

House Bill 2569

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**.

Allows law practices to serve as trustees of trust deeds. Permits attorney who is shareholder, partner, member, proprietor or employee of law practice that is trustee to sign document that is permitted or required to be signed in connection with trust deed if attorney provides attorney's full name, Oregon State Bar number and relationship between attorney and trustee.

A BILL FOR AN ACT

1
2 Relating to conditions for certain trustee's signatures on trust deed documents; amending ORS
3 86.705 and 86.790.

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

5 **SECTION 1.** ORS 86.705, as amended by section 5, chapter 112, Oregon Laws 2012, is amended
6 to read:

7 86.705. As used in ORS 86.705 to 86.795:

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

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

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

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

15 (5) "**Law practice**" means a **professional corporation, partnership, limited liability part-**
16 **nership, limited liability company or sole proprietorship that is authorized to do business in**
17 **this state and the attorneys who are shareholders, partners, members, proprietors or em-**
18 **ployees of the professional corporation, partnership, limited liability partnership, limited li-**
19 **ability company or sole proprietorship.**

20 [(5)] (6) "Residential trust deed" means a trust deed on property upon which are situated four
21 or fewer residential units, one of which the grantor, the grantor's spouse or the grantor's minor or
22 dependent child occupies as a principal residence at the time a default that results in an action to
23 foreclose the obligation secured by the trust deed first occurs.

24 [(6)] (7) "Residential unit" means an improvement designed for residential use.

25 [(7)] (8) "Trust deed" means a deed executed in conformity with ORS 86.705 to 86.795 that con-
26 veys an interest in real property to a trustee in trust to secure the performance of an obligation the
27 grantor or other person named in the deed owes to a beneficiary.

28 [(8)] (9) "Trustee" means a person, other than the beneficiary, to whom a trust deed conveys
29 an interest in real property, or the person's successor in interest, or an employee of the beneficiary,
30 if the employee is qualified to be a trustee under ORS 86.790.

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 **SECTION 2.** ORS 86.790 is amended to read:

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

4 (a) [*Any*] **A law practice or an** 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, that is authorized to do
 6 business under the laws of Oregon or the United States;

7 (c) A title insurance company authorized to insure title to real property in this state[*, its*] **and**
 8 **the** subsidiaries, affiliates, insurance producers or branches **of the title insurance company**;

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

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

11 (2) **A law practice that, or** an attorney who, is a trustee under subsection (1)(a) of this section
 12 may represent the beneficiary in addition to performing the duties of trustee.

13 (3) At any time after [*the*] **a** trust deed is executed, the beneficiary may appoint in writing an-
 14 other qualified trustee. If the appointment of the successor trustee is recorded in the mortgage re-
 15 cords of the county or counties in which the trust deed is recorded, the successor trustee [*shall*
 16 *be*] **is** vested with all the powers of the original trustee.

17 (4) A trustee or successor trustee is a necessary and proper party to any proceeding to deter-
 18 mine the validity of **a trust deed**, or **to** enjoin any private or judicial proceeding to foreclose a trust
 19 deed, but a trustee or successor trustee is [*neither*] **not** a necessary [*nor a*] **or** proper party to any
 20 proceeding to determine title to the property subject to the trust deed, or to any proceeding to im-
 21 pose, enforce or foreclose any other lien on the subject property.

22 (5) Nothing in ORS 86.705 to 86.795 imposes a duty on the trustee or successor trustee to notify
 23 any person of any proceeding with respect to [*such*] **the** person, except a proceeding [*initiated by*]
 24 **that** the trustee or successor trustee **initiates**.

25 (6) A trustee or the attorney for the trustee or any agent [*designated by*] the trustee or the at-
 26 torney **designates** may announce and accept a bid from the beneficiary whether or not the benefi-
 27 ciary is present at the sale.

28 (7) The trustee or successor trustee [*shall have*] **has** no fiduciary duty or fiduciary obligation
 29 to the grantor or other persons [*having*] **that have** an interest in the property subject to the trust
 30 deed. The trustee or successor trustee [*shall*] **may** not be relieved of the duty to reconvey the
 31 property **that is** subject to the trust deed to the grantor upon **the beneficiary's** request for
 32 reconveyance [*by the beneficiary*].

33 (8) **An attorney who is a shareholder, partner, member, proprietor or employee of a law**
 34 **practice that is a trustee, as provided in subsection (1)(a) of this section, or an attorney who**
 35 **is a shareholder, partner, member, proprietor or employee of a law practice in which an in-**
 36 **dividual attorney who is the trustee also practices, may sign any document that is permitted**
 37 **or required to be signed under ORS 86.705 to 86.795 if the attorney makes evident in the**
 38 **document the attorney's full name, Oregon State Bar number and the relationship between**
 39 **the attorney and the trustee.**

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