

House Bill 2568

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Debtor-Creditor Section)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that in amended notice of sale following release from stay on foreclosure proceedings, trustee must describe only defaults that existed on date stay was terminated if portion of defaults specified in original notice of sale was cured during stay or if additional defaults have occurred during stay.

A BILL FOR AN ACT

1
2 Relating to requirements for amended notice of sale following stay of foreclosure; creating new
3 provisions; and amending ORS 86.755.

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

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

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

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

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

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

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

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

29 (2)(a) The trustee or the attorney for the trustee, or an agent that the trustee or the attorney
30 [*conducting the sale*] designates, may postpone the sale for one or more periods that total not more

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 than 180 days from the original sale date, giving notice of each postponement by public proclamation
 2 made at the time and place set for sale. The trustee, the attorney or an agent that the trustee or
 3 the attorney designates may make the proclamation.

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

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

15 (4) The trustee’s deed shall convey to the purchaser the interest in the property that the grantor
 16 had, or had the power to convey, at the time the grantor executed the trust deed, together with any
 17 interest the grantor or the grantor’s successors in interest acquire after the execution of the trust
 18 deed.

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

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

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

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

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

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

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

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

34 (A) Personal delivery to the tenant.

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

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

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

41 (d) A notice that contains the information required under paragraph (b)(B) and (C) of this sub-
 42 section meets the requirements of paragraph (b) of this subsection if the notice is in substantially
 43 the following form:
 44 _____
 45

1 NOTICE TO RESIDENTIAL TENANTS OF
2 CHANGE IN OWNERSHIP

3 The property in which you are living has gone through foreclosure and was sold to a new owner
4 on _____ (date). The contact information for the new owner or the owner's representative is
5 _____ (name, address, telephone number).
6

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

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

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

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

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

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

25 IMPORTANT:

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

34 YOUR TENANCY
35 BETWEEN NOW
36 AND THE MOVE-OUT DATE

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

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

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

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

14
 15 (6)(a) Except as provided in paragraph (b) or (c) of this subsection, the purchaser at the trustee's
 16 sale is entitled to possession of the property on the 10th day after the sale. A person that remains
 17 in possession after the 10th day under any interest, except an interest prior to the trust deed, or
 18 an interest the grantor or a successor of the grantor created voluntarily, is a tenant at sufferance.
 19 The purchaser may obtain possession of the property from a tenant at sufferance by following the
 20 procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

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

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

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

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

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

36 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS
 37 90.100.

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

45 (A) Does not prevent the tenant from asserting the existence of the fixed term tenancy as a

1 defense to the action.

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

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

7 (A) The 10th day after the trustee’s sale;

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

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

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

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

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

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

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

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

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

32 (a) Personal delivery to the tenant.

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

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

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

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

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

45 (B) Enters into a new rental agreement with the individual who possesses the property under

1 a tenancy described in subsection (6)(c) of this section; or

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

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

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

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

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

15 (B) Returning a security deposit.

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

19 (A) Damage to the property or diminution in rental value that occurs after the date of the
20 trustee’s sale; or

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

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

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

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

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

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

34 (12)(a) Notwithstanding subsection (2)(a) of this section, except when a beneficiary has partic-
35 ipated in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by pro-
36 ceedings in bankruptcy or for any other lawful reason shall, after release from the stay, continue
37 as if uninterrupted, if within 30 days after release the trustee sends amended notice of sale by reg-
38 istered or certified mail to the last-known address of the persons listed in ORS 86.740 and 86.750 (1).

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

41 (A) By registered or certified mail to:

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

44 (ii) The address provided by each member of the Oregon State Bar who by registered or certified
45 mail requests the amended notice of sale and includes with the request the notice of default or an

1 identification number for the trustee's sale that would assist the trustee in identifying the property
 2 subject to the trustee's sale and a self-addressed, stamped envelope measuring at least 8.5 by 11
 3 inches in size; or

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

6 [(13)] (c) The amended notice of sale must:

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

8 [(b)] (B) Set an amended date of sale that may be the same as the original sale date, or date to
 9 which the sale was postponed, provided the requirements of this [subsection] **paragraph** and ORS
 10 86.740 and 86.750 are satisfied;

11 [(c)] (C) Specify the time and place for sale;

12 [(d)] (D) Conform to the requirements of ORS 86.745; and

13 [(e)] (E) State that the original sale proceedings were stayed and the date the stay terminated.

