

**PROPOSED AMENDMENTS TO
HOUSE BILL 3499**

1 On page 1 of the printed bill, line 2, after the first semicolon delete the
2 rest of the line and line 3 and insert “amending ORS 86.745 and 86.750; and
3 declaring an emergency.”.

4 Delete lines 5 through 27 and delete pages 2 and 3 and insert:

5 **“SECTION 1. ORS 86.745 is amended to read:**

6 **“86.745. The notice of sale [*shall*] **must:****

7 **“(1) List the names of the grantor, trustee and beneficiary in the trust**
8 **deed, and the mailing address of the trustee.**

9 **“(2) Describe the property the trust deed covers.**

10 **“(3) Identify the book and page of the mortgage records that record the**
11 **trust deed.**

12 **“(4) State the default for which the foreclosure is made.**

13 **“(5) State the sum owing on the obligation that the trust deed secures.**

14 **“(6) State that the property will be sold to satisfy the obligation.**

15 **“(7) Set forth the date, time and place of the sale.**

16 **“(8) State that the right exists under ORS 86.753 to have the proceeding**
17 **dismissed and the trust deed reinstated by paying the entire amount then**
18 **due, together with costs, trustee’s fees and attorney fees, and by curing any**
19 **other default complained of in the notice of default, at any time that is not**
20 **later than five days before the date last set for the sale.**

21 **“(9) Include language that reads substantially as follows:**

22 “ _____

1 **Without limiting the trustee’s disclaimer of representations or**
2 **warranties, Oregon law requires the trustee to state in this notice that**
3 **some residential property sold at a trustee’s sale may have been used**
4 **in manufacturing methamphetamines, the chemical components of**
5 **which are known to be toxic. Prospective purchasers of residential**
6 **property should be aware of this potential danger before deciding to**
7 **place a bid for this property at the trustee’s sale.**

8 “ _____
9 “[9] (10) If the property includes one or more dwelling units that are
10 subject to ORS chapter 90, include a notice addressed clearly to any indi-
11 vidual who occupies the property and who is or might be a residential ten-
12 ant. The notice required under this subsection must:

13 “(a) Include contact information for the Oregon State Bar and a person
14 or organization that provides legal help to individuals at no charge to the
15 individual;

16 “(b) Include information concerning the right the individual has to notice
17 under ORS 86.755 (6)(c);

18 “(c) Be set apart from other text in the notice of sale; and

19 “(d) Be in substantially the following form:

20 “ _____
21 **NOTICE TO RESIDENTIAL TENANTS**

22 The property in which you are living is in foreclosure. A foreclosure sale
23 is scheduled for _____ (date). The date of this sale may be postponed.
24 Unless the lender that is foreclosing on this property is paid before the sale
25 date, the foreclosure will go through and someone new will own this prop-
26 erty. After the sale, the new owner is required to provide you with contact
27 information and notice that the sale took place.

28 The following information applies to you only if you are a bona fide
29 tenant occupying and renting this property as a residential dwelling under
30 a legitimate rental agreement. The information does not apply to you if you

1 own this property or if you are not a bona fide residential tenant.

2 If the foreclosure sale goes through, the new owner will have the right
3 to require you to move out. Before the new owner can require you to move,
4 the new owner must provide you with written notice that specifies the date
5 by which you must move out. If you do not leave before the move-out date,
6 the new owner can have the sheriff remove you from the property after a
7 court hearing. You will receive notice of the court hearing.

8 PROTECTION FROM EVICTION

9 IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING
10 THIS PROPERTY AS A RESIDENTIAL DWELLING, YOU HAVE THE
11 RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE FORE-
12 CLOSURE SALE FOR:

13 • THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE
14 A FIXED TERM LEASE; OR

15 • AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRIT-
16 TEN TERMINATION NOTICE.

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

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

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

26 • Is the result of an arm's-length transaction;

27 • Requires the payment of rent that is not substantially less than fair
28 market rent for the property, unless the rent is reduced or subsidized due to
29 a federal, state or local subsidy; and

30 • Was entered into prior to the date of the foreclosure sale.

1 ABOUT YOUR TENANCY
2 BETWEEN NOW AND THE
3 FORECLOSURE SALE: RENT

4 YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD
5 UNTIL THE PROPERTY IS SOLD OR UNTIL A COURT TELLS YOU
6 OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED. BE
7 SURE TO KEEP PROOF OF ANY PAYMENTS YOU MAKE.

