

Senate Bill 804

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 **as introduced**.

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.

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, 86.750, 86.755, 86.780
3 and 86.790 and sections 2, 2a, 3, 4 and 4a, chapter 112, Oregon Laws 2012; and declaring an
4 emergency.

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

6 **SECTION 1.** Section 2, chapter 112, Oregon Laws 2012, is amended to read:

7 **Sec. 2.** (1) As used in this section and sections 3 and 4a [*of this 2012 Act*], **chapter 112, Oregon**
8 **Laws 2012**, "foreclosure avoidance measure" means an agreement between a beneficiary and a
9 grantor that uses one or more of the following methods to modify an obligation that is secured by
10 a trust deed:

11 (a) The beneficiary defers or forbears from collecting one or more payments due on the obli-
12 gation.

13 (b) The beneficiary modifies, temporarily or permanently, the payment terms or other terms of
14 the obligation.

15 (c) The beneficiary accepts a deed in lieu of foreclosure from the grantor.

16 (d) The [*grantor conducts*] **beneficiary approves** a short sale.

17 (e) The beneficiary provides the grantor with other assistance that enables the grantor to avoid
18 a foreclosure.

19 (2)(a) Except as provided in paragraph (d) of this subsection, a beneficiary that seeks to fore-
20 close a residential trust deed under ORS 86.735 shall enter into mediation with the grantor for the
21 purpose of negotiating a foreclosure avoidance measure in accordance with the provisions of this
22 section.

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 (b) The Attorney General shall:

2 (A) Appoint a mediation service provider to coordinate a mediation program and shall enter into
3 an agreement to pay the mediation service provider for the mediation service provider's services
4 from the Foreclosure Avoidance Mediation Fund established in section 4, **chapter 112, Oregon**
5 **Laws 2012** [of this 2012 Act]. The appointment and the agreement are not subject to ORS chapter
6 279A or 279B.

7 (B) Prescribe qualifications, training and experience requirements for mediators by rule.

8 (C) Set the schedule of fees for the mediation by rule.

9 (c) The beneficiary and the grantor shall share the cost of the mediation, except that the
10 grantor's portion of the cost may not exceed \$200. The mediator may waive the grantor's portion
11 of the fee in accordance with rules that the Attorney General adopts to describe circumstances that
12 permit a waiver.

13 (d) The requirement to enter into mediation with a grantor does not apply:

14 (A) To an individual, **partnership, corporation, limited liability company or other business**
15 **entity, to** a financial institution[,] **or trust company** as **those terms are** defined in ORS 706.008,
16 **to** a mortgage banker[,] as defined in ORS 86A.100, or **to** a licensee[,] as defined in ORS 725.010, if
17 the individual, **partnership, corporation, limited liability company or other business entity**, fi-
18 nancial institution, **trust company**, mortgage banker or licensee provides to the Attorney General
19 a sworn affidavit that states that during the preceding calendar year the individual, **partnership,**
20 **corporation, limited liability company or other business entity**, financial institution, **trust**
21 **company**, mortgage banker or licensee did not commence or cause an affiliate or agent of the in-
22 dividual, **partnership, corporation, limited liability company or other business entity**, financial
23 institution, **trust company**, mortgage banker or licensee to commence more than a total of 250
24 actions to foreclose a residential trust deed by advertisement and sale under ORS 86.735 or a resi-
25 dential mortgage by suit under ORS 88.010. An individual, **partnership, corporation, limited li-**
26 **ability company or other business entity**, financial institution, **trust company**, mortgage banker
27 or licensee that intends to claim an exemption under this subparagraph shall file the affidavit **with**
28 **the Attorney General** either:

29 (i) [*Within 30 days after the operative date specified in section 11 of this 2012 Act to claim the*
30 *exemption for calendar year 2012 and*] Not later than January 31 in any [*subsequent*] calendar year
31 in which the individual, **partnership, corporation, limited liability company or other business**
32 **entity**, financial institution, **trust company**, mortgage banker or licensee intends to claim the ex-
33 emption; or

34 (ii) At the time the individual, **partnership, corporation, limited liability company or other**
35 **business entity**, financial institution, **trust company**, mortgage banker or licensee files a notice
36 of default under ORS 86.735.

37 (B) If the grantor fails to confirm that the grantor will enter into mediation by the date specified
38 under subsection (3)(c) of this section.

39 (e) **The Attorney General shall maintain a publicly accessible index of exemption affida-**
40 **vidits filed under paragraph (d)(A) of this subsection and shall make copies of the exemption**
41 **affidavits available for any person who desires a copy.**

42 (3) Within 30 days after the date on which the beneficiary caused a notice of mediation to be
43 served or mailed as provided in ORS 86.740, the mediation service provider shall send a notice to
44 the grantor and the beneficiary that:

45 (a) Schedules a date, time and location for the mediation. The date must be not earlier than

1 45 days and not later than 90 days after the date on which the notice of mediation was served or
2 mailed as provided in ORS 86.740.

3 (b) Identifies **the mediator and identifies** and provides contact information for the mediation
4 service provider.

5 (c) Specifies a date at least 30 days before the scheduled date of the mediation by which the
6 grantor must contact the mediation service provider **in writing** to confirm that the grantor will
7 enter into mediation. The notice must state that the mediation service provider will deem the
8 grantor to have declined to enter into mediation if the grantor fails to confirm by the specified date.

9 (d) Lists the costs of the mediation and specifies the portion of the costs for which the grantor
10 is responsible.

11 (e) Provides any other information that the Attorney General requires by rule.

