trust deed, but a trustee or successor trustee is
27 neither a necessary nor a proper party to any proceeding to determine title
28 to the property subject to the trust deed, or to any proceeding to impose,
29 enforce or foreclose any other lien on the subject property.

30 [(5)] (6) Nothing in ORS 86.705 to 86.795 imposes a duty on the trustee
31 or successor trustee to notify any person of any proceeding with respect to

1 such person, except a proceeding initiated by the trustee or successor trustee.

2 [(6)] (7) A trustee or the attorney for the trustee or any agent designated
3 by the trustee or the attorney may announce and accept a bid from the
4 beneficiary whether or not the beneficiary is present at the sale.

5 [(7)] (8) The trustee or successor trustee shall have no fiduciary duty or
6 fiduciary obligation to the grantor or other persons having an interest in the
7 property subject to the trust deed. The trustee or successor trustee shall not
8 be relieved of the duty to reconvey the property subject to the trust deed to
9 the grantor upon request for reconveyance by the beneficiary.

10 **SECTION 13. Section 14 of this 2013 Act is added to and made a part**
11 **of ORS 86.705 to 86.795.**

12 **SECTION 14. (1) A beneficiary, including a beneficiary designated**
13 **as an agent or nominee, may designate an agent or nominee to act on**
14 **behalf of the beneficiary.**

15 **(2) A third party may rely on a designation of an agent or nominee**
16 **in the recorded trust deed or in a separate document that has been**
17 **recorded in the records of the counties in which the trust deed was**
18 **recorded unless:**

19 **(a) Termination of the designation has been recorded in the records;**
20 **or**

21 **(b) The third party has actual notice that the designation has been**
22 **terminated.**

23 **(3) The recording of the original trust deed establishes the identity**
24 **of the original beneficiary as agent or nominee for a successor in in-**
25 **terest unless:**

26 **(a) An assignment to the successor in interest has been recorded**
27 **and the assignment does not designate the original beneficiary as**
28 **agent or nominee for the successor in interest; or**

29 **(b) A document has been recorded that designates a person other**
30 **than the original beneficiary as agent or nominee for the successor in**
31 **interest.**

1 **SECTION 15.** (1) Section 14 of this 2013 Act and the amendments to
2 statutes and session laws by sections 1 to 12 of this 2013 Act become
3 operative 91 days after the effective date of this 2013 Act.

4 (2) The Attorney General may take any action before the operative
5 date specified in subsection (1) of this section that is necessary to en-
6 able the Attorney General to exercise, on and after the operative date
7 specified in subsection (1) of this section, all of the duties, functions
8 and powers conferred on the Attorney General by the enactment of
9 section 14 of this 2013 Act and the amendments to statutes and session
10 laws by sections 1 to 12 of this 2013 Act.

11 **SECTION 16.** Section 14 of this 2013 Act and the amendments to
12 statutes and session laws by sections 1 to 12 of this 2013 Act apply to
13 all foreclosures by advertisement and sale, whether commenced be-
14 fore, on or after the effective date of this 2013 Act.

15 **SECTION 17.** This 2013 Act being necessary for the immediate
16 preservation of the public peace, health and safety, an emergency is
17 declared to exist, and this 2013 Act takes effect on its passage.

18
