

**PROPOSED AMENDMENTS TO
SENATE BILL 558**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and lines 3 and 4 and insert “86.705, 86.735, 86.740, 86.750, 86.755 and
3 88.010 and sections 2, 4 and 4a, chapter 112, Oregon Laws 2012; repealing
4 sections 2a and 3, chapter 112, Oregon Laws 2012; and declaring an emer-
5 gency.”.

6 Delete lines 6 through 22 and delete pages 2 through 14 and insert:

7 **“SECTION 1. Sections 2, 3, 4, 5 and 6 of this 2013 Act are added to
8 and made a part of ORS 86.705 to 86.795.**

9 **“SECTION 2. (1)(a) Except as provided in paragraph (b) of this
10 subsection, a beneficiary that intends to foreclose a residential trust
11 deed shall first notify the grantor that the grantor may request a re-
12 solution conference before the beneficiary or the trustee files a notice
13 of default under ORS 86.735 or before the beneficiary brings suit under
14 ORS 88.010.**

15 **“(b)(A) The requirement to participate in a resolution conference
16 with a grantor in accordance with this section does not apply to a
17 beneficiary if the beneficiary submits to the Attorney General a sworn
18 affidavit that states that during the preceding calendar year the ben-
19 eficiary did not complete or cause an affiliate, subsidiary or agent of
20 the beneficiary to complete more than 200 actions to foreclose a resi-
21 dential trust deed by advertisement and sale under ORS 86.735 or by
22 suit under ORS 88.010. A beneficiary that is a trustee shall include as**

1 part of the total number of foreclosure actions that the beneficiary
2 completed in the previous calendar year all foreclosure actions that
3 the beneficiary completed in the beneficiary's capacity as a trustee.
4 A beneficiary that intends to claim an exemption under this subpara-
5 graph shall submit the affidavit either:

6 “(i) Not later than January 31 in any calendar year in which the
7 beneficiary intends to claim the exemption for the remainder of the
8 calendar year; or

9 “(ii) At the time the beneficiary files a notice of default under ORS
10 86.735 or brings suit under ORS 88.010.

11 “(B) An exemption under subparagraph (A) of this paragraph ex-
12 pires at the end of the calendar year in which the beneficiary claims
13 the exemption.

14 “(c) A beneficiary that claims an exemption under this subsection
15 is not exempt from the requirements set forth in section 4a, chapter
16 112, Oregon Laws 2012.

17 “(2) The beneficiary shall notify the grantor that the grantor may
18 request a resolution conference if the grantor makes the request
19 within 30 days after receiving the beneficiary's notice. The beneficiary
20 shall notify the service provider electronically or by mail that the
21 beneficiary has sent a notice to the grantor under this subsection. The
22 beneficiary's notice under this subsection must identify the residential
23 trust deed that the beneficiary intends to foreclose, list additional
24 documents the beneficiary requires to determine if the grantor is eli-
25 gible for a foreclosure avoidance measure and list the name, title, ad-
26 dress, telephone number and other available contact information for:

27 “(a) The beneficiary;

28 “(b) Any person other than the beneficiary that will receive, on the
29 beneficiary's behalf, notices or other communications related to the
30 resolution conference; and

1 “(c) The grantor.

2 “(3)(a) A grantor may request a resolution conference under this
3 section if:

4 “(A) The beneficiary or the trustee has not filed a notice of default
5 under ORS 86.735 or the beneficiary has not commenced a suit under
6 ORS 88.010;

7 “(B) The beneficiary is not exempt under subsection (1)(b) of this
8 section; and

9 “(C) The grantor first obtains from a housing counselor a certifi-
10 cation in writing that the grantor is more than 30 days in default on
11 the obligation that the residential trust deed secures or, if the grantor
12 is not in default, that the grantor has a financial hardship that the
13 housing counselor reasonably believes may qualify the grantor for a
14 foreclosure avoidance measure.

15 “(b) A grantor shall request a resolution conference through the
16 service provider. The grantor shall submit the request to the service
17 provider electronically or by mail and shall enclose with the request
18 the written certification the housing counselor provides under para-
19 graph (a)(B) of this subsection. The Attorney General by rule shall
20 specify the information that the request must include.

21 “(c) A beneficiary that receives a notice from a service provider
22 after the service provider receives a request from a grantor under
23 paragraph (b) of this subsection is subject to the requirements set
24 forth in this section and sections 3, 4 and 5 of this 2013 Act and section
25 4a, chapter 112, Oregon Laws 2012.

26 “(4) A beneficiary that submitted an affidavit in accordance with
27 subsection (1)(b) of this section may, without waiving the exemption
28 the beneficiary claimed in the affidavit, request a resolution confer-
29 ence with a grantor.

30 “SECTION 3. (1)(a) Within 10 days after a service provider receives

1 a request for a resolution conference under section 2 of this 2013 Act,
2 the service provider shall schedule the resolution conference and mail
3 a notice to the beneficiary and to the grantor. The service provider
4 shall schedule the resolution conference to occur within 45 days after
5 the date on which the service provider sends the notice.

6 “(b) A notice under this subsection must:

7 “(A) Specify the date, time and location of the resolution confer-
8 ence;

9 “(B) State that the beneficiary and the grantor each must pay the
10 facilitator’s fees for the resolution conference;

11 “(C) List and describe the documents that the beneficiary and the
12 grantor must submit to the service provider;

13 “(D) State that the grantor must consult a housing counselor before
14 attending the resolution conference unless the grantor notifies the
15 service provider that the grantor could not obtain an appointment
16 with a housing counselor before the date of the resolution conference;
17 and

18 “(E) State that the grantor may have an attorney or housing
19 counselor present to represent the grantor at the resolution confer-
20 ence.

21 “(2) Within 20 days after the date on which the service provider
22 sends a notice under subsection (1) of this section:

23 “(a) The grantor shall pay a fee to the service provider for the
24 facilitator’s services in an amount the Attorney General specifies by
25 rule. The grantor’s fee may not exceed \$200.

26 “(b) The grantor shall submit to the service provider:

27 “(A) Information about the grantor’s income, expenses, debts and
28 other obligations;

29 “(B) A description of the grantor’s financial hardship, if any;

30 “(C) Documents that verify the grantor’s income; and

1 **“(D) Any other information the beneficiary has indicated that the**
2 **beneficiary needs to evaluate the grantor’s eligibility for a foreclosure**
3 **avoidance measure.**

4 **“(3) Within 10 days after the service provider makes the informa-**
5 **tion the grantor submitted under subsection (2) of this section avail-**
6 **able to the beneficiary, the beneficiary shall:**

7 **“(a) Pay a fee to the service provider for the facilitator’s services**
8 **in an amount the Attorney General specifies by rule that does not**
9 **exceed \$500; and**

10 **“(b) Submit to the service provider:**

11 **“(A) The residential trust deed and a certified true copy of the**
12 **promissory note that is evidence of the obligation that the residential**
13 **trust deed secures;**

14 **“(B) The name and address of the person that owns the obligation**
15 **that is secured by the residential trust deed;**

16 **“(C) A record of the grantor’s payment history for the longer of the**
17 **preceding 12 months or since the beneficiary last deemed the grantor**
18 **current on the obligation;**

19 **“(D) An itemized statement that shows:**

20 **“(i) The amount the grantor owes on the obligation;**

21 **“(ii) The amount of fees and charges the beneficiary has assessed;**
22 **and**

23 **“(iii) The amount the grantor must pay to cure the grantor’s de-**
24 **fault;**

25 **“(E) The appraisal or price opinion the beneficiary relied on most**
26 **recently to determine the value of the property that is the subject of**
27 **the residential trust deed, unless the beneficiary has provided the ap-**
28 **praisal or price opinion to the grantor previously;**

