

# House Bill 2929

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

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

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

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

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

## A BILL FOR AN ACT

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

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

5 **SECTION 1.** ORS 86.755, as amended by section 9, chapter 112, Oregon 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

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

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

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

20 **(c) A trustee that must give a written notice to postpone a sale date under paragraph (b)**  
 21 **of this subsection shall pay \$500 to the Attorney General if the trustee fails to give a notice**  
 22 **that accurately states the information described in paragraph (b) of this subsection at least**  
 23 **15 days before the new sale date. The Attorney General may issue an order to enforce the**  
 24 **penalty set forth in this paragraph and shall deposit moneys the Attorney General receives**  
 25 **into the Foreclosure Avoidance Mediation Fund established under section 4, chapter 112,**  
 26 **Oregon Laws 2012.**

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

30 **(b) A trustee that fails to execute and deliver the trustee's deed to the purchaser as**  
 31 **provided in paragraph (a) of this subsection, in addition to and not in lieu of any other pen-**  
 32 **alty provided by law, is liable for damages to the purchaser in the amount of:**

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

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

38 **(c) For purposes of this subsection, the trustee has delivered the trustee's deed on the**  
 39 **earlier of any of the following dates, as applicable:**

40 **(A) Three days after the trustee deposits the trustee's deed as certified mail with the**  
 41 **United States Postal Service, properly addressed, with postage prepaid and return receipt**  
 42 **requested.**

43 **(B) One day after the trustee deposits the trustee's deed with an overnight delivery ser-**  
 44 **vice that is nationally recognized and that supplies a tracking number and a delivery receipt.**

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

1       (4)(a) **The trustee may void the trustee’s sale if, within 10 calendar days after the sale**  
 2 **date, the trustee:**

3       (A) **Notifies the purchaser of the trustee’s election to void the sale in the manner pro-**  
 4 **vided for service of summons under ORCP 7 D(2) or in any commercially reasonable manner;**  
 5 **and**

6       (B) **Tenders to the purchaser a full refund of the purchase price for the property and an**  
 7 **additional payment equivalent to five percent of the purchase price.**

8       (b)(A) **The purchaser may void the trustee’s sale if, within three calendar days after the**  
 9 **date of the sale, the purchaser has not received the trustee’s deed for the property and the**  
 10 **purchaser:**

11       (i) **Notifies the trustee of the purchaser’s election to void the sale; and**

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

14       (B) **A trustee that receives a notice from a purchaser under subparagraph (A) of this**  
 15 **paragraph may offer the property to the bidder that offered the next highest bid for the**  
 16 **property at the trustee’s sale or may conduct another sale after giving notice in accordance**  
 17 **with this section. With respect to the requirements for a foreclosure proceeding under ORS**  
 18 **86.735 and the notice requirements set forth in this section, a void sale operates as a**  
 19 **postponement of the trustee’s sale.**

20       [(4)] (c) **The trustee’s deed [shall convey] conveys** to the purchaser the interest in the property  
 21 that the grantor had, or had the power to convey, at the time the grantor executed the trust deed,  
 22 together with any interest the grantor or the grantor’s successors in interest acquire after the ex-  
 23 ecution of the trust deed.

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

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

32       (b) **The notice required by this subsection must:**

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

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

36       (C) **Include the name, contact address and contact telephone number of the purchaser or the**  
 37 **purchaser’s representative.**

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

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

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

43       (A) **Personal delivery to the tenant.**

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

45       (C) **First class mail to the tenant at the dwelling unit and attachment of a second notice copy.**

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

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

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

8 \_\_\_\_\_  
9  
10 NOTICE TO RESIDENTIAL TENANTS OF  
11 CHANGE IN OWNERSHIP

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

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

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

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

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

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

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

34 IMPORTANT:

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

43 YOUR TENANCY  
44 BETWEEN NOW  
45 AND THE MOVE-OUT DATE

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

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

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

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

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

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

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

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

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

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

45 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS

1 90.100.

2 (d) If a purchaser gives a 90-day written termination notice pursuant to paragraph (c) of this  
 3 subsection, the purchaser may include in the notice a request that a tenant with a fixed term  
 4 tenancy provide written evidence of the existence of the tenancy to the purchaser at an address  
 5 described in the notice. Written evidence includes a copy of the rental agreement or another docu-  
 6 ment that shows the existence of the fixed term tenancy. *[Failure of the tenant]* **The tenant's**  
 7 **failure** to provide the requested written evidence before the purchaser files an action for possession  
 8 based on a 90-day notice:

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

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

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

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

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

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

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

26 (f) A purchaser *[seeking]* **that seeks** to obtain possession pursuant to ORS 105.105 to 105.168  
 27 must attach proof of service of a written termination notice required by paragraph (c) of this sub-  
 28 section to the pleadings.