12 (4)(a) If the grantor confirms by the date specified [*under*] **in** subsection (3)(c) of this section that
13 the grantor will enter into mediation, [*the beneficiary or the beneficiary's agent shall*] **at least 20**
14 **days before the scheduled date described in subsection (3)(a) of this section the grantor shall**
15 **provide the mediation service provider with:**

16 (A) **An intake form, the contents and format of which the Attorney General specifies by**
17 **rule;**

18 (B) **Evidence of the grantor's income for the previous two full months, such as:**

19 (i) **A record of wages or other pay the grantor received; or**

20 (ii) **A profit and loss statement, if available, if the grantor is self-employed;**

21 (C) **Account statements for the grantor's bank account for the previous two full months;**

22 (D) **A statement that shows how much income the grantor receives from Social Security,**
23 **disability, unemployment or other benefits and that indicates how often and for how long the**
24 **grantor receives and will receive the benefits, if the grantor relies on income from the ben-**
25 **efits to pay the obligation secured by the grantor's residential trust deed;**

26 (E) **A decree or judgment of dissolution or a legal separation agreement, if the grantor**
27 **must pay child support, spousal support or related obligations;**

28 (F) **The most recent statement that shows the amount the grantor paid for electricity,**
29 **for heat, for natural gas and for other utilities;**

30 (G) **The most recent property tax statement or appraisal conducted for the property that**
31 **is described in the trust deed that the beneficiary seeks to foreclose; and**

32 (H) **The grantor's tax returns for the previous two years.**

33 (b) **The mediation service provider shall provide the beneficiary or beneficiary's agent**
34 **with the material the grantor provides in accordance with paragraph (a) of this subsection**
35 **at least 15 days before the scheduled date described in subsection (3)(a) of this section.**

36 (c) **If the grantor confirms by the date specified in subsection (3)(c) of this section that**
37 **the grantor will enter into mediation and the grantor complies with the requirements set**
38 **forth in paragraph (a) of this subsection, the beneficiary or the beneficiary's agent shall:**

39 (A) **Provide the mediation service provider, at least 15 days before the scheduled date**
40 **described in subsection (3)(a) of this section, with:**

41 (i) **The grantor's payment history for the obligation that is secured by the residential**
42 **trust deed that the beneficiary seeks to foreclose, beginning with the most recent date on**
43 **which the beneficiary's records indicate that the obligation was not past due or otherwise in**
44 **default;**

45 (ii) **A true copy of the original debt instrument that is the basis for the right the bene-**

1 **fiiciary claims to foreclose the trust deed;**

2 **(iii) A copy of the authorization from the beneficiary to the beneficiary's agent, if the**
3 **beneficiary's agent will appear at the mediation; and**

4 **(iv) A copy of any document that the beneficiary claims limits the beneficiary's authority**
5 **to agree to a foreclosure avoidance measure.**

6 **(B)** Appear at the time and the location identified in the mediation service provider's notice
7 under subsection (3) of this section [*with the documentation described in paragraph (b) of this sub-*
8 *section*].

9 **(d) The mediation service provider shall provide the beneficiary or beneficiary's agent**
10 **with the material the grantor provides in accordance with paragraph (a) of this subsection**
11 **before the scheduled date described in subsection (3)(a) of this section.**

12 **(e) If the grantor does not comply with the requirements set forth in paragraph (a) of**
13 **this subsection, the mediation service provider shall deem the grantor to have declined to**
14 **enter into mediation and shall provide the beneficiary with the certificate described in sub-**
15 **section (6)(b) of this section without requiring the beneficiary to comply with the require-**
16 **ments of paragraph (c) of this subsection.**

17 *[(b)]* **(f) If the beneficiary or beneficiary's agent must comply with paragraph (c) of this**
18 **subsection, the beneficiary or the beneficiary's agent [must] shall appear in person at the location**
19 **of the mediation unless the mediator permits the beneficiary or the beneficiary's agent to appear in**
20 **another manner for good cause shown. The fact that a beneficiary or beneficiary's agent is located**
21 **outside this state does not alone constitute good cause for the purposes of this paragraph. [The**
22 **beneficiary or the beneficiary's agent must appear at the mediation with:]**

23 *[(A) The grantor's complete payment history for the obligation that is secured by the residential*
24 *trust deed that the beneficiary seeks to foreclose;]*

25 *[(B) Evidence that the beneficiary is the real party in interest with respect to the obligation, in-*
26 *cluding but not limited to:]*

27 *[(i) A true copy of the original debt instrument that is the basis for the right the beneficiary claims*
28 *to foreclose the trust deed; and]*

29 *[(ii) Documents that show the chain of title for the property that is subject to the residential trust*
30 *deed from the date of the original loan for which the beneficiary seeks foreclosure to the date of the*
31 *notices given under ORS 86.740, including conveyances, endorsements and assignments of the residen-*
32 *tial trust deed, the note and the security instrument, whether recorded or unrecorded;]*

33 *[(C) A copy of the authorization from the beneficiary to the beneficiary's agent, if the beneficiary's*
34 *agent appears at the mediation;]*

35 *[(D) A copy of any of the following documents that apply to the note or obligation that is secured*
36 *by the trust deed:]*

37 *[(i) A servicing agreement the beneficiary entered into with another person; or]*

38 *[(ii) An agreement by means of which the beneficiary pledged as collateral for a security the ben-*
39 *eficiary issued or sold all or a portion of the ownership interest in the note or other obligation; and]*

40 *[(E) Other documentation the Attorney General specifies by rule.]*

41 *[(c)]* **(g)** The beneficiary or the beneficiary's agent that enters into mediation with the grantor
42 must have or be able to obtain, before the initial mediation session concludes, authority to accept
43 or reject a proposal for a foreclosure avoidance measure and authority to enter with the grantor
44 into an agreement for a foreclosure avoidance measure.

45 **(5)(a)** The beneficiary or the beneficiary's agent **and the grantor** must enter into mediation in

1 accordance with mediation guidelines the Attorney General establishes by rule.

2 (b) If the beneficiary or the beneficiary's agent agrees with the grantor on a foreclosure avoid-
3 ance measure, the beneficiary or beneficiary's agent and the grantor shall set forth the terms of the
4 foreclosure avoidance measure in a written agreement, a copy of which the beneficiary or
5 beneficiary's agent shall provide to the Attorney General. The beneficiary may elect to pay the
6 grantor's portion of the cost of the mediation or the grantor and the beneficiary may agree to in-
7 clude the cost of the mediation as part of and in accordance with any payment plan that is part of
8 the foreclosure avoidance measure.

9 (c) If the beneficiary or the beneficiary's agent and the grantor do not agree on a foreclosure
10 avoidance measure, the mediation service provider shall, **within five days after the conclusion**
11 **of the last mediation session**, notify the Attorney General **in writing** that the mediation did not
12 result in an agreement.

13 (6)(a) [*At the*] **Within five days after the** conclusion of the mediation, if the beneficiary has
14 complied with the requirements of subsections (4) and (5) of this section, the mediation service pro-
15 vider shall provide the beneficiary or the beneficiary's agent with a certificate of compliance in a
16 form and with contents that the Attorney General specifies by rule. The certificate must state that
17 the beneficiary has complied with the requirements of this section.

