

A-Engrossed
Senate Bill 804

Ordered by the Senate April 22
Including Senate Amendments dated April 22

Sponsored by COMMITTEE ON JUDICIARY

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 grantor that seeks mediation with trustee before foreclosure proceedings to provide mediation service provider with certain documents.]

[Makes beneficiary's duty to provide certain documents and to appear at mediation contingent on grantor's providing documents.]

[Specifies when grantor is at risk of default and would be eligible to seek mediation with beneficiary.]

[Specifies form of notice of determination that beneficiary must send to grantor if beneficiary determines that grantor is not eligible for foreclosure avoidance measure or if grantor fails to comply with foreclosure avoidance measure.]

Revises definition of "beneficiary."

Modifies requirements for trustee to foreclose a trust deed by advertisement and sale.

[Modifies requirements for providing notice of sale.]

[Modifies notice requirements for postponing trustee's sale.]

Declares recorded trustee's deed prima facie evidence that all assignments required to be recorded are recorded. Declares instrument executed by beneficiary prima facie evidence that beneficiary is authorized to execute instrument.

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

Permits beneficiary to designate agent or nominee to act on behalf of beneficiary.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to trust deeds; creating new provisions; amending ORS 86.705, 86.735, 86.780 and 86.790; and
3 declaring an emergency.

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] **the** person named or otherwise designated in a trust deed as [*the*
10 *person for whose benefit a trust deed is given*] **the beneficiary**, or the person's successor in
11 interest[, and who is not the trustee unless the beneficiary is qualified to be a trustee under ORS
12 86.790 (1)(d)].

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

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

16 (5) "Residential trust deed" means a trust deed on property upon which are situated four or
17 fewer residential units, one of which the grantor, the grantor's spouse or the grantor's minor or
18 dependent child occupies as a principal residence at the time a **trust deed foreclosure is com-**

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 **menced** [*default that results in an action to foreclose the obligation secured by the trust deed first*
2 *occurs*].

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

4 (7) “Trust deed” means a deed executed in conformity with ORS 86.705 to 86.795 that conveys
5 an interest in real property to a trustee in trust to secure the performance of an obligation the
6 grantor or other person named in the deed owes to a beneficiary **or a person for whom the ben-**
7 **eficiary is acting as agent or nominee.**

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

11 **SECTION 2.** ORS 86.735, as amended by section 6, chapter 112, Oregon Laws 2012, is amended
12 to read:

13 86.735. (1) A trustee may foreclose a trust deed by advertisement and sale in the manner pro-
14 vided in ORS 86.740 to 86.755 if:

15 [(1)] (a) The trust deed, [*any assignments of the trust deed by the trustee or the beneficiary and*]
16 any appointment of a successor trustee **and any assignment that changes the designation of the**
17 **beneficiary of the trust deed** are recorded in the mortgage records in the counties in which the
18 property described in the deed is situated;

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

22 **(b) The grantor or other person, or the grantor’s or other person’s successor in interest,**
23 **defaults on an obligation for which the trust deed secures performance and with respect to**
24 **which a provision in the deed authorizes sale in the event of default;**

25 [(3)] (c) The trustee or beneficiary has filed for [*record*] **recording** in the county clerk’s office
26 in each county where the trust property, or some part of the trust property, is situated, a notice of
27 default containing the information required by ORS 86.745 and containing the trustee’s or
28 beneficiary’s election to sell the property to satisfy the obligation;

29 [(4)] (d) The beneficiary or the beneficiary’s agent has filed for recording in the official records
30 of the county or counties in which the property that is subject to the residential trust deed is lo-
31 cated the certificate of compliance the beneficiary received under section 2, chapter 112, Oregon
32 Laws 2012, if the beneficiary must enter into mediation with the grantor under section 2 (2)(a),
33 chapter 112, Oregon Laws 2012;

34 [(5)(a)] (e) The beneficiary or the beneficiary’s agent has complied with the provisions of section
35 4a, chapter 112, Oregon Laws 2012, **if the provisions apply to the beneficiary;** and

36 [(b)] *The grantor is not in compliance with the terms of a foreclosure avoidance measure upon*
37 *which the beneficiary and the grantor have agreed; and]*

38 [(6)] (f) An action has not been commenced to recover the debt or any part of the debt then
39 remaining secured by the trust deed, or, if an action has been commenced, the action has been dis-
40 missed, except that:

41 [(a)] (A) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action
42 may be commenced to appoint a receiver or to obtain a temporary restraining order during fore-
43 closure of a trust deed by advertisement and sale, except that a receiver may not be appointed with
44 respect to a single-family residence that the grantor, the grantor’s spouse or the grantor’s minor or
45 dependent child occupies as a principal residence.

1 *[(b)]* **(B)** An action may be commenced to foreclose, judicially or nonjudicially, the same trust
2 deed as to any other property covered by the trust deed, or any other trust deeds, mortgages, se-
3 curity agreements or other consensual or nonconsensual security interests or liens that secure re-
4 payment of the debt.