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

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

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

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

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

41 (a) Personal delivery to the tenant.

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

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

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

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

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

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

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

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

15 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and  
 16 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not  
 17 impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to  
 18 this paragraph, “rent” refers to the amount [*paid by*] the tenant **pays** to the landlord for the right  
 19 to occupy the unit before the foreclosure.

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

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

24 (B) Returning a security deposit.

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

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

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

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

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

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

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

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

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

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

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

5 (A) By registered or certified mail to:

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

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

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

15 (13) The amended notice of sale must:

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

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

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

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

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

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

33 **SECTION 2.** ORS 86.755, as amended by section 7, chapter 510, Oregon Laws 2011, and section  
 34 10, chapter 112, Oregon Laws 2012, is amended to read:

35 86.755. (1)(a) A trustee shall hold a trustee's sale on the date and at the time and place desig-  
 36 nated in the notice of sale given under ORS 86.740. The designated time of the trustee's sale must  
 37 be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the  
 38 designated place of the trustee's sale must be in the county or one of the counties in which the  
 39 property is situated. Except as provided in paragraph (b) of this subsection, the trustee may sell the  
 40 property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the  
 41 highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding  
 42 the trustee, may bid at the trustee's sale. An attorney for the trustee, or an agent that the trustee  
 43 or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

44 (b) If the trustee sells property upon which a single residential unit that is subject to an af-  
 45 fordable housing covenant is situated, the eligible covenant holder may purchase the property from



1 the trustee at the trustee's sale for cash or cash equivalent in an amount that is the lesser of:

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

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

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

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

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

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

25 **(c) A trustee that must give a written notice to postpone a sale date under paragraph (b)**  
 26 **of this subsection shall pay \$500 to the Attorney General if the trustee fails to give a notice**  
 27 **that accurately states the information described in paragraph (b) of this subsection at least**  
 28 **15 days before the new sale date. The Attorney General may issue an order to enforce the**  
 29 **penalty set forth in this paragraph and shall deposit moneys the Attorney General receives**  
 30 **into the Foreclosure Avoidance Mediation Fund established under section 4, chapter 112,**  
 31 **Oregon Laws 2012.**

32 (3)(a) The purchaser shall pay at the time of sale the price bid or the price determined in ac-  
 33 cordance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee  
 34 shall execute and deliver the trustee's deed to the purchaser.

35 **(b) A trustee that fails to execute and deliver the trustee's deed to the purchaser as**  
 36 **provided in paragraph (a) of this subsection, in addition to and not in lieu of any other pen-**  
 37 **alty provided by law, is liable for damages to the purchaser in the amount of:**

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

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

43 **(c) For purposes of this subsection, the trustee has delivered the trustee's deed on the**  
 44 **earlier of any of the following dates, as applicable:**

45 **(A) Three days after the trustee deposits the trustee's deed as certified mail with the**

1 **United States Postal Service, properly addressed, with postage prepaid and return receipt**  
 2 **requested.**

3 **(B) One day after the trustee deposits the trustee's deed with an overnight delivery ser-**  
 4 **vice that is nationally recognized and that supplies a tracking number and a delivery receipt.**

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

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

8 **(A) Notifies the purchaser of the trustee's election to void the sale in the manner pro-**  
 9 **vided for service of summons under ORCP 7 D(2) or in any commercially reasonable manner;**  
 10 **and**

11 **(B) Tenders to the purchaser a full refund of the purchase price for the property and an**  
 12 **additional payment equivalent to five percent of the purchase price.**

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

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

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

19 **(B) A trustee that receives a notice from a purchaser under subparagraph (A) of this**  
 20 **paragraph may offer the property to the bidder that offered the next highest bid for the**  
 21 **property at the trustee's sale or may conduct another sale after giving notice in accordance**  
 22 **with this section. With respect to the requirements for a foreclosure proceeding under ORS**  
 23 **86.735 and the notice requirements set forth in this section, a void sale operates as a**  
 24 **postponement of the trustee's sale.**

25 **[(4)] (c) The trustee's deed [shall convey] conveys to the purchaser the interest in the property**  
 26 **that the grantor had, or had the power to convey, at the time the grantor executed the trust deed,**  
 27 **together with any interest the grantor or the grantor's successors in interest acquire after the ex-**  
 28 **ecution of the trust deed.**

29 **(d) If, within 15 days after the date of the trustee's sale, the purchaser records the**  
 30 **trustee's deed in the county in which the property sold at the trustee's sale is located, the**  
 31 **purchaser perfects the purchaser's interest in the property as of 9:00 a.m. on the date of**  
 32 **the trustee's sale.**

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

37 **(b) The notice required by this subsection must:**

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

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

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

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

45 **(E) Include contact information for the Oregon State Bar and a person or organization that**

1 provides legal help to individuals at no charge to the individual.