18 (b) If the grantor does not confirm by the date specified under subsection (3)(c) of this section
19 that the grantor will enter into mediation **or the grantor does not comply with the requirements**
20 **of subsection (4)(a) of this section**, the mediation service provider shall provide the beneficiary
21 or the beneficiary's agent with a certificate of compliance in a form and with contents that the At-
22 torney General specifies by rule. The certificate must state that the grantor declined to enter into
23 mediation with the beneficiary.

24 (c) **Within five days after the mediation service provider issues the certificate of compli-**
25 **ance under paragraph (a) or (b) of this subsection**, the mediation service provider shall provide
26 a copy of the certificate [*the mediation service provider issues under paragraph (a) or (b) of this*
27 *subsection*] **of compliance** to the grantor and to the Attorney General.

28 (7)(a) A grantor that is at risk of [*default*] **defaulting on an obligation secured by a residen-**
29 **tial trust deed** before the beneficiary or the trustee has filed a notice of default for recording under
30 ORS 86.735 **or before the beneficiary has filed an action for the judicial foreclosure of the**
31 **grantor's trust deed** may notify the [*beneficiary or trustee*] **person to whom the grantor was**
32 **most recently directed to send payments** [*in the trust deed*] or the beneficiary's or trustee's agent
33 that the grantor wants to enter [*into*] mediation. **Unless the beneficiary has claimed an ex-**
34 **emption in accordance with subsection (2)(d) of this section**, within 15 days after receiving the
35 request, the beneficiary or trustee or the beneficiary's or trustee's agent shall respond to the
36 grantor's request and shall notify the Attorney General and the mediation service provider [*identi-*
37 *fied*] **described** in subsection (2)(b) of this section. The response to the grantor must include contact
38 information for the Attorney General and the mediation service provider. **If the beneficiary has**
39 **claimed an exemption under subsection (2)(d) of this section, within 15 days after receiving**
40 **the grantor's request for mediation, the beneficiary or trustee or the beneficiary's or**
41 **trustee's agent shall inform the grantor in writing that the beneficiary is exempt from the**
42 **requirement to enter into mediation.**

43 (b) **For the purposes of paragraph (a) of this subsection, a grantor is at risk of defaulting**
44 **on an obligation if at the time the grantor requests mediation the grantor has, for 30 days**
45 **or more, failed to make a required periodic payment or otherwise has failed to perform in**

1 **accordance with the terms of the obligation that is secured by the trust deed.**

2 [(b)] (c) A grantor that requests mediation under paragraph (a) of this subsection may also notify
3 the Attorney General and the mediation service provider of the request. The Attorney General shall
4 post on the Department of Justice website contact information for the mediation service provider
5 and an address or method by which the grantor may notify the Attorney General.

6 [(c)] (d) **Unless the beneficiary has claimed an exemption under subsection (2)(d) of this**
7 **section**, within 10 days after receiving notice of the request under paragraph (a) of this subsection,
8 the mediation service provider shall send a notice to the grantor and the beneficiary that, except
9 with respect to the date by which the mediation service provider must send the notice, is otherwise
10 in accordance with the provisions of subsection (3) of this section.

11 (e) **If the beneficiary has claimed an exemption under subsection (2)(d) of this section,**
12 **within 10 days after receiving notification of the grantor's request for mediation under par-**
13 **agraph (c) of this subsection, the mediation service provider shall inform the grantor in**
14 **writing that the beneficiary is exempt from the requirement to enter into mediation.**

15 [(d)] (f) A beneficiary or beneficiary's agent that receives a request under paragraph (a) of this
16 subsection is subject to the same duties as are described in subsections (2), (4) and (5) of this section.

17 **SECTION 2.** Section 2a, chapter 112, Oregon Laws 2012, is amended to read:

18 **Sec. 2a.** (1)(a) Except as provided in subsection (3) of this section, a grantor that confirms under
19 section 2 (3)(c) [*of this 2012 Act*], **chapter 112, Oregon Laws 2012**, that the grantor will enter into
20 mediation shall consult a housing counselor approved by the United States Department of Housing
21 and Urban Development **or an agency of this state** before the scheduled date of the mediation.

22 (b) If, after consulting with the housing counselor, the grantor decides not to enter into medi-
23 ation, the grantor shall notify the mediation service provider that sent the notice under section 2
24 (3) [*of this 2012 Act*], **chapter 112, Oregon Laws 2012**, that the grantor no longer intends to enter
25 into mediation. The housing counselor shall inform the grantor of the requirement under this para-
26 graph to notify the mediation service provider. **Within five days after the mediation service**
27 **provider receives the notification from the grantor**, the mediation service provider shall notify
28 the beneficiary or the beneficiary's agent **in writing** of the grantor's decision.

29 (2) The notice of mediation described in section 3 [*of this 2012 Act*], **chapter 112, Oregon Laws**
30 **2012**, must include a statement that informs the grantor that the grantor must consult a housing
31 counselor in accordance with subsection (1) of this section. The statement must also notify the
32 grantor that the requirement to consult a housing counselor is subject to the provisions of sub-
33 section (3) of this section.

34 (3) The requirement under subsection (1) of this section to consult a housing counselor does not
35 apply to a grantor that could not obtain an appointment to consult a housing counselor within 30
36 days after receiving the notice described in subsection (2) of this section. A grantor that intends to
37 claim the exemption provided under this subsection shall obtain from the mediation service provider
38 and sign an affidavit that attests that the grantor could not obtain an appointment to consult a
39 housing counselor within the 30-day period. The Attorney General by rule shall prescribe the form
40 and contents of the affidavit.

41 **SECTION 3.** Section 3, chapter 112, Oregon Laws 2012, is amended to read:

42 **Sec. 3.** The notice of mediation required under ORS 86.740 (1)(b) must be **substantially** in a
43 form and with the contents the Attorney General specifies by rule and must:

44 (1) List the **last-known** name, address, telephone number and other contact information for the
45 grantor or other person named in the residential trust deed **or of the last person the beneficiary**

1 **knows to have assumed the grantor's obligations under the note and trust deed.**

2 (2) Specify the account number or other means by which the beneficiary or trustee or an agent
3 of the beneficiary or trustee identifies the obligation that is secured by the residential trust deed.

