

**PROPOSED AMENDMENTS TO
SENATE BILL 804**

1 On page 1 of the printed bill, line 2, delete “86.750, 86.755,”.

2 In line 3, delete “and sections 2, 2a, 3, 4 and 4a, chapter 112, Oregon Laws
3 2012”.

4 Delete lines 6 through 22.

5 Delete pages 2 through 27 and insert:

6 **“SECTION 1.** ORS 86.705, as amended by section 5, chapter 112, Oregon
7 Laws 2012, is amended to read:

8 “86.705. As used in ORS 86.705 to 86.795:

9 “(1) ‘Affordable housing covenant’ has the meaning given that term in
10 ORS 456.270.

11 “(2) ‘Beneficiary’ means [a] **the** person named or otherwise designated in
12 a trust deed as [*the person for whose benefit a trust deed is given*] **the ben-**
13 **eficiary**, or the person’s successor in interest[, *and who is not the trustee*
14 *unless the beneficiary is qualified to be a trustee under ORS 86.790 (1)(d)*].

15 “(3) ‘Eligible covenant holder’ has the meaning given that term in ORS
16 456.270.

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

19 “(5) ‘Residential trust deed’ means a trust deed on property upon which
20 are situated four or fewer residential units, one of which the grantor, the
21 grantor’s spouse or the grantor’s minor or dependent child occupies as a
22 principal residence at the time a **trust deed foreclosure is commenced**

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

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

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

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

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

15 “86.735. (1) A trustee may foreclose a trust deed by advertisement and sale
16 in the manner provided in ORS 86.740 to 86.755 if:

17 “[*(1)*] (a) The trust deed, [*any assignments of the trust deed by the trustee*
18 *or the beneficiary and*] any appointment of a successor trustee **and any as-**
19 **signment that changes the designation of the beneficiary of the trust**
20 **deed** are recorded in the mortgage records in the counties in which the
21 property described in the deed is situated;

22 “[*(2)*] *There is a default by the grantor or other person that owes an obli-*
23 *gation, the performance of which is secured by the trust deed, or by the*
24 *grantor’s or other person’s successors in interest with respect to a provision in*
25 *the deed that authorizes sale in the event of default of the provision;]*

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

30 “[*(3)*] (c) The trustee or beneficiary has filed for [*record*] **recording** in the

1 county clerk's office in each county where the trust property, or some part
2 of the trust property, is situated, a notice of default containing the infor-
3 mation required by ORS 86.745 and containing the trustee's or beneficiary's
4 election to sell the property to satisfy the obligation;

5 “[4] (d) The beneficiary or the beneficiary's agent has filed for recording
6 in the official records of the county or counties in which the property that
7 is subject to the residential trust deed is located the certificate of compliance
8 the beneficiary received under section 2, chapter 112, Oregon Laws 2012, if
9 the beneficiary must enter into mediation with the grantor under section 2
10 (2)(a), chapter 112, Oregon Laws 2012;

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

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

17 “[6] (f) An action has not been commenced to recover the debt or any
18 part of the debt then remaining secured by the trust deed, or, if an action
19 has been commenced, the action has been dismissed, except that:

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

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

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

4 “**SECTION 3.** ORS 86.780 is amended to read:

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

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

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

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

1 **“SECTION 4.** ORS 86.790 is amended to read:

2 “86.790. (1) The trustee of a trust deed under ORS 86.705 to 86.795 [*shall*
3 *not be*] **is not** required to comply with the provisions of ORS chapters 707
4 and 709 and [*shall*] **must** be:

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

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

9 “(c) A title insurance company authorized to insure title to real property
10 in this state, its subsidiaries, affiliates, insurance producers or branches;

11 “(d) The United States or any agency thereof; or

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

13 **“(2) The person named or otherwise designated as the beneficiary**
14 **in a trust deed may not be the trustee under the trust deed unless the**
15 **person is qualified to be a trustee under subsection (1)(d) of this sec-**
16 **tion.**

17 “[(2)] **(3)** An attorney who is a trustee under subsection (1)(a) of this
18 section may represent the beneficiary in addition to performing the duties
19 of trustee.

20 “[(3)] **(4)** At any time after the trust deed is executed, the beneficiary may
21 appoint in writing another qualified trustee. If the appointment of the suc-
22 cessor trustee is recorded in the mortgage records of the county or counties
23 in which the trust deed is recorded, the successor trustee shall be vested
24 with all the powers of the original trustee.

25 “[(4)] **(5)** A trustee or successor trustee is a necessary and proper party
26 to any proceeding to determine the validity of or enjoin any private or ju-
27 dicial proceeding to foreclose a trust deed, but a trustee or successor trustee
28 is neither a necessary nor a proper party to any proceeding to determine title
29 to the property subject to the trust deed, or to any proceeding to impose,
30 enforce or foreclose any other lien on the subject property.

1 “[5] (6) Nothing in ORS 86.705 to 86.795 imposes a duty on the trustee
2 or successor trustee to notify any person of any proceeding with respect to
3 such person, except a proceeding initiated by the trustee or successor trustee.

4 “[6] (7) A trustee or the attorney for the trustee or any agent designated
5 by the trustee or the attorney may announce and accept a bid from the
6 beneficiary whether or not the beneficiary is present at the sale.

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

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

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

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

21 **“(a) Termination of the designation has been recorded in the re-
22 cords; or**

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

25 **“(3) The recording of the original trust deed establishes the identity
26 of the original beneficiary as agent or nominee for a successor in in-
27 terest unless:**

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

1 **“(b) A document has been recorded that designates a person other**
2 **than the original beneficiary as agent or nominee for the successor in**
3 **interest.**

4 **“SECTION 7. Section 6 of this 2013 Act and the amendments to ORS**
5 **86.705, 86.735, 86.780 and 86.790 by sections 1 to 4 of this 2013 Act apply**
6 **to all foreclosures by advertisement and sale, whether commenced**
7 **before, on or after the effective date of this 2013 Act.**

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

11
