

Enrolled House Bill 3389

Sponsored by Representative HOLVEY; Representatives BAILEY, BARNHART, BOONE, BUCKLEY, DEMBROW, DOHERTY, FRÉDERICK, GALLEGOS, GELSER, GOMBERG, GORSEK, GREENLICK, HOYLE, KENY-GUYER, KOMP, LIVELY, NATHANSON, THATCHER, TOMEI, UNGER, WITT

CHAPTER

AN ACT

Relating to foreclosures of residential trust deeds; creating new provisions; amending ORS 86.705 and 86.735; and declaring an emergency.

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

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 86.705 to 86.795.

SECTION 2. (1) As used in this section, “nonprofit entity” means a nonprofit corporation that is organized in this state and that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, or a subsidiary or agent of the nonprofit corporation.

(2) Except as provided in subsection (3) of this section, a beneficiary may not, as a condition of offering or approving a short sale as an alternative to foreclosing a residential trust deed, require a nonprofit entity that purchases property that is subject to the residential trust deed from a grantor in a short sale, or that purchases a note from the beneficiary that secures the grantor’s obligation to the beneficiary by means of the residential trust deed, to enter into an agreement with the beneficiary or the grantor that limits or bars the grantor, after the short sale or the sale of the note, from owning or occupying the property that is subject to the residential trust deed.

(3) Subsection (2) of this section does not apply if:

(a) The beneficiary does not receive notice before the short sale that the nonprofit entity or the grantor intends for the grantor to continue after the short sale to own or occupy the property that is the subject of the short sale;

(b) The grantor does not allow the beneficiary reasonable access to the property that is the subject of the short sale for the purpose of inspecting or appraising the property;

(c) Offering or approving the short sale would require the beneficiary to breach a contractual obligation to another person with respect to a residential trust deed that was recorded before the effective date of this 2013 Act; or

(d) Offering or approving the short sale would require the beneficiary to breach a legal obligation that is not based on a contract.

SECTION 3. ORS 86.705, as amended by section 5, chapter 112, Oregon Laws 2012, is amended to read:

86.705. As used in ORS 86.705 to 86.795:

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

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

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

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

(5) "Residential trust deed" means a trust deed on property upon which are situated four or fewer residential units, one of which the grantor, the grantor's spouse or the grantor's minor or dependent child occupies as a principal residence at the time *[a default that results in an action to foreclose the obligation secured by the trust deed first occurs]* **the trust deed is recorded or, in the case of a purchase money loan, one of which is intended to be the principal residence of the grantor, the grantor's spouse or the grantor's minor or dependent child after the trust deed is recorded.**

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

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

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

SECTION 4. ORS 86.735, as amended by section 6, chapter 112, Oregon Laws 2012, and section 10, chapter 304, Oregon Laws 2013 (Enrolled Senate Bill 558), is amended to read:

86.735. A trustee may not foreclose a trust deed by advertisement and sale in the manner provided in ORS 86.740 to 86.755 unless:

(1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any appointment of a successor trustee are recorded in the mortgage records in the counties in which the property described in the deed is situated;

(2) There is a default by the grantor or other person that owes an obligation, the performance of which is secured by the trust deed, or by the grantor's or other person's successors in interest with respect to a provision in the deed that authorizes sale in the event of default of the provision;

(3) The trustee or beneficiary has filed for record in the county clerk's office in each county where the trust property, or some part of the trust property, is situated, a notice of default containing the information required by ORS 86.745 and containing the trustee's or beneficiary's election to sell the property to satisfy the obligation;

(4) The beneficiary has filed for recording in the official records of the county or counties in which the property that is subject to the residential trust deed is located:

(a) A *[valid and unexpired]* certificate of compliance that a service provider issued to the beneficiary under section 5 *[of this 2013 Act]*, **chapter 304, Oregon Laws 2013 (Enrolled Senate Bill 558), that is valid and unexpired at the time the notice of default is recorded;** or

(b) A copy of the affidavit with which the beneficiary claimed, under section 2 (1)(b) *[of this 2013 Act]*, **chapter 304, Oregon Laws 2013 (Enrolled Senate Bill 558)**, an exemption that has not expired;

(5) The beneficiary has complied with the provisions of section 4a, chapter 112, Oregon Laws 2012;

(6) The grantor has not complied with the terms of any foreclosure avoidance measure upon which the beneficiary and the grantor have agreed; and

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

(a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action may be commenced to appoint a receiver or to obtain a temporary restraining order during foreclosure of a trust deed by advertisement and sale, except that a receiver may not be appointed with respect

to a single-family residence that the grantor, the grantor's spouse or the grantor's minor or dependent child occupies as a principal residence.

(b) An action may be commenced to foreclose, judicially or nonjudicially, the same trust deed as to any other property covered by the trust deed, or any other trust deeds, mortgages, security agreements or other consensual or nonconsensual security interests or liens that secure repayment of the debt.

SECTION 5. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House June 19, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 28, 2013

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State