4 (3) Provide the address, telephone number and other contact information for:

5 (a) The beneficiary or an agent of the beneficiary that the beneficiary authorizes to negotiate
6 on the beneficiary's behalf;

7 (b) The Oregon State Bar's Lawyer Referral Service;

8 (c) Service agencies or other providers that offer free or low-cost legal services from a list of
9 agencies or providers that the Attorney General adopts by rule; and

10 (d) A list of not-for-profit housing counselors approved by the United States Department of
11 Housing and Urban Development or an agency of this state.

12 (4) State that section 2, **chapter 112, Oregon Laws 2012**, [of this 2012 Act] requires the bene-
13 ficiary to enter into mediation with the grantor for the purpose of negotiating a foreclosure avoid-
14 ance measure.

15 (5) List the documents the grantor must [bring to the mediation. The Attorney General by rule
16 shall specify the documents the grantor must bring] **provide under section 2 (4)(a), chapter 112,**
17 **Oregon Laws 2012.**

18 (6) State that the grantor **must appear in person and** may choose to have an attorney or a
19 housing counselor approved by the United States Department of Housing and Urban Development
20 **or an agency of this state** represent the grantor at the mediation.

21 (7) State the costs of the mediation and specify the maximum cost for which the grantor will
22 be responsible.

23 (8) State that the mediation and mediation communications, as defined in ORS 36.110, are con-
24 fidential in accordance with and to the extent provided in ORS 36.220 to 36.238.

25 (9) State that within 30 days after the date of the notice [a] **the** mediation service provider will
26 send another notice to the grantor with a date, time and location for the mediation and with the
27 other information specified in section 2 (3) [of this 2012 Act], **chapter 112, Oregon Laws 2012.**

28 **SECTION 4.** Section 4, chapter 112, Oregon Laws 2012, is amended to read:

29 **Sec. 4.** (1) The Foreclosure Avoidance Mediation Fund is established in the State Treasury,
30 separate and distinct from the General Fund. The fund consists of moneys the Attorney General
31 collects or receives for the purpose of paying the expenses of coordinating a mediation program
32 under section 2 [of this 2012 Act], **chapter 112, Oregon Laws 2012**, and related expenses. The
33 moneys in the fund are continuously appropriated to the Attorney General for the purposes of pay-
34 ing the expenses of coordinating the mediation program and related expenses.

35 (2) The Attorney General may receive moneys for the purposes set forth in subsection (1) of this
36 section from any public or private source.

37 (3)(a) Except as provided in paragraph (b) of this subsection, a trustee or beneficiary that files
38 a notice of default under ORS 86.735 shall pay to the county clerk that records the notice \$100 in
39 addition to and not in lieu of any fee that the county clerk charges for recording the notice of de-
40 fault. The county clerk at the end of each month shall forward the proceeds of the \$100 charge to
41 the Attorney General for deposit into the fund described in subsection (1) of this section.

42 [(b) An individual, a financial institution, as defined in ORS 706.008, a mortgage banker, as de-
43 fined in ORS 86A.100, or a licensee, as defined in ORS 725.010, is not subject to the \$100 charge de-
44 scribed in paragraph (a) of this subsection if the individual, financial institution, mortgage banker or
45 licensee provides to the county clerk a sworn affidavit that states that during the preceding calendar

1 year the individual, financial institution, mortgage banker or licensee did not commence or cause an
 2 affiliate or agent of the individual, financial institution, mortgage banker or licensee to commence more
 3 than a total of 250 actions to foreclose a residential trust deed by advertisement and sale under ORS
 4 86.735 or a residential mortgage by suit under ORS 88.010. An individual, financial institution, mort-
 5 gage banker or licensee that intends to claim an exemption under this paragraph shall provide the af-
 6 fidavit either:]

7 **(b) The \$100 charge described in paragraph (a) of this subsection does not apply to an**
 8 **individual, partnership, corporation, limited liability company or other business entity, to a**
 9 **financial institution or trust company as those terms are defined in ORS 706.008, to a mort-**
 10 **gage banker as defined in ORS 86A.100, or to a licensee as defined in ORS 725.010, if:**

11 **(A) The index maintained by the Attorney General under section 2 (2)(e), chapter 112,**
 12 **Oregon Laws 2012, shows that the individual, partnership, corporation, limited liability com-**
 13 **pany or other business entity, financial institution, trust company, mortgage banker or**
 14 **licensee has filed an exemption affidavit under section 2 (2)(d)(A), chapter 112, Oregon Laws**
 15 **2012; or**

16 **(B) The individual, partnership, corporation, limited liability company or other business**
 17 **entity, financial institution, trust company, mortgage banker or licensee provides to the**
 18 **county clerk a sworn affidavit or a copy of the sworn affidavit the beneficiary provided to**
 19 **the Attorney General pursuant to section 2 (2)(d)(A), chapter 112, Oregon Laws 2012, that**
 20 **states that during the preceding calendar year the individual, partnership, corporation, lim-**
 21 **ited liability company or other business entity, financial institution, trust company, mort-**
 22 **gage banker or licensee did not commence or cause an affiliate or agent of the individual,**
 23 **partnership, corporation, limited liability company or other business entity, financial insti-**
 24 **tution, trust company, mortgage banker or licensee to commence more than a total of 250**
 25 **actions to foreclose a residential trust deed by advertisement and sale under ORS 86.735 or**
 26 **a residential mortgage by suit under ORS 88.010. An individual, partnership, corporation,**
 27 **limited liability company or other business entity, financial institution, trust company,**
 28 **mortgage banker or licensee that intends to claim an exemption under this paragraph shall**
 29 **provide a copy of the affidavit either:**

30 [(A)] (i) [Within 30 days after the operative date specified in section 11 of this 2012 Act to claim
 31 the exemption for calendar year 2012 and] Not later than January 31 in any [subsequent] calendar
 32 year in which the individual, **partnership, corporation, limited liability company or other busi-**
 33 **ness entity,** financial institution, **trust company,** mortgage banker or licensee intends to claim the
 34 exemption; or

35 [(B)] (ii) At the time the individual, **partnership, corporation, limited liability company or**
 36 **other business entity,** financial institution, **trust company,** mortgage banker or licensee files a
 37 notice of default under ORS 86.735.