8 SECURITY DEPOSIT

9 You may apply your security deposit and any rent you paid in advance
10 against the current rent you owe your landlord as provided in ORS 90.367.
11 To do this, you must notify your landlord in writing that you want to sub-
12 tract the amount of your security deposit or prepaid rent from your rent
13 payment. You may do this only for the rent you owe your current landlord.
14 If you do this, you must do so before the foreclosure sale. The business or
15 individual who buys this property at the foreclosure sale is not responsible
16 to you for any deposit or prepaid rent you paid to your landlord.

17 ABOUT YOUR TENANCY
18 AFTER THE FORECLOSURE SALE

19 The new owner that buys this property at the foreclosure sale may be
20 willing to allow you to stay as a tenant instead of requiring you to move
21 out after 90 days or at the end of your fixed term lease. After the sale, you
22 should receive a written notice informing you that the sale took place and
23 giving you the new owner's name and contact information. You should con-
24 tact the new owner if you would like to stay. If the new owner accepts rent
25 from you, signs a new residential rental agreement with you or does not
26 notify you in writing within 30 days after the date of the foreclosure sale
27 that you must move out, the new owner becomes your new landlord and must
28 maintain the property. Otherwise:

- 29 • You do not owe rent;
- 30 • The new owner is not your landlord and is not responsible for main-

1 taining the property on your behalf; and

2 • You must move out by the date the new owner specifies in a notice to
3 you.

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

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

19 “ _____

20 **“SECTION 2.** ORS 86.745, as amended by section 6, chapter 510, Oregon
21 Laws 2011, is amended to read:

22 “86.745. The notice of sale [*shall*] **must**:

23 “(1) List the names of the grantor, trustee and beneficiary in the trust
24 deed, and the mailing address of the trustee.

25 “(2) Describe the property the trust deed covers.

26 “(3) Identify the book and page of the mortgage records that record the
27 trust deed.

28 “(4) State the default for which the foreclosure is made.

29 “(5) State the sum owing on the obligation that the trust deed secures.

30 “(6) State that the property will be sold to satisfy the obligation.

1 “(7) Set forth the date, time and place of the sale.

2 “(8) State that the right exists under ORS 86.753 to have the proceeding
3 dismissed and the trust deed reinstated by paying the entire amount then
4 due, together with costs, trustee’s fees and attorney fees, and by curing any
5 other default complained of in the notice of default, at any time that is not
6 later than five days before the date last set for the sale.

7 “(9) **Include language that reads substantially as follows:**

8 “
9 **Without limiting the trustee’s disclaimer of representations or**
10 **warranties, Oregon law requires the trustee to state in this notice that**
11 **some residential property sold at a trustee’s sale may have been used**
12 **in manufacturing methamphetamines, the chemical components of**
13 **which are known to be toxic. Prospective purchasers of residential**
14 **property should be aware of this potential danger before deciding to**
15 **place a bid for this property at the trustee’s sale.**

16 “
17 “[9] (10) If the property includes one or more dwelling units that are
18 subject to ORS chapter 90, include a notice addressed clearly to any indi-
19 vidual who occupies the property and who is or might be a residential ten-
20 ant. The notice required under this subsection must:

21 “(a) Include contact information for the Oregon State Bar and a person
22 or organization that provides legal help to individuals at no charge to the
23 individual;

24 “(b) Include information concerning the right the individual has to notice
25 under ORS 86.755 (6)(c);

26 “(c) Be set apart from other text in the notice of sale; and

27 “(d) Be in substantially the following form:

28 “
29 **NOTICE TO RESIDENTIAL TENANTS**

30 The property in which you are living is in foreclosure. A foreclosure sale

1 is scheduled for _____ (date). The date of this sale may be postponed.
2 Unless the lender that is foreclosing on this property is paid before the sale
3 date, the foreclosure will go through and someone new will own this prop-
4 erty. After the sale, the new owner is required to provide you with contact
5 information and notice that the sale took place.

6 The following information applies to you only if you are a bona fide
7 tenant occupying and renting this property as a residential dwelling under
8 a legitimate rental agreement. The information does not apply to you if you
9 own this property or if you are not a bona fide residential tenant.