5 **(2) For purposes of subsection (1) of this section, the negotiation, transfer or assignment**
6 **of a note does not constitute an assignment that changes the designation of the beneficiary**
7 **of the trust deed.**

8 **SECTION 3.** ORS 86.780 is amended to read:

9 86.780. **(1)(a)** *[When the]* **If a trustee's deed is recorded in the deed records of the county or**
10 **counties where the property described in the deed is situated, the recitals contained in the deed and**
11 **in the *[affidavits]* documents required to be recorded under *[ORS 86.750 (3) and (4) shall be]* ORS**
12 **86.705 to 86.795 are prima facie evidence *[in any court]* of the truth of the matters set forth**
13 ***[therein]* in the recitals, but the recitals *[shall be]* are conclusive in favor of a purchaser for value**
14 **in good faith relying upon *[them]* the recitals.**

15 **(b) A trustee's deed recorded as provided in paragraph (a) of this subsection is prima**
16 **facie evidence that all assignments of the trust deed that are required to be recorded under**
17 **ORS 86.735 are recorded, but the recording is conclusive in favor of a purchaser for value in**
18 **good faith that relies upon the recording of the trustee's deed.**

19 **(2) A trustee's sale that forecloses a trust deed in which a nominee is designated as**
20 **beneficiary and that is completed before the effective date of this 2013 Act is not void or**
21 **voidable by reason of the absence in the record of an assignment of the trust deed unless the**
22 **assignment changes the designation of the beneficiary of the trust deed.**

23 **(3) An instrument that a beneficiary executes is prima facie evidence that the beneficiary**
24 **has authorization to execute the instrument from the person that owns or holds the debt**
25 **or other obligation that the trust deed secures. The instrument is conclusive in favor of a**
26 **purchaser for value in good faith that relies on the instrument unless, before the purchaser's**
27 **reliance begins, the beneficiary has recorded an instrument withdrawing or repudiating the**
28 **instrument it previously executed.**

29 **SECTION 4.** ORS 86.790 is amended to read:

30 86.790. (1) The trustee of a trust deed under ORS 86.705 to 86.795 *[shall not be]* **is not** required
31 to comply with the provisions of ORS chapters 707 and 709 and *[shall]* **must** be:

32 (a) Any attorney who is an active member of the Oregon State Bar;

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

35 (c) A title insurance company authorized to insure title to real property in this state, its sub-
36 sidiaries, affiliates, insurance producers or branches;

37 (d) The United States or any agency thereof; or

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

39 **(2) The person named or otherwise designated as the beneficiary in a trust deed may not**
40 **be the trustee under the trust deed unless the person is qualified to be a trustee under**
41 **subsection (1)(d) of this section.**

42 *[(2)]* **(3)** An attorney who is a trustee under subsection (1)(a) of this section may represent the
43 beneficiary in addition to performing the duties of trustee.

44 *[(3)]* **(4)** At any time after the trust deed is executed, the beneficiary may appoint in writing
45 another qualified trustee. If the appointment of the successor trustee is recorded in the mortgage

1 records of the county or counties in which the trust deed is recorded, the successor trustee shall
2 be vested with all the powers of the original trustee.

3 [(4)] (5) A trustee or successor trustee is a necessary and proper party to any proceeding to
4 determine the validity of or enjoin any private or judicial proceeding to foreclose a trust deed, but
5 a trustee or successor trustee is neither a necessary nor a proper party to any proceeding to de-
6 termine title to the property subject to the trust deed, or to any proceeding to impose, enforce or
7 foreclose any other lien on the subject property.

8 [(5)] (6) Nothing in ORS 86.705 to 86.795 imposes a duty on the trustee or successor trustee to
9 notify any person of any proceeding with respect to such person, except a proceeding initiated by
10 the trustee or successor trustee.

11 [(6)] (7) A trustee or the attorney for the trustee or any agent designated by the trustee or the
12 attorney may announce and accept a bid from the beneficiary whether or not the beneficiary is
13 present at the sale.

14 [(7)] (8) The trustee or successor trustee shall have no fiduciary duty or fiduciary obligation to
15 the grantor or other persons having an interest in the property subject to the trust deed. The trust-
16 tee or successor trustee shall not be relieved of the duty to reconvey the property subject to the
17 trust deed to the grantor upon request for reconveyance by the beneficiary.

18 **SECTION 5. Section 6 of this 2013 Act is added to and made a part of ORS 86.705 to 86.795.**

19 **SECTION 6. (1) A beneficiary, including a beneficiary designated as an agent or nominee,
20 may designate an agent or nominee to act on behalf of the beneficiary.**

21 **(2) A third party may rely on a designation of an agent or nominee in the recorded trust
22 deed or in a separate document that has been recorded in the records of the counties in
23 which the trust deed was recorded unless:**

24 **(a) Termination of the designation has been recorded in the records; or**

25 **(b) The third party has actual notice that the designation has been terminated.**

26 **(3) The recording of the original trust deed establishes the identity of the original bene-
27 ficiary as agent or nominee for a successor in interest unless:**

28 **(a) An assignment to the successor in interest has been recorded and the assignment
29 does not designate the original beneficiary as agent or nominee for the successor in interest;
30 or**

31 **(b) A document has been recorded that designates a person other than the original ben-
32 eficiary as agent or nominee for the successor in interest.**

33 **SECTION 7. Section 6 of this 2013 Act and the amendments to ORS 86.705, 86.735, 86.780
34 and 86.790 by sections 1 to 4 of this 2013 Act apply to all foreclosures by advertisement and
35 sale, whether commenced before, on or after the effective date of this 2013 Act.**

36 **SECTION 8. This 2013 Act being necessary for the immediate preservation of the public
37 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
38 on its passage.**

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