38 **SECTION 5.** Section 4a, chapter 112, Oregon Laws 2012, is amended to read:

39 **Sec. 4a.** (1)(a) If a beneficiary **that has entered into mediation with a grantor under section**
 40 **2, chapter 112, Oregon Laws 2012,** determines that a grantor is not eligible for any foreclosure
 41 avoidance measure or **determines after completing mediation with a grantor** that the grantor
 42 has not complied with the terms of a foreclosure avoidance measure to which the grantor has
 43 agreed, the beneficiary or the beneficiary's agent, at least [30] **25** days before [the date specified
 44 for] the trustee's sale [in a notice served under ORS 86.740 or 86.755 (2)(b)], shall notify the grantor
 45 in writing of the beneficiary's determination and shall cause the notice to be served **or mailed** as

1 provided in ORS 86.740 (1).

2 (b) The notice must, in plain language, explain the basis for the beneficiary’s determination.

3 [(2) *The beneficiary or the beneficiary’s agent shall mail a copy of the notice of the determination*
4 *described in subsection (1) of this section to the Department of Justice on the same date on which the*
5 *notice is served.*]

6 [(3)(a)] **(2)(a) If a beneficiary makes a determination under subsection (1)(a) of this sec-**
7 **tion,** at least 20 days before the date specified for the trustee’s sale in a notice served under ORS
8 86.740 or 86.755 (2)(b)[,] the beneficiary or the beneficiary’s agent shall[:]

9 [(A)] record in the mortgage records for the property that is subject to the trustee’s sale, in the
10 county or in one of the counties in which the property is located, an affidavit that states that the
11 beneficiary has complied with the requirements set forth in subsections (1) and (2) of this section[;
12 *and*]

13 [(B) *Mail a copy of the affidavit to the department.*]

14 (b) The affidavit described in paragraph (a) of this subsection must:

15 (A) Identify the property that is the subject of the trustee’s sale;

16 (B) Identify the grantor and, as of the date of the affidavit, the trustee and the beneficiary;

17 (C) State that the beneficiary or beneficiary’s agent has complied with the requirements set
18 forth in [*subsections (1) and (2)*] **subsection (1)** of this section; and

19 (D) Include proof of service on **or mailing to** the grantor for the notice described in subsection
20 (1) of this section.

21 [(4) *The Attorney General by rule shall specify a form for and the contents of the notice of the*
22 *determination described in subsection (1) of this section and shall identify an address to which the*
23 *beneficiary or beneficiary’s agent must mail the copy of the notice under subsection (2) of this section*
24 *and the affidavit under subsection (3) of this section.*]

25 **(3) The notice described in subsection (1) of this section must be in substantially this**
26 **form:**

27
28
29 **NOTICE OF DETERMINATION**
30 **YOU ARE AT RISK OF FORECLOSURE**
31 **YOU MAY LOSE YOUR PROPERTY**
32 **IF YOU DO NOT TAKE IMMEDIATE ACTION**

33
34 **Lender’s Name:** _____

35 **Homeowner’s Name:** _____

36 **Property Address:** _____

37
38 **Your lender has determined that:**

39
40 **[] You are not eligible for:**

- 41 • **A forbearance agreement**
- 42 • **A temporary or permanent loan**
43 **modification**
- 44 • **A short sale**
- 45 • **A deed in lieu of foreclosure**

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- Any other foreclosure avoidance measure

Your lender considered these other foreclosure avoidance measures, but these measures are not available:

The basis for your lender's determination is (must be described specifically and in plain language):

- You have not complied with the terms of an agreement with your lender for a forbearance, temporary or permanent loan modification, short sale, deed in lieu of foreclosure or other foreclosure avoidance measure.

The basis for your lender's determination is (must be described specifically and in plain language):

Government agencies and nonprofit organizations can give you information about foreclosure and help you decide what to do. For the name and telephone number of an agency or organization near you, please call _____. If you need help finding a lawyer, call the Oregon State Bar's Lawyer Referral Service at _____ or visit online at _____. If you have a low income, you might be eligible for assistance at no cost. For more information and a directory of legal aid programs, visit _____.

(Beneficiary or Beneficiary's Agent)

By: _____ Date: _____

[(5)(a)] (4)(a) A beneficiary [or an agent of the beneficiary] that is subject to and fails to substantially comply with the provisions of this section is liable to the grantor in the amount of \$500 plus the amount of the grantor's actual damages for each failure to comply with a provision of this section.

(b) A grantor may bring an action against a beneficiary [or an agent of the beneficiary] in a

1 circuit court of this state to recover the amounts described in paragraph (a) of this subsection. The
 2 grantor shall commence the action within two years after the date on which the beneficiary [*or the*
 3 *beneficiary's agent*] should have complied, but did not comply, with the provisions of this section.
 4 **The remedy provided for the grantor under this subsection shall be the grantor's exclusive**
 5 **remedy for a beneficiary's violation of this section.**

6 (c) Notwithstanding an agreement to the contrary, a court may award reasonable attorney fees,
 7 costs and disbursements to [*a grantor that obtains a final judgment in the grantor's favor*] **the pre-**
 8 **vailing party in an action the grantor brings under paragraph (b) of this subsection.**

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

11 86.705. As used in ORS 86.705 to 86.795:

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

13 (2) "Beneficiary" means [*a*] **the** person named or otherwise designated in a trust deed as [*the*
 14 *person for whose benefit a trust deed is given*] **the beneficiary**, or the person's successor in
 15 interest[, *and who is not the trustee unless the beneficiary is qualified to be a trustee under ORS*
 16 *86.790 (1)(d)*].

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

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

20 (5) "Residential trust deed" means a trust deed on property upon which are situated four or
 21 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 **trust deed foreclosure is com-**
 23 **menced** [*default that results in an action to foreclose the obligation secured by the trust deed first*
 24 *occurs*].