10 If the foreclosure sale goes through, the new owner will have the right
11 to require you to move out. Before the new owner can require you to move,
12 the new owner must provide you with written notice that specifies the date
13 by which you must move out. If you do not leave before the move-out date,
14 the new owner can have the sheriff remove you from the property after a
15 court hearing. You will receive notice of the court hearing.

16 PROTECTION FROM EVICTION

17 IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING
18 THIS PROPERTY AS A RESIDENTIAL DWELLING, YOU HAVE THE
19 RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE FORE-
20 CLOSURE SALE FOR:

- 21 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMI-
22 NATION NOTICE, IF YOU HAVE A FIXED TERM LEASE; OR
- 23 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRIT-
24 TEN TERMINATION NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR
25 WEEK-TO-WEEK RENTAL AGREEMENT.

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

30 You must be provided with at least 30 days' written notice after the

1 foreclosure sale before you can be required to move.

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

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

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12 FORECLOSURE SALE: RENT

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15 OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED. BE
16 SURE TO KEEP PROOF OF ANY PAYMENTS YOU MAKE.

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18 You may apply your security deposit and any rent you paid in advance
19 against the current rent you owe your landlord as provided in ORS 90.367.
20 To do this, you must notify your landlord in writing that you want to sub-
21 tract the amount of your security deposit or prepaid rent from your rent
22 payment. You may do this only for the rent you owe your current landlord.
23 If you do this, you must do so before the foreclosure sale. The business or
24 individual who buys this property at the foreclosure sale is not responsible
25 to you for any deposit or prepaid rent you paid to your landlord.

26 ABOUT YOUR TENANCY
27 AFTER THE FORECLOSURE SALE

28 The new owner that buys this property at the foreclosure sale may be
29 willing to allow you to stay as a tenant instead of requiring you to move
30 out after 30 or 60 days. After the sale, you should receive a written notice

1 informing you that the sale took place and giving you the new owner's name
2 and contact information. You should contact the new owner if you would
3 like to stay. If the new owner accepts rent from you, signs a new residential
4 rental agreement with you or does not notify you in writing within 30 days
5 after the date of the foreclosure sale that you must move out, the new owner
6 becomes your new landlord and must maintain the property. Otherwise:

- 7 • You do not owe rent;
- 8 • The new owner is not your landlord and is not responsible for main-
9 taining the property on your behalf; and
- 10 • You must move out by the date the new owner specifies in a notice to
11 you.

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

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

27 “ _____

28 **“SECTION 3.** ORS 86.750 is amended to read:

29 “86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the
30 notice prescribed in ORS 86.745 must be served upon an occupant of the

1 property described in the trust deed in the manner in which a summons is
2 served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before the day
3 the trustee conducts the sale.

4 “(b)(A) If service cannot be effected on an occupant as provided in para-
5 graph (a) of this subsection on the first attempt, the person that attempts to
6 effect service shall post a copy of the notice in a conspicuous place on the
7 property on the date of the first attempt. The person that attempts to effect
8 service shall make a second attempt to effect service on a day that is at least
9 two days after the first attempt.

10 “(B) If service cannot be effected on an occupant as provided in paragraph
11 (a) of this subsection on the second attempt, the person that attempts to ef-
12 fect service shall post a copy of the notice in a conspicuous place on the
13 property on the date of the second attempt. The person that attempts to ef-
14 fect service shall make a third attempt to effect service on a day that is at
15 least two days after the second attempt.

16 “(C) If service cannot be effected on an occupant as provided in paragraph
17 (a) of this subsection on the third attempt, the person that attempts to effect
18 service shall send a copy of the notice, bearing the word ‘occupant’ as the
19 addressee, to the property address by first class mail with postage prepaid.

20 “(c) Service on an occupant is effected on the earlier of the date that
21 notice is served as provided in paragraph (a) of this subsection or the first
22 date on which notice is posted as described in paragraph (b)(A) of this sub-
23 section.

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

29 “(b) The copy of the notice of sale required to be published under para-
30 graph (a) of this subsection does not need to include the notice to tenants

1 required under ORS 86.745 [(9)] (10).

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

6 “(a) An affidavit of mailing, if any;

7 “(b) An affidavit of service, if any;

8 “(c) An affidavit of service attempts and posting, if any; and

9 “(d) An affidavit of publication.

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

14 **“SECTION 4. This 2013 Act being necessary for the immediate**
15 **preservation of the public peace, health and safety, an emergency is**
16 **declared to exist, and this 2013 Act takes effect on its passage.”.**

17
