

A-Engrossed
House Bill 3389

Ordered by the House June 14
Including House Amendments dated June 14

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

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.

[Requires beneficiary under residential trust deed to request resolution conference with grantor for purposes of negotiating foreclosure avoidance measure, unless beneficiary is eligible to claim exemption from requirement. Specifies manner in which beneficiary must request resolution conference. Permits grantor to request resolution conference under certain circumstances.]

[Specifies documents that beneficiary and grantor must provide and specifies procedure for and duties of beneficiary and grantor with respect to resolution conference.]

[Requires beneficiary to obtain certificate of compliance after resolution conference in order to foreclose residential trust deed. Specifies conditions under which beneficiary may obtain certificate of compliance.]

[Changes name of Foreclosure Avoidance Mediation Fund to Foreclosure Avoidance Fund and continuously appropriates moneys in fund to Attorney General for purposes of paying service provider to coordinate program to implement provisions of Act and paying related expenses.]

[Requires beneficiary to send notice to grantor if beneficiary determines that grantor is not eligible for foreclosure avoidance measure or has not complied with terms of foreclosure avoidance measure.]

[Becomes operative 91 days after effective date of Act.]

Prohibits beneficiary from requiring as condition of short sale, except in certain circumstances, that nonprofit entity that purchases property in short sale, or that purchases note from beneficiary, enter into agreement with beneficiary or grantor that limits or bars grantor from owning or occupying residential property after short sale or sale of note.

Specifies that certificate of compliance required to foreclose trust deed must be valid and unexpired at time notice of default is recorded.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to foreclosures of residential trust deeds; creating new provisions; amending ORS 86.705
3 and 86.735; and declaring an emergency.

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

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

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

9 **(2) Except as provided in subsection (3) of this section, a beneficiary may not, as a con-**
10 **dition of offering or approving a short sale as an alternative to foreclosing a residential trust**
11 **deed, require a nonprofit entity that purchases property that is subject to the residential**
12 **trust deed from a grantor in a short sale, or that purchases a note from the beneficiary that**
13 **secures the grantor's obligation to the beneficiary by means of the residential trust deed, to**
14 **enter into an agreement with the beneficiary or the grantor that limits or bars the grantor,**
15 **after the short sale or the sale of the note, from owning or occupying the property that is**

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 **subject to the residential trust deed.**

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

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

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

8 **(c) Offering or approving the short sale would require the beneficiary to breach a con-**
9 **tractual obligation to another person with respect to a residential trust deed that was re-**
10 **corded before the effective date of this 2013 Act; or**

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

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

15 86.705. As used in ORS 86.705 to 86.795:

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

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

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

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

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

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

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

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

37 **SECTION 4.** ORS 86.735, as amended by section 6, chapter 112, Oregon Laws 2012, and section
38 10, chapter 304, Oregon Laws 2013 (Enrolled Senate Bill 558), is amended to read:

39 86.735. A trustee may not foreclose a trust deed by advertisement and sale in the manner pro-
40 vided in ORS 86.740 to 86.755 unless:

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

44 (2) There is a default by the grantor or other person that owes an obligation, the performance
45 of which is secured by the trust deed, or by the grantor's or other person's successors in interest

1 with respect to a provision in the deed that authorizes sale in the event of default of the provision;

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

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

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

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

14 (5) The beneficiary has complied with the provisions of section 4a, chapter 112, Oregon Laws
15 2012;

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

18 (7) An action has not been commenced to recover the debt or any part of the debt then re-
19 maining secured by the trust deed, or, if an action has been commenced, the action has been dis-
20 missed, except that:

21 (a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action may
22 be commenced to appoint a receiver or to obtain a temporary restraining order during foreclosure
23 of a trust deed by advertisement and sale, except that a receiver may not be appointed with respect
24 to a single-family residence that the grantor, the grantor's spouse or the grantor's minor or de-
25 pendent child occupies as a principal residence.

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

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

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