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

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

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

33 **SECTION 7.** ORS 86.735, as amended by section 6, chapter 112, Oregon Laws 2012, is amended
 34 to read:

35 86.735. (1) A trustee may foreclose a trust deed by advertisement and sale in the manner pro-
 36 vided in ORS 86.740 to 86.755 if:

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

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

44 (b) **The grantor or other person, or the grantor's or other person's successor in interest,**
 45 **defaults on an obligation for which the trust deed secures performance and with respect to**

1 **which a provision in the deed authorizes sale in the event of default;**

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

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

11 [(5)(a)] (e) The beneficiary or the beneficiary's agent has complied with the provisions of section
12 4a, chapter 112, Oregon Laws 2012, **if the provisions apply to the beneficiary**; and

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

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

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

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

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

30 **SECTION 8.** ORS 86.750 is amended to read:

31 86.750. (1)(a) [*Except as provided in paragraph (b) of this subsection,*] The notice prescribed in
32 ORS 86.745 must be served upon an occupant of the property described in the trust deed in the
33 manner in which a summons is served [*pursuant to*] **under ORCP 7 D(2) and 7 D(3) or mailed by**
34 **both first class and certified mail with return receipt requested**, at least 120 days before the
35 day the trustee conducts the sale, **to the last-known address of the occupant.**

36 [(b)(A) *If service cannot be effected on an occupant as provided in paragraph (a) of this subsection*
37 *on the first attempt, the person that attempts to effect service shall post a copy of the notice in a con-*
38 *spicuous place on the property on the date of the first attempt. The person that attempts to effect service*
39 *shall make a second attempt to effect service on a day that is at least two days after the first*
40 *attempt.*]

41 [(B) *If service cannot be effected on an occupant as provided in paragraph (a) of this subsection*
42 *on the second attempt, the person that attempts to effect service shall post a copy of the notice in a*
43 *conspicuous place on the property on the date of the second attempt. The person that attempts to effect*
44 *service shall make a third attempt to effect service on a day that is at least two days after the second*
45 *attempt.*]

1 [(C) *If service cannot be effected on an occupant as provided in paragraph (a) of this subsection*
 2 *on the third attempt, the person that attempts to effect service shall send a copy of the notice, bearing*
 3 *the word “occupant” as the addressee, to the property address by first class mail with postage*
 4 *prepaid.*]

5 [(c) (b) Service on an occupant is effected on the earlier of the date that notice is served as
 6 provided in paragraph (a) of this subsection or the [*first*] date on which notice is [*posted as described*
 7 *in paragraph (b)(A) of this subsection*] **mailed.**

8 (2)(a) Except as provided in paragraph (b) of this subsection, a copy of the notice of sale must
 9 be published in a newspaper of general circulation in each of the counties in which the property is
 10 situated once a week for four successive weeks. The last publication must be made more than 20
 11 days prior to the date the trustee conducts the sale.

12 (b) The copy of the notice of sale required to be published under paragraph (a) of this subsection
 13 does not need to include the notice to tenants required under ORS 86.745 (9).

14 (3) At or before the time the trustee conducts the sale, the trustee shall file for recording in the
 15 official record of the county or counties in which the property described in the deed is situated the
 16 following affidavits with respect to the notice of sale:

17 (a) An affidavit of mailing, if any;

18 (b) An affidavit of service, if any; **and**

19 [(c) *An affidavit of service attempts and posting, if any; and*]

20 [(d)] (c) An affidavit of publication.

21 (4) At or before the time the trustee conducts the sale, the trustee shall file for recording in the
 22 official record of the county or counties in which the property described in the deed is situated an
 23 affidavit of mailing with respect to the notice to the grantor required under ORS 86.737.

24 **SECTION 9.** ORS 86.755, as amended by section 9, chapter 112, Oregon Laws 2012, is amended
 25 to read:

26 86.755. (1)(a) A trustee shall hold a trustee’s sale on the date and at the time and place desig-
 27 nated in the notice of sale given under ORS 86.740. The designated time of the trustee’s sale must
 28 be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the
 29 designated place of the trustee’s sale must be in the county or one of the counties in which the
 30 property is situated. Except as provided in paragraph (b) of this subsection, the trustee may sell the
 31 property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the
 32 highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding
 33 the trustee, may bid at the trustee’s sale. An attorney for the trustee, or an agent that the trustee
 34 or the attorney designates, may conduct the sale and act in the sale as the trustee’s auctioneer.

35 (b) If the trustee sells property upon which a single residential unit that is subject to an af-
 36 fordable housing covenant is situated, the eligible covenant holder may purchase the property from
 37 the trustee at the trustee’s sale for cash or cash equivalent in an amount that is the lesser of:

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

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

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

43 (B) If an interest in the property exists that is prior to the eligible covenant holder’s interest,
 44 other than the interest set forth in the trust deed that was the subject of the foreclosure proceeding
 45 under ORS 86.735, notwithstanding the provisions of ORS 86.770 (1) the sale does not foreclose and

1 terminate the prior interest and the eligible covenant holder's title to the property is subject to the
2 prior interest.

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

8 (b)(A) **Except as provided in subparagraphs (B) and (C) of this paragraph**, if a person
9 postpones the sale date [*as provided in*] **under** paragraph (a) of this subsection, the trustee, in the
10 manner provided for [*service of the*] **giving a** notice of sale under ORS 86.740 (1), shall cause written
11 notice of the new time, date and place for the sale to be served on **or mailed to** the grantor and
12 [*on*] any person [*to whom notice of the sale was given*] **who was given a notice of sale** under ORS
13 86.745. The **postponement** notice must be given at least 15 days before the new sale date. [*The*
14 *person may postpone the sale once, for not more than two calendar days, without giving notice as*
15 *provided in this paragraph. The person may not postpone the sale for more than two calendar days*
16 *or more than once without giving notice as provided in this paragraph.*]

17 (B) **The person conducting the sale may, on the day previously scheduled for the sale,**
18 **postpone the time set for the sale one or more times to a later time that day, giving notice**
19 **of each postponement by public proclamation made at the time and place previously set for**
20 **the sale.**

21 (C) **The person conducting the sale may postpone the sale once beyond the originally**
22 **scheduled sale date for not more than two calendar days, giving notice of the postponement**
23 **by public proclamation made at the time and place originally set for the sale.**

24 (3) The purchaser shall pay at the time of sale the price bid or the price determined in accord-
25 ance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee shall
26 execute and deliver the trustee's deed to the purchaser.

27 (4) The trustee's deed shall convey to the purchaser the interest in the property that the grantor
28 had, or had the power to convey, at the time the grantor executed the trust deed, together with any
29 interest the grantor or the grantor's successors in interest acquire after the execution of the trust
30 deed.

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

35 (b) The notice required by this subsection must:

36 (A) Explain that the dwelling unit has been sold at a foreclosure sale and that the purchaser
37 at that sale is the new owner.

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

39 (C) Include the name, contact address and contact telephone number of the purchaser or the
40 purchaser's representative.

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

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

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

1 (A) Personal delivery to the tenant.

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

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

6 (D) If the names of the tenants are not known to the purchaser, the notice may be addressed
7 to "occupants."