29 **“(F) The portion of any pooling agreement, servicing agreement or**
30 **other agreement that the beneficiary cites as a limitation or prohibi-**

1 **tion on modifying the terms of the obligation; and**

2 **“(G) A description of any additional documents the beneficiary re-**
3 **quires to evaluate the grantor’s eligibility for a foreclosure avoidance**
4 **measure.**

5 **“(4)(a) The service provider may postpone or reschedule for not**
6 **more than 30 days later a resolution conference that the service pro-**
7 **vider scheduled under subsection (1) of this section if:**

8 **“(A) The beneficiary and the grantor agree to a new date;**

9 **“(B) The beneficiary or the grantor requests a new date in writing**
10 **and can show good cause for the request; or**

11 **“(C) The beneficiary does not pay the fee required under subsection**
12 **(3)(a) of this section by the date the fee is due. The service provider**
13 **may wait until the beneficiary has paid the fee before rescheduling the**
14 **resolution conference.**

15 **“(b) The service provider shall cancel a resolution conference that**
16 **the service provider scheduled under subsection (1) of this section if**
17 **the grantor does not pay the fee or provide the documents or infor-**
18 **mation required under subsection (2) of this section by the dates the**
19 **fee or documents and information are due.**

20 **“(5)(a) A resolution conference conducted in accordance with this**
21 **section and sections 2, 4 and 5 of this 2013 Act is not subject to ORS**
22 **chapter 36 and does not preclude mediation that a court or another**
23 **provision of law requires.**

24 **“(b) A facilitator is not subject to a subpoena in any proceeding**
25 **between a beneficiary and a grantor that is related to and occurs after**
26 **a resolution conference.**

27 **“(c) A facilitator’s act or omission in the course of a resolution**
28 **conference does not subject the facilitator to civil liability unless the**
29 **facilitator acted or made an omission in bad faith, with malicious in-**
30 **tent or in a manner that exhibited a willful or wanton disregard of the**

1 **rights, safety or property of another person.**

2 **“(d) Information that a beneficiary or a grantor submits to a ser-**
3 **vice provider under this section is not subject to disclosure under ORS**
4 **192.410 to 192.505. A service provider may disclose information that**
5 **relates to the result of a resolution conference under ORS 192.410 to**
6 **192.505 if the information does not identify a party that participated**
7 **in the resolution conference.**

8 **“SECTION 4. (1)(a) Except as provided in paragraph (b) of this**
9 **subsection, a beneficiary that must notify a grantor of the grantor’s**
10 **right to request a resolution conference under section 2 of this 2013**
11 **Act shall attend and participate in the resolution conference in person.**

12 **“(b) A beneficiary may send an agent to the resolution conference**
13 **if the agent attends the resolution conference in person and has com-**
14 **plete authority to negotiate on the beneficiary’s behalf and commit the**
15 **beneficiary to a foreclosure avoidance measure or, if the agent who**
16 **attends the resolution conference in person does not have complete**
17 **authority, the beneficiary also requires a person who does have com-**
18 **plete authority to participate in the resolution conference by remote**
19 **communication.**

20 **“(c) The grantor must attend the resolution conference in person.**

21 **“(2) If the beneficiary agrees to a foreclosure avoidance measure**
22 **with the grantor, the beneficiary and the grantor shall sign a written**
23 **document that sets forth the terms of the foreclosure avoidance**
24 **measure.**

25 **“(3) A facilitator may suspend or postpone a resolution conference**
26 **after the resolution conference has begun:**

27 **“(a) One time only on the facilitator’s initiative or in response to**
28 **a request for a suspension or postponement from the beneficiary or**
29 **the grantor;**

30 **“(b) After a suspension or postponement under paragraph (a) of this**

1 subsection only if the beneficiary and the grantor agree to the addi-
2 tional suspension or postponement; or

3 “(c) If the beneficiary or the grantor needs additional time to write
4 or sign a document that sets forth the terms of a foreclosure avoid-
5 ance measure.

6 “(4) Within five days after the resolution conference concludes, the
7 facilitator shall submit to the service provider a written report that:

8 “(a) Lists the date or dates on which the resolution conference oc-
9 curred; and

10 “(b) Lists the name, title, address, telephone number and other
11 available contact information for each person that participated in the
12 resolution conference, noting whether the person attended the resol-
13 ution conference in person or participated by remote communication.

14 “SECTION 5. (1)(a) The service provider shall issue, within five days
15 after receiving a report from a facilitator under section 4 (4) of this
16 2013 Act, a certificate of compliance to a beneficiary that complied
17 with sections 2, 3 and 4 of this 2013 Act.

18 “(b) The service provider shall notify a beneficiary that failed to
19 meet a requirement to which the beneficiary was subject under para-
20 graph (a) of this subsection that the service provider will not issue a
21 certificate of compliance, explaining in the notice why the service
22 provider will not issue the certificate of compliance. The service pro-
23 vider shall provide a copy of a notice under this paragraph to the
24 grantor and to the Attorney General.

25 “(2) Notwithstanding the requirements set forth in subsection (1)
26 of this section, if a service provider cancels a resolution conference
27 under section 3 (4)(b) of this 2013 Act or if the grantor does not appear
28 in person at the resolution conference, the service provider shall issue
29 a certificate of compliance to the beneficiary within five days after
30 canceling the resolution conference or five days after the date on

1 **which the grantor failed to appear in person at the resolution confer-**
2 **ence.**

3 **“SECTION 6. The Attorney General shall:**

4 **“(1) Appoint and enter into an agreement with a service provider**
5 **to coordinate a program to implement the provisions of sections 2, 3**
6 **4 and 5 of this 2013 Act. The Attorney General shall pay for the service**
7 **provider’s services from the Foreclosure Avoidance Fund established**
8 **in section 4, chapter 112, Oregon Laws 2012. The appointment and the**
9 **agreement are not subject to ORS chapter 279A or 279B.**

10 **“(2) Receive affidavits submitted under section 2 (1)(b) of this 2013**
11 **Act.**

12 **“(3) Specify \$500 as the maximum amount a beneficiary must pay**
13 **for the facilitator’s services under section 3 (3) of this 2013 Act and**
14 **specify \$200 as the maximum amount a grantor must pay for the**
15 **facilitator’s services under section 3 (2) of this 2013 Act.**

16 **“SECTION 7. Section 2, chapter 112, Oregon Laws 2012, is amended to**
17 **read:**

18 **“Sec. 2. [(1)] As used in this section and [sections 3 and 4a of this 2012**
19 **Act,] sections 2, 3, 4, 5 and 6 of this 2013 Act and sections 4 and 4a,**
20 **chapter 112, Oregon Laws 2012:**

21 **“(1) ‘Facilitator’ means a person that a service provider selects to**
22 **conduct a resolution conference.**

23 **“(2) ‘Foreclosure avoidance measure’ means an agreement between a**
24 **beneficiary and a grantor that uses one or more of the following methods to**
25 **modify an obligation that is secured by a **residential** trust deed:**

26 **“(a) The beneficiary defers or forbears from collecting one or more pay-**
27 **ments due on the obligation.**

28 **“(b) The beneficiary modifies, temporarily or permanently, the payment**
29 **terms or other terms of the obligation.**

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

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

2 “(e) The beneficiary provides the grantor with other assistance that ena-
3 bles the grantor to avoid a foreclosure.