14 [(14)] (d) If the publication of the notice of sale was not completed before the date the foreclo-
 15 sure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other
 16 lawful reason, after release from the stay, in addition to complying with the provisions of [sub-
 17 sections (12) and (13) of this section] **paragraphs (b) and (c) of this subsection**, the trustee shall
 18 complete the publication by publishing an amended notice of sale that states that the notice has
 19 been amended following release from the stay and that contains the amended date of sale. The
 20 amended notice must be published in a newspaper of general circulation in each of the counties in
 21 which the property is situated once a week for four successive weeks, except that the required
 22 number of publications must be reduced by the number of publications that were completed before
 23 the effective date of the stay. The last publication must be made more than 20 days before the date
 24 the trustee conducts the sale.

25 **(e) If a portion of the defaults specified in the original notice of default or in the original**
 26 **notice of sale was cured during the time the foreclosure proceedings were stayed, or if ad-**
 27 **ditional defaults have occurred during that time, the trustee shall describe in the amended**
 28 **notice of sale only those defaults that existed on the date on which the stay was terminated.**

29 **(f) After a release from a stay of proceedings, the trustee or the attorney for the trustee,**
 30 **or an agent that the trustee or the attorney designates, may postpone a sale for one or more**
 31 **periods that total not more than the greater of 60 days or the portion of the 180-day period**
 32 **allowed for postponement under subsection (2)(a) of this section that remained on the day**
 33 **before the stay began. A postponement under this paragraph must comply with the proce-**
 34 **dural and notice requirements specified in subsection (2) of this section.**

35 **SECTION 2.** ORS 86.755, as amended by section 7, chapter 510, Oregon Laws 2011, and section
 36 10, chapter 112, Oregon Laws 2012, is amended to read:

37 86.755. (1)(a) A trustee shall hold a trustee's sale on the date and at the time and place desig-
 38 nated in the notice of sale given under ORS 86.740. The designated time of the trustee's sale must
 39 be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the
 40 designated place of the trustee's sale must be in the county or one of the counties in which the
 41 property is situated. Except as provided in paragraph (b) of this subsection, the trustee may sell the
 42 property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the
 43 highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding
 44 the trustee, may bid at the trustee's sale. An attorney for the trustee, or an agent that the trustee
 45 or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (A) Personal delivery to the tenant.

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

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

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

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

14 _____
15
16 NOTICE TO RESIDENTIAL TENANTS OF
17 CHANGE IN OWNERSHIP

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

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

- 25 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF
26 YOU HAVE A FIXED TERM LEASE; OR
- 27 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION
28 NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO-WEEK RENTAL AGREEMENT.

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

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

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

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

40 IMPORTANT:

41 YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER’S REPRESENTATIVE AT
42 THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER
43 KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE
44 OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED
45 TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 30 DAYS LEFT. Written evidence

1 of your rental agreement can be a copy of your lease or rental agreement, or other documentation
 2 of the existence of your rental agreement. Keep your original documents and a record of any infor-
 3 mation you give to the new owner.

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

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

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

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

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

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

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

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

- 45 (A) At least 60 days after service of a written termination notice, if the bona fide tenancy is a

1 fixed term tenancy as defined in ORS 90.100; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) Personal delivery to the tenant.

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

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

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

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

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

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

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

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

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

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

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

29 (B) Returning a security deposit.

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

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

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

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

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

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

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

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

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

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

10 (A) By registered or certified mail to:

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

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

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

20 [(13)] (c) The amended notice of sale must:

21 [(a)] (A) Be given at least [20] **15** days before the amended date of sale;

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

25 [(c)] (C) Specify the time and place for sale;

26 [(d)] (D) Conform to the requirements of ORS 86.745; and

27 [(e)] (E) State that the original sale proceedings were stayed and the date the stay terminated.

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

39 (e) **If a portion of the defaults specified in the original notice of default or in the original**
 40 **notice of sale was cured during the time the foreclosure proceedings were stayed, or if ad-**
 41 **ditional defaults have occurred during that time, the trustee shall describe in the amended**
 42 **notice of sale only those defaults that existed on the date on which the stay was terminated.**

43 (f) **After a release from a stay of proceedings, the trustee or the attorney for the trustee,**
 44 **or an agent that the trustee or the attorney designates, may postpone a sale for one or more**
 45 **periods that total not more than the greater of 60 days or the portion of the 180-day period**

1 allowed for postponement under subsection (2)(a) of this section that remained on the day
2 before the stay began. A postponement under this paragraph must comply with the proce-
3 dural and notice requirements specified in subsection (2) of this section.

4 SECTION 3. The amendments to ORS 86.755 by sections 1 and 2 of this 2013 Act apply to
5 amended notices of sale and to notices of postponed trustee's sales that are given on or after
6 the effective date of this 2013 Act.

7