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

11 _____

12
13 NOTICE TO RESIDENTIAL TENANTS OF
14 CHANGE IN OWNERSHIP

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

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

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

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

29 You must be provided with at least 90 days' written notice after the foreclosure sale before you
30 can be required to move.

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

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

37 IMPORTANT:

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

YOUR TENANCY
 BETWEEN NOW
 AND THE MOVE-OUT DATE

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

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

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

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

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

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

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

- (A) Upon expiration of the fixed term of the tenancy, if the bona fide tenancy is a fixed term tenancy as defined in ORS 90.100; or
- (B) At least 90 days after service of a written termination notice if the bona fide tenancy is:

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

3 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS
4 90.100.

5 (d) If a purchaser gives a 90-day written termination notice pursuant to paragraph (c) of this
6 subsection, the purchaser may include in the notice a request that a tenant with a fixed term
7 tenancy provide written evidence of the existence of the tenancy to the purchaser at an address
8 described in the notice. Written evidence includes a copy of the rental agreement or another docu-
9 ment that shows the existence of the fixed term tenancy. Failure of the tenant to provide the re-
10 quested written evidence before the purchaser files an action for possession based on a 90-day
11 notice:

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

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

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

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

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

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

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

29 (f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to 105.168 must attach
30 proof of service of a written termination notice required by paragraph (c) of this subsection to the
31 pleadings.

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

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

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

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

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

44 (a) Personal delivery to the tenant.

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

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

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

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

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

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

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

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

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

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

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

27 (B) Returning a security deposit.

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

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

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

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

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

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

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

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

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

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

8 (A) By registered or certified mail to:

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

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

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

18 (13) The amended notice of sale must:

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

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

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

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

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

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

36 **SECTION 10.** ORS 86.755, as amended by section 7, chapter 510, Oregon Laws 2011, and section
37 10, chapter 112, Oregon Laws 2012, is amended to read:

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

1 or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

2 (b) If the trustee sells property upon which a single residential unit that is subject to an af-
3 fordable housing covenant is situated, the eligible covenant holder may purchase the property from
4 the trustee at the trustee's sale for cash or cash equivalent in an amount that is the lesser of:

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

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

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

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

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

20 (b)(A) **Except as provided in subparagraphs (B) and (C) of this paragraph**, if a person
21 postpones the sale date [*as provided in*] **under** paragraph (a) of this subsection, the trustee, in the
22 manner provided for [*service of the*] **giving a** notice of sale under ORS 86.740 (1), shall cause written
23 notice of the new time, date and place for the sale to be served on **or mailed to** the grantor and
24 [*on*] any person [*to whom notice of the sale was given*] **who was given a notice of sale** under ORS
25 86.745. The **postponement** notice must be given at least 15 days before the new sale date. [*The*
26 *person may postpone the sale once, for not more than two calendar days, without giving notice as*
27 *provided in this paragraph. The person may not postpone the sale for more than two calendar days*
28 *or more than once without giving notice as provided in this paragraph.*]

29 (B) **The person conducting the sale may, on the day previously scheduled for the sale,**
30 **postpone the time set for the sale one or more times to a later time that day, giving notice**
31 **of each postponement by public proclamation made at the time and place previously set for**
32 **the sale.**

33 (C) **The person conducting the sale may postpone the sale once beyond the originally**
34 **scheduled sale date for not more than two calendar days, giving notice of the postponement**
35 **by public proclamation made at the time and place originally set for the sale.**

36 (3) The purchaser shall pay at the time of sale the price bid or the price determined in accord-
37 ance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee shall
38 execute and deliver the trustee's deed to the purchaser.

39 (4) The trustee's deed shall convey to the purchaser the interest in the property that the grantor
40 had, or had the power to convey, at the time the grantor executed the trust deed, together with any
41 interest the grantor or the grantor's successors in interest acquire after the execution of the trust
42 deed.

43 (5)(a) If property purchased at the trustee's sale includes one or more dwelling units that are
44 subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the
45 occupants of each unit within 30 days after the date of sale and before or concurrently with service

1 of a written termination notice authorized by subsection (6)(c)(B) of this section.

2 (b) The notice required by this subsection must:

3 (A) Explain that the dwelling unit has been sold at a foreclosure sale and that the purchaser
4 at that sale is the new owner.

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

6 (C) Include the name, contact address and contact telephone number of the purchaser or the
7 purchaser’s representative.

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

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

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

13 (A) Personal delivery to the tenant.

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

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

18 (D) If the names of the tenants are not known to the purchaser, the notice may be addressed
19 to “occupants.”

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

23
24
25 **NOTICE TO RESIDENTIAL TENANTS OF**
26 **CHANGE IN OWNERSHIP**

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

30
31 **IF YOU ARE A BONA FIDE TENANT RENTING THIS PROPERTY AS A RESIDENTIAL**
32 **DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE**
33 **FORECLOSURE SALE FOR:**

- 34 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF
- 35 YOU HAVE A FIXED TERM LEASE; OR
- 36 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION
- 37 NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO-WEEK RENTAL AGREEMENT.

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

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

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

- 45 • Is the result of an arm’s-length transaction;

- 1 • Requires the payment of rent that is not substantially less than fair market rent for the
- 2 property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
- 3 • Was entered into prior to the date of the foreclosure sale.

4 **IMPORTANT:**

5 YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S REPRESENTATIVE AT
 6 THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER
 7 KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE
 8 OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED
 9 TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 30 DAYS LEFT. Written evidence
 10 of your rental agreement can be a copy of your lease or rental agreement, or other documentation
 11 of the existence of your rental agreement. Keep your original documents and a record of any infor-
 12 mation you give to the new owner.

13 **YOUR TENANCY**
 14 **BETWEEN NOW**
 15 **AND THE MOVE-OUT DATE**

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

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

24 The new owner may offer to pay your moving expenses and any other costs or amounts you and
 25 the new owner agree on in exchange for your agreement to leave the premises in less than 30 or
 26 60 days. You should speak with a lawyer to fully understand your rights before making any decisions
 27 regarding your tenancy.