4 **“(3) ‘Housing counselor’ means a counselor employed by a nonprofit**
5 **housing counseling agency that the Housing and Community Services**
6 **Department or a successor state agency approves.**

7 **“(4) ‘Resolution conference’ means a meeting at which a grantor**
8 **and a beneficiary attempt to negotiate and agree upon a foreclosure**
9 **avoidance measure.**

10 **“(5) ‘Service provider’ means a person that the Attorney General**
11 **appoints under section 6 of this 2013 Act to coordinate a program to**
12 **implement the provisions of sections 2, 3, 4 and 5 of this 2013 Act.**

13 “[(2)(a) *Except as provided in paragraph (d) of this subsection, a beneficiary*
14 *that seeks to foreclose a residential trust deed under ORS 86.735 shall enter*
15 *into mediation with the grantor for the purpose of negotiating a foreclosure*
16 *avoidance measure in accordance with the provisions of this section.*]

17 “[(b) *The Attorney General shall:*]

18 “[(A) *Appoint a mediation service provider to coordinate a mediation pro-*
19 *gram and shall enter into an agreement to pay the mediation service provider*
20 *for the mediation service provider’s services from the Foreclosure Avoidance*
21 *Mediation Fund established in section 4 of this 2012 Act. The appointment and*
22 *the agreement are not subject to ORS chapter 279A or 279B.*]

23 “[(B) *Prescribe qualifications, training and experience requirements for*
24 *mediators by rule.*]

25 “[(C) *Set the schedule of fees for the mediation by rule.*]

26 “[(c) *The beneficiary and the grantor shall share the cost of the mediation,*
27 *except that the grantor’s portion of the cost may not exceed \$200. The mediator*
28 *may waive the grantor’s portion of the fee in accordance with rules that the*
29 *Attorney General adopts to describe circumstances that permit a waiver.*]

30 “[(d) *The requirement to enter into mediation with a grantor does not ap-*

1 *ply:]*

2 *“(A) To an individual, a financial institution, as defined in ORS 706.008,*
3 *a mortgage banker, as defined in ORS 86A.100, or a licensee, as defined in*
4 *ORS 725.010, if the individual, financial institution, mortgage banker or*
5 *licensee provides to the Attorney General a sworn affidavit that states that*
6 *during the preceding calendar year the individual, financial institution, mort-*
7 *gage banker or licensee did not commence or cause an affiliate or agent of the*
8 *individual, financial institution, mortgage banker or licensee to commence*
9 *more than a total of 250 actions to foreclose a residential trust deed by adver-*
10 *tisement and sale under ORS 86.735 or a residential mortgage by suit under*
11 *ORS 88.010. An individual, financial institution, mortgage banker or licensee*
12 *that intends to claim an exemption under this subparagraph shall file the af-*
13 *fidavit either:]*

14 *“(i) Within 30 days after the operative date specified in section 11 of this*
15 *2012 Act to claim the exemption for calendar year 2012 and not later than*
16 *January 31 in any subsequent calendar year in which the individual, financial*
17 *institution, mortgage banker or licensee intends to claim the exemption; or]*

18 *“(ii) At the time the individual, financial institution, mortgage banker or*
19 *licensee files a notice of default under ORS 86.735.]*

20 *“(B) If the grantor fails to confirm that the grantor will enter into medi-*
21 *ation by the date specified under subsection (3)(c) of this section.]*

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

25 *“(a) Schedules a date, time and location for the mediation. The date must*
26 *be not earlier than 45 days and not later than 90 days after the date on which*
27 *the notice of mediation was served or mailed as provided in ORS 86.740.]*

28 *“(b) Identifies and provides contact information for the mediation service*
29 *provider.]*

30 *“(c) Specifies a date at least 30 days before the scheduled date of the me-*

1 *diation by which the grantor must contact the mediation service provider to*
2 *confirm that the grantor will enter into mediation. The notice must state that*
3 *the mediation service provider will deem the grantor to have declined to enter*
4 *into mediation if the grantor fails to confirm by the specified date.]*

5 *“(d) Lists the costs of the mediation and specifies the portion of the costs*
6 *for which the grantor is responsible.]*

7 *“(e) Provides any other information that the Attorney General requires by*
8 *rule.]*

9 *“(4)(a) If the grantor confirms by the date specified under subsection (3)(c)*
10 *of this section that the grantor will enter into mediation, the beneficiary or the*
11 *beneficiary’s agent shall appear at the time and the location identified in the*
12 *mediation service provider’s notice under subsection (3) of this section with the*
13 *documentation described in paragraph (b) of this subsection.]*

14 *“(b) The beneficiary or the beneficiary’s agent must appear in person at the*
15 *location of the mediation unless the mediator permits the beneficiary or the*
16 *beneficiary’s agent to appear in another manner for good cause shown. The fact*
17 *that a beneficiary or beneficiary’s agent is located outside this state does not*
18 *alone constitute good cause for the purposes of this paragraph. The beneficiary*
19 *or the beneficiary’s agent must appear at the mediation with:]*

20 *“(A) The grantor’s complete payment history for the obligation that is se-*
21 *cured by the residential trust deed that the beneficiary seeks to foreclose;]*

22 *“(B) Evidence that the beneficiary is the real party in interest with respect*
23 *to the obligation, including but not limited to:]*

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

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

1 “[(C) A copy of the authorization from the beneficiary to the beneficiary’s
2 agent, if the beneficiary’s agent appears at the mediation;]

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

5 “[(i) A servicing agreement the beneficiary entered into with another per-
6 son; or]

7 “[(ii) An agreement by means of which the beneficiary pledged as collateral
8 for a security the beneficiary issued or sold all or a portion of the ownership
9 interest in the note or other obligation; and]

10 “[(E) Other documentation the Attorney General specifies by rule.]

11 “[(c) The beneficiary or the beneficiary’s agent that enters into mediation
12 with the grantor must have or be able to obtain, before the initial mediation
13 session concludes, authority to accept or reject a proposal for a foreclosure
14 avoidance measure and authority to enter with the grantor into an agreement
15 for a foreclosure avoidance measure.]

16 “[(5)(a) The beneficiary or the beneficiary’s agent must enter into mediation
17 in accordance with mediation guidelines the Attorney General establishes by
18 rule.]

19 “[(b) If the beneficiary or the beneficiary’s agent agrees with the grantor
20 on a foreclosure avoidance measure, the beneficiary or beneficiary’s agent and
21 the grantor shall set forth the terms of the foreclosure avoidance measure in
22 a written agreement, a copy of which the beneficiary or beneficiary’s agent
23 shall provide to the Attorney General. The beneficiary may elect to pay the
24 grantor’s portion of the cost of the mediation or the grantor and the beneficiary
25 may agree to include the cost of the mediation as part of and in accordance
26 with any payment plan that is part of the foreclosure avoidance measure.]

27 “[(c) If the beneficiary or the beneficiary’s agent and the grantor do not
28 agree on a foreclosure avoidance measure, the mediation service provider shall
29 notify the Attorney General that the mediation did not result in an
30 agreement.]

