

**PROPOSED AMENDMENTS TO
HOUSE BILL 3389**

1 On page 1 of the printed bill, line 2, after the second semicolon delete the
2 rest of the line and lines 3 and 4 and insert “amending ORS 86.705 and 86.735;
3 and declaring an emergency.”.

4 Delete lines 6 through 21 and delete pages 2 through 14 and insert:

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

7 **“SECTION 2. (1) As used in this section, ‘nonprofit entity’ means
8 a nonprofit corporation that is organized in this state and that is ex-
9 empt from taxation under section 501(c)(3) of the Internal Revenue
10 Code, or a subsidiary or agent of the nonprofit corporation.**

11 **“(2) Except as provided in subsection (3) of this section, a benefici-
12 ary may not, as a condition of offering or approving a short sale as
13 an alternative to foreclosing a residential trust deed, require a
14 nonprofit entity that purchases property that is subject to the resi-
15 dential trust deed from a grantor in a short sale, or that purchases a
16 note from the beneficiary that secures the grantor’s obligation to the
17 beneficiary by means of the residential trust deed, to enter into an
18 agreement with the beneficiary or the grantor that limits or bars the
19 grantor, after the short sale or the sale of the note, from owning or
20 occupying the property that is subject to the residential trust deed.**

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

22 **“(a) The beneficiary does not receive notice before the short sale**

1 **that the nonprofit entity or the grantor intends for the grantor to**
2 **continue after the short sale to own or occupy the property that is the**
3 **subject of the short sale;**

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

7 **“(c) Offering or approving the short sale would require the benefi-**
8 **ciary to breach a contractual obligation to another person with respect**
9 **to a residential trust deed that was recorded before the effective date**
10 **of this 2013 Act; or**

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

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

15 “86.705. As used in ORS 86.705 to 86.795:

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

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

22 “(3) ‘Eligible covenant holder’ has the meaning given that term in ORS
23 456.270.

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

26 “(5) ‘Residential trust deed’ means a trust deed on property upon which
27 are situated four or fewer residential units, one of which the grantor, the
28 grantor’s spouse or the grantor’s minor or dependent child occupies as a
29 principal residence at the time [*a default that results in an action to foreclose*
30 *the obligation secured by the trust deed first occurs*] **the trust deed is re-**

1 **corded or, in the case of a purchase money loan, one of which is in-**
2 **tended to be the principal residence of the grantor, the grantor's**
3 **spouse or the grantor's minor or dependent child after the trust deed**
4 **is recorded.**

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

6 “(7) ‘Trust deed’ means a deed executed in conformity with ORS 86.705 to
7 86.795 that conveys an interest in real property to a trustee in trust to secure
8 the performance of an obligation the grantor or other person named in the
9 deed owes to a beneficiary.

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

14 **“SECTION 4.** ORS 86.735, as amended by section 6, chapter 112, Oregon
15 Laws 2012, and section 10, chapter _____, Oregon Laws 2013 (Enrolled Senate
16 Bill 558), is amended to read:

17 “86.735. A trustee may not foreclose a trust deed by advertisement and
18 sale in the manner provided in ORS 86.740 to 86.755 unless:

19 “(1) The trust deed, any assignments of the trust deed by the trustee or
20 the beneficiary and any appointment of a successor trustee are recorded in
21 the mortgage records in the counties in which the property described in the
22 deed is situated;

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

27 “(3) The trustee or beneficiary has filed for record in the county clerk's
28 office in each county where the trust property, or some part of the trust
29 property, is situated, a notice of default containing the information required
30 by ORS 86.745 and containing the trustee's or beneficiary's election to sell

1 the property to satisfy the obligation;

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

5 “(a) A [*valid and unexpired*] certificate of compliance that a service pro-
6 vider issued to the beneficiary under section 5 [*of this 2013 Act*], **chapter**
7 **____**, **Oregon Laws 2013 (Enrolled Senate Bill 558)**, **that is valid and**
8 **unexpired at the time the notice of default is recorded**; or

9 “(b) A copy of the affidavit with which the beneficiary claimed, under
10 section 2 (1)(b) [*of this 2013 Act*], **chapter ____**, **Oregon Laws 2013 (En-**
11 **rolled Senate Bill 558)**, an exemption that has not expired;

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

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

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

20 “(a) Subject to ORS 86.010 and the procedural requirements of ORCP 79
21 and 80, an action may be commenced to appoint a receiver or to obtain a
22 temporary restraining order during foreclosure of a trust deed by advertise-
23 ment and sale, except that a receiver may not be appointed with respect to
24 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) An action may be commenced to foreclose, judicially or nonjudicially,
27 the same trust deed as to any other property covered by the trust deed, or
28 any other trust deeds, mortgages, security agreements or other consensual
29 or nonconsensual security interests or liens that secure repayment of the
30 debt.

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

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