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

36
 37
 38 (6)(a) Except as provided in paragraph (b) or (c) of this subsection, the purchaser at the trustee's
 39 sale is entitled to possession of the property on the 10th day after the sale. A person that remains
 40 in possession after the 10th day under any interest, except an interest prior to the trust deed, or
 41 an interest the grantor or a successor of the grantor created voluntarily, is a tenant at sufferance.
 42 The purchaser may obtain possession of the property from a tenant at sufferance by following the
 43 procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

44 (b) Except as provided in paragraph (c) of this subsection, at any time after the trustee's sale
 45 the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable

1 judicial procedure to obtain possession of the property from a person that holds possession under
2 an interest that the grantor or a successor of the grantor created voluntarily if, not earlier than 30
3 days before the date first set for the sale, the person was served with not less than 30 days' written
4 notice of the requirement to surrender or deliver possession of the property.

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

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

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

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

14 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS
15 90.100.

16 (d) If a purchaser gives a 30-day written termination notice pursuant to paragraph (c) of this
17 subsection, the purchaser may include in the notice a request that a tenant with a fixed term
18 tenancy provide written evidence of the existence of the tenancy to the purchaser at an address
19 described in the notice. Written evidence includes a copy of the rental agreement or another docu-
20 ment that shows the existence of the fixed term tenancy. Failure of the tenant to provide the re-
21 quested written evidence before the purchaser files an action for possession based on a 30-day
22 notice:

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

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

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

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

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

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

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

40 (f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to 105.168 must attach
41 proof of service of a written termination notice required by paragraph (c) of this subsection to the
42 pleadings.

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

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

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

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

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

10 (a) Personal delivery to the tenant.

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

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

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

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

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

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

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

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

29 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and
30 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not
31 impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to
32 this paragraph, “rent” refers to the amount paid by the tenant to the landlord for the right to oc-
33 cupy the unit before the foreclosure.

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

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

38 (B) Returning a security deposit.

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

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

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

45 (11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement

1 to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or
2 (9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the pre-
3 vailing party together with costs and disbursements.

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

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

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

10 (c) As used in this subsection, "prevailing party" means the party in whose favor final judgment
11 is rendered.

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

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

19 (A) By registered or certified mail to:

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

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

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

29 (13) The amended notice of sale must:

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

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

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

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

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

37 (14) If the publication of the notice of sale was not completed before the date the foreclosure
38 proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other lawful
39 reason, after release from the stay, in addition to complying with the provisions of subsections (12)
40 and (13) of this section, the trustee shall complete the publication by publishing an amended notice
41 of sale that states that the notice has been amended following release from the stay and that con-
42 tains the amended date of sale. The amended notice must be published in a newspaper of general
43 circulation in each of the counties in which the property is situated once a week for four successive
44 weeks, except that the required number of publications must be reduced by the number of publica-
45 tions that were completed before the effective date of the stay. The last publication must be made

1 more than 20 days before the date the trustee conducts the sale.

2 **SECTION 11.** ORS 86.780 is amended to read:

3 86.780. (1)(a) [*When the*] **If a trustee's deed is recorded in the deed records of the county or**
 4 **counties where the property described in the deed is situated, the recitals contained in the deed and**
 5 **in the [*affidavits*] documents required to be recorded under [*ORS 86.750 (3) and (4) shall be*] ORS**
 6 **86.705 to 86.795 are prima facie evidence [*in any court*] of the truth of the matters set forth**
 7 **[*therein*] in the recitals, but the recitals [*shall be*] are conclusive in favor of a purchaser for value**
 8 **in good faith relying upon [*them*] the recitals.**

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

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

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

23 **SECTION 12.** ORS 86.790 is amended to read:

24 86.790. (1) The trustee of a trust deed under ORS 86.705 to 86.795 shall not be required to
 25 comply with the provisions of ORS chapters 707 and 709 and shall be:

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

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

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

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

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

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

36 [(2)] **(3) An attorney who is a trustee under subsection (1)(a) of this section may represent the**
 37 **beneficiary in addition to performing the duties of trustee.**

38 [(3)] **(4) At any time after the trust deed is executed, the beneficiary may appoint in writing**
 39 **another qualified trustee. If the appointment of the successor trustee is recorded in the mortgage**
 40 **records of the county or counties in which the trust deed is recorded, the successor trustee shall**
 41 **be vested with all the powers of the original trustee.**

42 [(4)] **(5) A trustee or successor trustee is a necessary and proper party to any proceeding to**
 43 **determine the validity of or enjoin any private or judicial proceeding to foreclose a trust deed, but**
 44 **a trustee or successor trustee is neither a necessary nor a proper party to any proceeding to de-**
 45 **termine title to the property subject to the trust deed, or to any proceeding to impose, enforce or**

1 foreclose any other lien on the subject property.

2 [(5)] (6) Nothing in ORS 86.705 to 86.795 imposes a duty on the trustee or successor trustee to
3 notify any person of any proceeding with respect to such person, except a proceeding initiated by
4 the trustee or successor trustee.

5 [(6)] (7) A trustee or the attorney for the trustee or any agent designated by the trustee or the
6 attorney may announce and accept a bid from the beneficiary whether or not the beneficiary is
7 present at the sale.

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

12 **SECTION 13. Section 14 of this 2013 Act is added to and made a part of ORS 86.705 to**
13 **86.795.**

14 **SECTION 14. (1) A beneficiary, including a beneficiary designated as an agent or nominee,**
15 **may designate an agent or nominee to act on behalf of the beneficiary.**

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

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

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

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

23 (a) An assignment to the successor in interest has been recorded and the assignment
24 does not designate the original beneficiary as agent or nominee for the successor in interest;
25 or

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

28 **SECTION 15. (1) Section 14 of this 2013 Act and the amendments to statutes and session**
29 **laws by sections 1 to 12 of this 2013 Act become operative 91 days after the effective date**
30 **of this 2013 Act.**

31 (2) The Attorney General may take any action before the operative date specified in
32 subsection (1) of this section that is necessary to enable the Attorney General to exercise,
33 on and after the operative date specified in subsection (1) of this section, all of the duties,
34 functions and powers conferred on the Attorney General by the enactment of section 14 of
35 this 2013 Act and the amendments to statutes and session laws by sections 1 to 12 of this
36 2013 Act.

37 **SECTION 16. Section 14 of this 2013 Act and the amendments to statutes and session**
38 **laws by sections 1 to 12 of this 2013 Act apply to all foreclosures by advertisement and sale,**
39 **whether commenced before, on or after the effective date of this 2013 Act.**

40 **SECTION 17. This 2013 Act being necessary for the immediate preservation of the public**
41 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
42 **on its passage.**

43