1 “[(6)(a) *At the conclusion of the mediation, if the beneficiary has complied*
2 *with the requirements of subsections (4) and (5) of this section, the mediation*
3 *service provider shall provide the beneficiary or the beneficiary’s agent with*
4 *a certificate of compliance in a form and with contents that the Attorney*
5 *General specifies by rule. The certificate must state that the beneficiary has*
6 *complied with the requirements of this section.*]

7 “[(b) *If the grantor does not confirm by the date specified under subsection*
8 *(3)(c) of this section that the grantor will enter into mediation, the mediation*
9 *service provider shall provide the beneficiary or the beneficiary’s agent with*
10 *a certificate of compliance in a form and with contents that the Attorney*
11 *General specifies by rule. The certificate must state that the grantor declined*
12 *to enter into mediation with the beneficiary.*]

13 “[(c) *The mediation service provider shall provide a copy of the certificate*
14 *the mediation service provider issues under paragraph (a) or (b) of this sub-*
15 *section to the grantor and to the Attorney General.*]

16 “[(7)(a) *A grantor that is at risk of default before the beneficiary or the*
17 *trustee has filed a notice of default for recording under ORS 86.735 may notify*
18 *the beneficiary or trustee in the trust deed or the beneficiary’s or trustee’s*
19 *agent that the grantor wants to enter into mediation. Within 15 days after re-*
20 *ceiving the request, the beneficiary or trustee or the beneficiary’s or trustee’s*
21 *agent shall respond to the grantor’s request and shall notify the Attorney*
22 *General and the mediation service provider identified in subsection (2)(b) of*
23 *this section. The response to the grantor must include contact information for*
24 *the Attorney General and the mediation service provider.*]

25 “[(b) *A grantor that requests mediation under paragraph (a) of this sub-*
26 *section may also notify the Attorney General and the mediation service pro-*
27 *vider of the request. The Attorney General shall post on the Department of*
28 *Justice website contact information for the mediation service provider and an*
29 *address or method by which the grantor may notify the Attorney General.*]

30 “[(c) *Within 10 days after receiving notice of the request under paragraph*

1 (a) of this subsection, the mediation service provider shall send a notice to the
2 grantor and the beneficiary that, except with respect to the date by which the
3 mediation service provider must send the notice, is otherwise in accordance
4 with the provisions of subsection (3) of this section.]

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

8 **“SECTION 8.** Section 4, chapter 112, Oregon Laws 2012, is amended to
9 read:

10 **“Sec. 4.** (1) The Foreclosure Avoidance [*Mediation*] Fund is established
11 in the State Treasury, separate and distinct from the General Fund. The
12 **Foreclosure Avoidance** Fund consists of moneys the Attorney General col-
13 lects or receives for the purpose of paying [*the expenses of coordinating a*
14 *mediation program under section 2 of this 2012 Act and*] **a service provider**
15 **to coordinate a program to implement the provisions of sections 2, 3,**
16 **4 and 5 of this 2013 Act and to pay** related expenses. The moneys in the
17 fund are continuously appropriated to the Attorney General for the purposes
18 of paying [*the expenses of coordinating the mediation program and*] **a service**
19 **provider to coordinate a program to implement sections 2, 3, 4 and 5**
20 **of this 2013 Act and paying** related expenses.

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

23 “[*(3)(a) Except as provided in paragraph (b) of this subsection, a trustee*
24 *or beneficiary that files a notice of default under ORS 86.735 shall pay to the*
25 *county clerk that records the notice \$100 in addition to and not in lieu of any*
26 *fee that the county clerk charges for recording the notice of default. The*
27 *county clerk at the end of each month shall forward the proceeds of the \$100*
28 *charge to the Attorney General for deposit into the fund described in sub-*
29 *section (1) of this section.]*

30 “[*(b) An individual, a financial institution, as defined in ORS 706.008, a*

1 mortgage banker, as defined in ORS 86A.100, or a licensee, as defined in ORS
2 725.010, is not subject to the \$100 charge described in paragraph (a) of this
3 subsection if the individual, financial institution, mortgage banker or licensee
4 provides to the county clerk a sworn affidavit that states that during the pre-
5 ceding calendar year the individual, financial institution, mortgage banker or
6 licensee did not commence or cause an affiliate or agent of the individual, fi-
7 nancial institution, mortgage banker or licensee to commence more than a total
8 of 250 actions to foreclose a residential trust deed by advertisement and sale
9 under ORS 86.735 or a residential mortgage by suit under ORS 88.010. An
10 individual, financial institution, mortgage banker or licensee that intends to
11 claim an exemption under this paragraph shall provide the affidavit either:]

12 “[A] Within 30 days after the operative date specified in section 11 of this
13 2012 Act to claim the exemption for calendar year 2012 and not later than
14 January 31 in any subsequent calendar year in which the individual, financial
15 institution, mortgage banker or licensee intends to claim the exemption; or]

16 “[B] At the time the individual, financial institution, mortgage banker or
17 licensee files a notice of default under ORS 86.735.]

18 **“SECTION 9.** Section 4a, chapter 112, Oregon Laws 2012, is amended to
19 read:

20 **“Sec. 4a. [(1)(a)] (1) Whether or not a beneficiary participates in a**
21 **resolution conference under section 2 of this 2013 Act, if [a] the bene-**
22 **ficiary does not offer the grantor of a residential trust deed a foreclo-**
23 **sure avoidance measure, the grantor and the beneficiary do not enter**
24 **into a written agreement for a foreclosure avoidance measure or the**
25 beneficiary determines that [a] **the** grantor is not eligible for any foreclosure
26 avoidance measure or that the grantor has not complied with the terms of
27 a foreclosure avoidance measure to which the grantor has agreed, the bene-
28 ficiary or the beneficiary’s agent[, at least 30 days before the date specified
29 for the trustee’s sale in a notice served under ORS 86.740 or 86.755 (2)(b), shall
30 notify the grantor in writing of the beneficiary’s determination and shall cause

1 *the notice to be served as provided in ORS 86.740 (1).]* **shall notify the**
2 **grantor, within 10 days after the beneficiary determines that a condi-**
3 **tion described in this subsection exists, by mailing a written notice**
4 **that explains in plain language the basis for the beneficiary’s deter-**
5 **mination.**

6 “*[(b) The notice must in plain language explain the basis for the*
7 *beneficiary’s determination.]*

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

11 “*[(3)(a)] (2) At least [20] five days before [the date specified for the*
12 *trustee’s sale in a notice served under ORS 86.740 or 86.755 (2)(b),] the trust-*
13 **tee sells the property that is subject to foreclosure,** *the beneficiary [or*
14 *the beneficiary’s agent shall:]*

15 “*[(A)] shall* record in the mortgage records *[for the property that is subject*
16 *to the trustee’s sale,]* in the county or in one of the counties in which the
17 property is located*[,] an affidavit that states that the beneficiary has com-*
18 **plied with the requirements set forth in subsection (1) of this section.**
19 *[subsections (1) and (2) of this section; and]*

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

21 “*[(b) The affidavit described in paragraph (a) of this subsection must:]*

22 “*[(A) Identify the property that is the subject of the trustee’s sale;]*

23 “*[(B) Identify the grantor and, as of the date of the affidavit, the trustee*
24 *and the beneficiary;]*

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

27 “*[(D) Include proof of service on the grantor for the notice described in*
28 *subsection (1) of this section.]*

29 “*[(4) The Attorney General by rule shall specify a form for and the contents*
30 *of the notice of the determination described in subsection (1) of this section and*

1 shall identify an address to which the beneficiary or beneficiary’s agent must
2 mail the copy of the notice under subsection (2) of this section and the affidavit
3 under subsection (3) of this section.]

4 “[5(a)] **(3)(a)** A beneficiary [or an agent of the beneficiary] that fails to
5 **substantially** comply with the provisions of this section is liable to the
6 grantor in the amount of \$500 plus the amount of the grantor’s actual dam-
7 ages, **if any**, for [each] **the beneficiary’s** failure to comply with [a
8 provision] **the provisions** of this section.