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

3 (A) Personal delivery to the tenant.

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

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

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

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

13 \_\_\_\_\_

14  
15 NOTICE TO RESIDENTIAL TENANTS OF  
16 CHANGE IN OWNERSHIP

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

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

- 24 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF  
25 YOU HAVE A FIXED TERM LEASE; OR
- 26 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION  
27 NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO-WEEK RENTAL AGREEMENT.

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

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

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

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

39 IMPORTANT:

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) A purchaser *[seeking]* **that seeks** to obtain possession pursuant to ORS 105.105 to 105.168 must attach proof of service of a written termination notice required by paragraph (c) of this subsection to the pleadings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (B) Returning a security deposit.

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

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

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

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

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

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

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

45 (c) As used in this subsection, "prevailing party" means the party in whose favor final judgment

1 is rendered.

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

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

9 (A) By registered or certified mail to:

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

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

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

19 (13) The amended notice of sale must:

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

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

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

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

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

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

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

38 86.790. (1) The trustee of a trust deed under ORS 86.705 to 86.795 [*shall not be*]:

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

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

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

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

44 [(c)] (C) A title insurance company **or a subsidiary, affiliate, insurance producer or branch**  
 45 **of the title insurance company that is** authorized to insure title to real property in this state[

1 *its subsidiaries, affiliates, insurance producers or branches*;

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

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

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

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

10 (3) At any time after the trust deed is executed, the beneficiary may appoint in writing another  
 11 qualified trustee. If the appointment of the successor trustee is recorded in the mortgage records  
 12 of the county or counties in which the trust deed is recorded, the successor trustee [*shall be vested*  
 13 *with all*] **has** the powers of the original trustee.

14 (4) A trustee or successor trustee is a necessary and proper party to any proceeding to deter-  
 15 mine the validity of or enjoin any private or judicial proceeding to foreclose a trust deed, but a  
 16 trustee or successor trustee is neither a necessary nor a proper party to any proceeding to deter-  
 17 mine title to the property subject to the trust deed, or to any proceeding to impose, enforce or  
 18 foreclose any other lien on the subject property.

19 (5) [*Nothing in*] **The provisions of** ORS 86.705 to 86.795 [*imposes*] **do not impose** a duty on the  
 20 trustee or successor trustee to notify any person of any proceeding with respect to [*such*] **the** per-  
 21 son, except a proceeding [*initiated by*] **that** the trustee or successor trustee **initiates**.

22 (6) A trustee or the attorney for the trustee or any agent [*designated by*] **that** the trustee or the  
 23 attorney **designates** may announce and accept a bid from the beneficiary whether or not the bene-  
 24 ficiary is present at the sale.

25 (7) The trustee or successor trustee [*shall have no*] **does not have a** fiduciary duty or fiduciary  
 26 obligation to the grantor or other persons **that have** [*having*] an interest in the property subject to  
 27 the trust deed. The trustee or successor trustee [*shall not be*] **is not** relieved of the duty to reconvey  
 28 the property subject to the trust deed to the grantor [*upon request for reconveyance by*] **when** the  
 29 beneficiary **requests a reconveyance**.

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

32 86.705. As used in ORS 86.705 to 86.795:

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

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

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

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

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

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

45 (7) “Trust deed” means a deed executed in conformity with ORS 86.705 to 86.795 that conveys



1 an interest in real property to a trustee in trust to secure the performance of an obligation the  
2 grantor or other person named in the deed owes to a beneficiary.

3 (8) "Trustee" means a person, other than the beneficiary, to whom a trust deed conveys an in-  
4 terest in real property, or the person's successor in interest, or an employee of the beneficiary, if  
5 the employee is qualified to be a trustee under ORS 86.790.

6 **SECTION 5. The amendments to ORS 86.705, 86.755 and 86.790 by sections 1 to 4 of this**  
7 **2013 Act apply to trustee's sales that occur on or after the effective date of this 2013 Act.**

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