9 “(b) A grantor may bring an action against a beneficiary [or an agent of
10 the beneficiary] in a circuit court of this state to recover the [amounts]
11 **amount** described in paragraph (a) of this subsection. The grantor shall
12 commence the action within [two years] **one year** after the date on which
13 the beneficiary [or the beneficiary’s agent] should have complied, but did not
14 comply, with the provisions of this section. **The remedy provided for the**
15 **grantor in this section is the grantor’s exclusive remedy for a violation**
16 **of this section.**

17 “(c) Notwithstanding an agreement to the contrary, a court may award
18 reasonable attorney fees, costs and disbursements to [a grantor that obtains
19 a final judgment in the grantor’s favor] **the prevailing party in an action**
20 **the grantor brings under paragraph (b) of this subsection.**

21 **“SECTION 10.** ORS 86.735, as amended by section 6, chapter 112, Oregon
22 Laws 2012, is amended to read:

23 “86.735. A trustee may **not** foreclose a trust deed by advertisement and
24 sale in the manner provided in ORS 86.740 to 86.755 [if] **unless**:

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

29 “(2) There is a default by the grantor or other person that owes an obli-
30 gation, the performance of which is secured by the trust deed, or by the

1 grantor's or other person's successors in interest with respect to a provision
2 in the deed that authorizes sale in the event of default of the provision;

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

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

14 **“(a) A valid certificate of compliance that a service provider issued**
15 **to the beneficiary under section 5 of this 2013 Act; or**

16 **“(b) A copy of the affidavit with which the beneficiary claimed,**
17 **under section 2 (1)(b) of this 2013 Act, an exemption that has not ex-**
18 **pired, unless the beneficiary or the beneficiary's agent has previously**
19 **filed the affidavit with the Attorney General;**

20 “(5)(a) The beneficiary [*or the beneficiary's agent*] has complied with the
21 provisions of section 4a, chapter 112, Oregon Laws 2012; [*and*]

22 “(b) The grantor [*is not in compliance*] **has not complied** with the terms
23 of [*a*] **any** foreclosure avoidance measure upon which the beneficiary and the
24 grantor have agreed; and

25 “(6) An action has not been commenced to recover the debt or any part
26 of the debt then remaining secured by the trust deed, or, if an action has
27 been commenced, the action has been dismissed, except that:

28 “(a) Subject to ORS 86.010 and the procedural requirements of ORCP 79
29 and 80, an action may be commenced to appoint a receiver or to obtain a
30 temporary restraining order during foreclosure of a trust deed by advertise-

1 ment and sale, except that a receiver may not be appointed with respect to
2 a single-family residence that the grantor, the grantor's spouse or the
3 grantor's minor or dependent child occupies as a principal residence.

4 “(b) An action may be commenced to foreclose, judicially or nonjudicially,
5 the same trust deed as to any other property covered by the trust deed, or
6 any other trust deeds, mortgages, security agreements or other consensual
7 or nonconsensual security interests or liens that secure repayment of the
8 debt.

9 “**SECTION 11.** ORS 86.740, as amended by section 7, chapter 112, Oregon
10 Laws 2012, is amended to read:

11 “86.740. [(1)(a)] (1) [Subsequent to] **After** recording a notice of default as
12 provided in ORS 86.735 and at least 120 days before the day the trustee
13 conducts the sale, notice of the sale with the contents described in ORS
14 86.745 must be served pursuant to ORCP 7 D(2) and 7 D(3) or mailed by both
15 first class and certified mail with return receipt requested.

16 “[*(b) If the sale is for the purpose of foreclosing a residential trust deed
17 and the beneficiary in the trust deed must enter into mediation with the
18 grantor under section 2 (2)(a), chapter 112, Oregon Laws 2012, a separate notice
19 of mediation, in the form and with the contents described in section 3, chapter
20 112, Oregon Laws 2012, must be served or mailed in the manner provided in
21 paragraph (a) of this subsection at least 60 days before the notice of sale de-
22 scribed in paragraph (a) of this subsection is served or mailed.*]

23 “(2) The [notices] **notice** described in subsection (1) of this section must
24 be served or mailed to the last-known address of the following persons or the
25 legal representatives of the persons, if any:

26 “(a) The grantor in the trust deed.

27 “(b) Any successor in interest to the grantor whose interest appears of
28 record, or of whose interest the trustee or the beneficiary has actual notice.

29 “(c) Any person, including the Department of Revenue or another state
30 agency, that has a lien or interest subsequent to the trust deed if the lien

1 or interest appears of record or the beneficiary has actual notice of the lien
2 or interest.

3 “(d) A person that requests notice as provided in ORS 86.785.

4 “[*e*] *The mediation service provider that the Attorney General appoints*
5 *under section 2 (2)(b), chapter 112, Oregon Laws 2012, if the notices are served*
6 *or mailed under subsection (1)(b) of this section.*]

7 “(3) A notice served by mail under subsection (1) of this section is effec-
8 tive when the notice is mailed.

9 “(4)(a) The disability, insanity or death of a person to whom the
10 [*notices*] **notice** required under this section must be given does not delay or
11 impair in any way the trustee’s right under a trust deed to foreclose under
12 the deed. If the disability, insanity or death occurs before the notice of de-
13 fault is recorded, the [*notices*] **notice** required under this section must be
14 given instead to the guardian, the conservator of the estate of the person or
15 the administrator or personal representative of the person in the manner and
16 by the time set forth in this section.

17 “(b) If the disability, insanity or death of a person to whom the [*notices*]
18 **notice** required under this section must be given occurs on or after the no-
19 tice of default is recorded, the trustee shall, if and when the trustee has
20 knowledge of the disability, insanity or death, promptly give the guardian,
21 the conservator of the estate or the administrator or personal representative
22 **the** required [*notices*] **notice** by sending the [*notices*] **notice** by first class
23 and certified mail with return receipt requested to the last-known address
24 of the guardian, conservator or administrator or personal representative.

25 “(c) If there is no administrator or personal representative of the estate
26 of the person to whom the [*notices*] **notice** required under this section must
27 be given, the [*notices*] **notice** may be given instead to the heirs at law or
28 devisees of the deceased person in the manner and by the time set forth in
29 this section.

30 “(5) If the owner of real property subject to foreclosure dies and the real

1 property is also subject to a transfer on death deed, as provided by ORS
2 93.948 to 93.979, the [notices] **notice** required under this section must be
3 given to the beneficiary designated under the transfer on death deed.

4 **“SECTION 12.** ORS 86.705, as amended by section 5, chapter 112, Oregon
5 Laws 2012, is amended to read:

6 “86.705. As used in ORS 86.705 to 86.795:

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

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

13 “(3) ‘Eligible covenant holder’ has the meaning given that term in ORS
14 456.270.

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

17 “(5) ‘Residential trust deed’ means a trust deed on property upon which
18 are situated four or fewer residential units, one of which the grantor, the
19 grantor’s spouse or the grantor’s minor or dependent child occupies as a
20 principal residence at the time a **trust deed foreclosure is commenced**
21 [*default that results in an action to foreclose the obligation secured by the trust*
22 *deed first occurs*].

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

24 “(7) ‘Trust deed’ means a deed executed in conformity with ORS 86.705 to
25 86.795 that conveys an interest in real property to a trustee in trust to secure
26 the performance of an obligation the grantor or other person named in the
27 deed owes to a beneficiary **or a person for whom the beneficiary is acting**
28 **as agent or nominee.**

29 “(8) ‘Trustee’ means a person, other than the beneficiary, to whom a trust
30 deed conveys an interest in real property, or the person’s successor in in-

1 terest, or an employee of the beneficiary, if the employee is qualified to be
2 a trustee under ORS 86.790.

3 **“SECTION 13.** ORS 86.750 is amended to read:

4 “86.750. (1)(a) [*Except as provided in paragraph (b) of this subsection,*] **At**
5 **least 120 days before the day the trustee conducts the sale,** the notice
6 prescribed in ORS 86.745 must be served upon an occupant of the property
7 described in the trust deed in the manner in which a summons is served
8 [*pursuant to*] **under** ORCP 7 D(2) and 7 D(3) [*at least 120 days before the day*
9 *the trustee conducts the sale*] **or mailed by both first class and certified**
10 **mail with return receipt requested, to the last-known address of the**
11 **occupant.**

12 “[*(b)(A) If service cannot be effected on an occupant as provided in para-*
13 *graph (a) of this subsection on the first attempt, the person that attempts to*
14 *effect service shall post a copy of the notice in a conspicuous place on the*
15 *property on the date of the first attempt. The person that attempts to effect*
16 *service shall make a second attempt to effect service on a day that is at least*
17 *two days after the first attempt.*]

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

24 “[*(C) If service cannot be effected on an occupant as provided in paragraph*
25 *(a) of this subsection on the third attempt, the person that attempts to effect*
26 *service shall send a copy of the notice, bearing the word ‘occupant’ as the ad-*
27 *dressee, to the property address by first class mail with postage prepaid.*]

28 “[*(c)*] **(b)** Service on an occupant is effected on the earlier of the date that
29 notice is served as provided in paragraph (a) of this subsection or the
30 [*first*] date on which notice is [*posted as described in paragraph (b)(A) of this*

1 subsection] **mailed.**

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

7 “(b) The copy of the notice of sale required to be published under para-
8 graph (a) of this subsection does not need to include the notice to tenants
9 required under ORS 86.745 (9).

10 “(3) 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 the following affidavits with
13 respect to the notice of sale:

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

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

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

17 “[*(d)*] **(c)** An affidavit of publication.

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

22 “**SECTION 14.** ORS 86.755, as amended by section 9, chapter 112, Oregon
23 Laws 2012, is amended to read:

24 “86.755. (1)(a) A trustee shall hold a trustee’s sale on the date and at the
25 time and place designated in the notice of sale given under ORS 86.740. The
26 designated time of the trustee’s sale must be after 9 a.m. and before 4 p.m.,
27 based on the standard of time set forth in ORS 187.110, and the designated
28 place of the trustee’s sale must be in the county or one of the counties in
29 which the property is situated. Except as provided in paragraph (b) of this
30 subsection, the trustee may sell the property in one parcel or in separate

1 parcels and shall sell the parcel or parcels at auction to the highest bidder
2 for cash. Any person, including the beneficiary under the trust deed, but
3 excluding the trustee, may bid at the trustee's sale. An attorney for the
4 trustee, or an agent that the trustee or the attorney designates, may conduct
5 the sale and act in the sale as the trustee's auctioneer.

6 “(b) If the trustee sells property upon which a single residential unit that
7 is subject to an affordable housing covenant is situated, the eligible covenant
8 holder may purchase the property from the trustee at the trustee's sale for
9 cash or cash equivalent in an amount that is the lesser of:

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

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

13 “(c)(A) Except as provided in subparagraph (B) of this paragraph, if an
14 eligible covenant holder purchases the property in accordance with para-
15 graph (b) of this subsection, the sale forecloses and terminates all other in-
16 terests in the property as provided in ORS 86.770 (1).

17 “(B) If an interest in the property exists that is prior to the eligible
18 covenant holder's interest, other than the interest set forth in the trust deed
19 that was the subject of the foreclosure proceeding under ORS 86.735, not-
20 withstanding the provisions of ORS 86.770 (1) the sale does not foreclose and
21 terminate the prior interest and the eligible covenant holder's title to the
22 property is subject to the prior interest.

23 “[~~(2)(a)~~] **(2)** The trustee or the attorney for the trustee, or an agent that
24 the trustee or the attorney conducting the sale designates, may postpone the
25 sale for one or more periods that total not more than 180 days from the or-
26 iginal sale date, giving notice of each postponement by public proclamation
27 made at the time and place set for sale. The trustee, the attorney or an agent
28 that the trustee or the attorney designates may make the proclamation.

29 “[~~(b)~~ *If a person postpones the sale date as provided in paragraph (a) of this*
30 *subsection, the trustee, in the manner provided for service of the notice of sale*

1 *under ORS 86.740 (1), shall cause written notice of the new time, date and*
2 *place for the sale to be served on the grantor and on any person to whom notice*
3 *of the sale was given under ORS 86.745. The notice must be given at least 15*
4 *days before the new sale date. The person may postpone the sale once, for not*
5 *more than two calendar days, without giving notice as provided in this para-*
6 *graph. The person may not postpone the sale for more than two calendar days*
7 *or more than once without giving notice as provided in this paragraph.]*

8 “(3) The purchaser shall pay at the time of sale the price bid or the price
9 determined in accordance with subsection (1)(b) of this section, and, within
10 10 days following payment, the trustee shall execute and deliver the trustee’s
11 deed to the purchaser.

12 “(4) The trustee’s deed shall convey to the purchaser the interest in the
13 property that the grantor had, or had the power to convey, at the time the
14 grantor executed the trust deed, together with any interest the grantor or
15 the grantor’s successors in interest acquire after the execution of the trust
16 deed.

17 “(5)(a) If property purchased at the trustee’s sale includes one or more
18 dwelling units that are subject to ORS chapter 90, the purchaser must pro-
19 vide written notice of change in ownership to the occupants of each unit
20 within 30 days after the date of sale and before or concurrently with service
21 of a written termination notice authorized by subsection (6)(c)(B) of this
22 section.

23 “(b) The notice required by this subsection must:

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

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

27 “(C) Include the name, contact address and contact telephone number of
28 the purchaser or the purchaser’s representative.

29 “(D) Provide information about the rights of bona fide residential tenants
30 as provided in subsections (6)(c) and (e) and (9)(a) of this section.

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

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

5 “(A) Personal delivery to the tenant.

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

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

11 “(D) If the names of the tenants are not known to the purchaser, the no-
12 tice may be addressed to ‘occupants.’

13 “(d) A notice that contains the information required under paragraph
14 (b)(B) and (C) of this subsection meets the requirements of paragraph (b) of
15 this subsection if the notice is in substantially the following form:

16 “ _____

17 NOTICE TO RESIDENTIAL TENANTS OF
18 CHANGE IN OWNERSHIP

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

23

24 IF YOU ARE A BONA FIDE TENANT RENTING THIS PROPERTY AS
25 A RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE
26 LIVING IN THIS PROPERTY AFTER THE FORECLOSURE SALE FOR:

27 • THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE
28 A FIXED TERM LEASE; OR

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

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

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

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

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

15 **IMPORTANT:**

16 **YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S**
17 **REPRESENTATIVE AT THE ADDRESS LISTED ON THIS NOTICE AS**
18 **SOON AS POSSIBLE TO LET THE NEW OWNER KNOW IF YOU ARE A**
19 **BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE**
20 **OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF**
21 **YOU HAVE A FIXED TERM RENTAL AGREEMENT OR LEASE WITH**
22 **MORE THAN 90 DAYS LEFT.** Written evidence of your rental agreement
23 can be a copy of your lease or rental agreement, or other documentation of
24 the existence of your rental agreement. Keep your original documents and
25 a record of any information you give to the new owner.

26 **YOUR TENANCY**

27 **BETWEEN NOW**

28 **AND THE MOVE-OUT DATE**

29 The new owner may be willing to allow you to stay as a tenant instead
30 of requiring you to move out after 90 days or at the end of your fixed term

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

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

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

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

26 “ _____
27 “(6)(a) Except as provided in paragraph (b) or (c) of this subsection, the
28 purchaser at the trustee’s sale is entitled to possession of the property on
29 the 10th day after the sale. A person that remains in possession after the
30 10th day under any interest, except an interest prior to the trust deed, or

1 an interest the grantor or a successor of the grantor created voluntarily, is
2 a tenant at sufferance. The purchaser may obtain possession of the property
3 from a tenant at sufferance by following the procedures set forth in ORS
4 105.105 to 105.168 or other applicable judicial procedure.

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

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

18 “(A) Upon expiration of the fixed term of the tenancy, if the bona fide
19 tenancy is a fixed term tenancy as defined in ORS 90.100; or

20 “(B) At least 90 days after service of a written termination notice if the
21 bona fide tenancy is:

22 “(i) A fixed term tenancy and the purchaser intends to occupy, as the
23 purchaser’s primary residence, the dwelling unit that is subject to the fixed
24 term tenancy; or

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

27 “(d) If a purchaser gives a 90-day written termination notice pursuant to
28 paragraph (c) of this subsection, the purchaser may include in the notice a
29 request that a tenant with a fixed term tenancy provide written evidence of
30 the existence of the tenancy to the purchaser at an address described in the

1 notice. Written evidence includes a copy of the rental agreement or another
2 document that shows the existence of the fixed term tenancy. Failure of the
3 tenant to provide the requested written evidence before the purchaser files
4 an action for possession based on a 90-day notice:

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

7 “(B) Prevents the tenant from recovering prevailing party attorney fees
8 or costs and disbursements pursuant to subsection (11)(b) of this section. The
9 90-day notice must describe the provisions of this paragraph.

10 “(e) A purchaser may not commence a proceeding under ORS 105.105 to
11 105.168 that is authorized under this subsection before the later of:

12 “(A) The 10th day after the trustee’s sale;

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

16 “(C) The date specified in a written notice of the purchaser’s intent to
17 terminate a tenancy if the notice is required by and is given to the person
18 in accordance with paragraph (c) of this subsection; or

19 “(D) The date on which the term of a fixed term tenancy ends, if the
20 property is a dwelling unit and the purchaser has not terminated the tenancy
21 in accordance with paragraph (c) of this subsection.

22 “(f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to
23 105.168 must attach proof of service of a written termination notice required
24 by paragraph (c) of this subsection to the pleadings.

25 “(g) In an action to obtain possession, violation of the procedures re-
26 quired by subsection (5) of this section or paragraph (c) of this subsection
27 is a defense for a bona fide tenant seeking to retain possession.

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

1 which:

2 “(A) The mortgagor or the child, spouse or parent of the mortgagor under
3 the contract is not the tenant; and

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

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

9 “(a) Personal delivery to the tenant.

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

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

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

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

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

25 “(B) Enters into a new rental agreement with the individual who pos-
26 sesses the property under a tenancy described in subsection (6)(c) of this
27 section; or

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

30 “(b) The purchaser may act as a landlord for purposes of terminating a

1 tenancy in accordance with the provisions of ORS 90.396.

2 “(c) The purchaser is subject to the provisions of ORS 90.322, 90.375,
3 105.165, 659A.421 and 659A.425. The application of ORS 90.375 to a purchaser
4 that does not become a landlord does not impose an affirmative duty to pay
5 for or provide services. For the purpose of damages pursuant to this para-
6 graph, ‘rent’ refers to the amount paid by the tenant to the landlord for the
7 right to occupy the unit before the foreclosure.

8 “(10)(a) Except as provided in paragraph (b) of this subsection, the pur-
9 chaser is not liable to the individual who possesses the property under a
10 tenancy described in subsection (6)(c) of this section for:

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

12 “(B) Returning a security deposit.

13 “(b) A purchaser that is a landlord under the provisions of subsection
14 (9)(a) of this section is liable to the individual who possesses the property
15 under a tenancy described in subsection (6)(c) of this section for:

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

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

20 “(11)(a) Except as provided in paragraph (b) of this subsection and not-
21 withstanding an agreement to the contrary, in an action or defense arising
22 pursuant to subsection (6)(c), (d), (f) or (g), (7) or (9)(c) of this section, rea-
23 sonable attorney fees at trial and on appeal may be awarded to the prevailing
24 party together with costs and disbursements.

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

29 “(A) Did not know, and did not have reasonable cause to know, of the
30 existence of a fixed term tenancy when commencing the action for pos-

1 session; and

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

4 “(c) As used in this subsection, ‘prevailing party’ means the party in
5 whose favor final judgment is rendered.

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

13 “(b) In addition to the notice required under paragraph (a) of this sub-
14 section, the trustee shall send amended notice of sale:

15 “(A) By registered or certified mail to:

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

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

24 “(B) By posting a true copy or a link to a true copy of the amended notice
25 of sale on the trustee’s Internet website.

26 “(13) The amended notice of sale must:

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

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

1 “(c) Specify the time and place for sale;

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

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

5 “(14) If the publication of the notice of sale was not completed before the
6 date the foreclosure proceedings were stayed by order of the court, by pro-
7 ceedings in bankruptcy or for any other lawful reason, after release from the
8 stay, in addition to complying with the provisions of subsections (12) and (13)
9 of this section, the trustee shall complete the publication by publishing an
10 amended notice of sale that states that the notice has been amended follow-
11 ing release from the stay and that contains the amended date of sale. The
12 amended notice must be published in a newspaper of general circulation in
13 each of the counties in which the property is situated once a week for four
14 successive weeks, except that the required number of publications must be
15 reduced by the number of publications that were completed before the effec-
16 tive date of the stay. The last publication must be made more than 20 days
17 before the date the trustee conducts the sale.

18 **“SECTION 15.** ORS 86.755, as amended by section 7, chapter 510, Oregon
19 Laws 2011, and section 10, chapter 112, Oregon Laws 2012, is amended to
20 read:

21 “86.755. (1)(a) A trustee shall hold a trustee’s sale on the date and at the
22 time and place designated in the notice of sale given under ORS 86.740. The
23 designated time of the trustee’s sale must be after 9 a.m. and before 4 p.m.,
24 based on the standard of time set forth in ORS 187.110, and the designated
25 place of the trustee’s sale must be in the county or one of the counties in
26 which the property is situated. Except as provided in paragraph (b) of this
27 subsection, the trustee may sell the property in one parcel or in separate
28 parcels and shall sell the parcel or parcels at auction to the highest bidder
29 for cash. Any person, including the beneficiary under the trust deed, but
30 excluding the trustee, may bid at the trustee’s sale. An attorney for the

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

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

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

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

10 “(c)(A) Except as provided in subparagraph (B) of this paragraph, if an
11 eligible covenant holder purchases the property in accordance with para-
12 graph (b) of this subsection, the sale forecloses and terminates all other in-
13 terests in the property as provided in ORS 86.770 (1).

14 “(B) If an interest in the property exists that is prior to the eligible
15 covenant holder's interest, other than the interest set forth in the trust deed
16 that was the subject of the foreclosure proceeding under ORS 86.735, not-
17 withstanding the provisions of ORS 86.770 (1) the sale does not foreclose and
18 terminate the prior interest and the eligible covenant holder's title to the
19 property is subject to the prior interest.

20 “[~~(2)(a)~~] **(2)** The trustee or the attorney for the trustee, or an agent that
21 the trustee or the attorney conducting the sale designates, may postpone the
22 sale for one or more periods that total not more than 180 days from the or-
23 iginal sale date, giving notice of each postponement by public proclamation
24 made at the time and place set for sale. The trustee, the attorney or an agent
25 that the trustee or the attorney designates may make the proclamation.

26 “[~~(b)~~ *If a person postpones the sale date as provided in paragraph (a) of this*
27 *subsection, the trustee, in the manner provided for service of the notice of sale*
28 *under ORS 86.740 (1), shall cause written notice of the new time, date and*
29 *place for the sale to be served on the grantor and on any person to whom notice*
30 *of the sale was given under ORS 86.745. The notice must be given at least 15*

1 *days before the new sale date. The person may postpone the sale once, for not*
2 *more than two calendar days, without giving notice as provided in this para-*
3 *graph. The person may not postpone the sale for more than two calendar days*
4 *or more than once without giving notice as provided in this paragraph.]*

5 “(3) The purchaser shall pay at the time of sale the price bid or the price
6 determined in accordance with subsection (1)(b) of this section, and, within
7 10 days following payment, the trustee shall execute and deliver the trustee’s
8 deed to the purchaser.

9 “(4) The trustee’s deed shall convey to the purchaser the interest in the
10 property that the grantor had, or had the power to convey, at the time the
11 grantor executed the trust deed, together with any interest the grantor or
12 the grantor’s successors in interest acquire after the execution of the trust
13 deed.

14 “(5)(a) If property purchased at the trustee’s sale includes one or more
15 dwelling units that are subject to ORS chapter 90, the purchaser must pro-
16 vide written notice of change in ownership to the occupants of each unit
17 within 30 days after the date of sale and before or concurrently with service
18 of a written termination notice authorized by subsection (6)(c)(B) of this
19 section.

20 “(b) The notice required by this subsection must:

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

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

24 “(C) Include the name, contact address and contact telephone number of
25 the purchaser or the purchaser’s representative.

26 “(D) Provide information about the rights of bona fide residential tenants
27 as provided in subsections (6)(c) and (e) and (9)(a) of this section.

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

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

2 “(A) Personal delivery to the tenant.

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

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

8 “(D) If the names of the tenants are not known to the purchaser, the no-
9 tice may be addressed to ‘occupants.’

10 “(d) A notice that contains the information required under paragraph
11 (b)(B) and (C) of this subsection meets the requirements of paragraph (b) of
12 this subsection if the notice is in substantially the following form:

13 “ _____

14 NOTICE TO RESIDENTIAL TENANTS OF
15 CHANGE IN OWNERSHIP

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

20

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

24 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMI-
25 NATION NOTICE, IF YOU HAVE A FIXED TERM LEASE; OR

26 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRIT-
27 TEN TERMINATION NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR
28 WEEK-TO-WEEK RENTAL AGREEMENT.

29 If the new owner wants to move in and use this property as a primary
30 residence, the new owner can give you written notice and require you to

1 move out after 30 days, even though you have a fixed term lease with more
2 than 30 days left.

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

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

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

13 **IMPORTANT:**

14 **YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S**
15 **REPRESENTATIVE AT THE ADDRESS LISTED ON THIS NOTICE AS**
16 **SOON AS POSSIBLE TO LET THE NEW OWNER KNOW IF YOU ARE A**
17 **BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE**
18 **OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF**
19 **YOU HAVE A FIXED TERM RENTAL AGREEMENT OR LEASE WITH**
20 **MORE THAN 30 DAYS LEFT.** Written evidence of your rental agreement
21 can be a copy of your lease or rental agreement, or other documentation of
22 the existence of your rental agreement. Keep your original documents and
23 a record of any information you give to the new owner.

24 **YOUR TENANCY**
25 **BETWEEN NOW**
26 **AND THE MOVE-OUT DATE**

27 The new owner may be willing to allow you to stay as a tenant instead
28 of requiring you to move out after 30 or 60 days. You should contact the new
29 owner if you would like to stay. If the new owner accepts rent from you,
30 signs a new residential rental agreement with you or does not notify you in

1 writing within 30 days after the date of the foreclosure sale that you must
2 move out, the new owner becomes your new landlord and must maintain the
3 property. Otherwise:

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

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

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

24 “ _____
25 “(6)(a) Except as provided in paragraph (b) or (c) of this subsection, the
26 purchaser at the trustee’s sale is entitled to possession of the property on
27 the 10th day after the sale. A person that remains in possession after the
28 10th day under any interest, except an interest prior to the trust deed, or
29 an interest the grantor or a successor of the grantor created voluntarily, is
30 a tenant at sufferance. The purchaser may obtain possession of the property

1 from a tenant at sufferance by following the procedures set forth in ORS
2 105.105 to 105.168 or other applicable judicial procedure.

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

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

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

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

20 “(i) A fixed term tenancy and the purchaser intends to occupy, as the
21 purchaser’s primary residence, the dwelling unit that is subject to the fixed
22 term tenancy; or

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

25 “(d) If a purchaser gives a 30-day written termination notice pursuant to
26 paragraph (c) of this subsection, the purchaser may include in the notice a
27 request that a tenant with a fixed term tenancy provide written evidence of
28 the existence of the tenancy to the purchaser at an address described in the
29 notice. Written evidence includes a copy of the rental agreement or another
30 document that shows the existence of the fixed term tenancy. Failure of the

1 tenant to provide the requested written evidence before the purchaser files
2 an action for possession based on a 30-day notice:

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

5 “(B) Prevents the tenant from recovering prevailing party attorney fees
6 or costs and disbursements pursuant to subsection (11)(b) of this section. The
7 30-day notice must describe the provisions of this paragraph.

8 “(e) A purchaser may not commence a proceeding under ORS 105.105 to
9 105.168 that is authorized under this subsection before the later of:

10 “(A) The 10th day after the trustee’s sale;

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

14 “(C) The date specified in a written notice of the purchaser’s intent to
15 terminate a tenancy if the notice is required by and is given to the person
16 in accordance with paragraph (c) of this subsection; or

17 “(D) The date on which the term of a fixed term tenancy ends, if the
18 property is a dwelling unit and the purchaser has not terminated the tenancy
19 in accordance with paragraph (c) of this subsection.

20 “(f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to
21 105.168 must attach proof of service of a written termination notice required
22 by paragraph (c) of this subsection to the pleadings.

23 “(g) In an action to obtain possession, violation of the procedures re-
24 quired by subsection (5) of this section or paragraph (c) of this subsection
25 is a defense for a bona fide tenant seeking to retain possession.

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

30 “(A) The mortgagor or the child, spouse or parent of the mortgagor under

1 the contract is not the tenant; and

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

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

7 “(a) Personal delivery to the tenant.

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

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

13 “(8) If the notice under subsection (6) of this section is served by mail
14 pursuant to subsection (7)(b) of this section, the minimum period for com-
15 pliance must be extended by three days and the notice must include the ex-
16 tension in the period stated in the notice.

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

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

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

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

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

30 “(c) The purchaser is subject to the provisions of ORS 90.322, 90.375,

1 105.165, 659A.421 and 659A.425. The application of ORS 90.375 to a purchaser
2 that does not become a landlord does not impose an affirmative duty to pay
3 for or provide services. For the purpose of damages pursuant to this para-
4 graph, ‘rent’ refers to the amount paid by the tenant to the landlord for the
5 right to occupy the unit before the foreclosure.

6 “(10)(a) Except as provided in paragraph (b) of this subsection, the pur-
7 chaser is not liable to the individual who possesses the property under a
8 tenancy described in subsection (6)(c) of this section for:

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

10 “(B) Returning a security deposit.

11 “(b) A purchaser that is a landlord under the provisions of subsection
12 (9)(a) of this section is liable to the individual who possesses the property
13 under a tenancy described in subsection (6)(c) of this section for:

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

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

18 “(11)(a) Except as provided in paragraph (b) of this subsection and not-
19 withstanding an agreement to the contrary, in an action or defense arising
20 pursuant to subsection (6)(c), (d), (f) or (g), (7) or (9)(c) of this section, rea-
21 sonable attorney fees at trial and on appeal may be awarded to the prevailing
22 party together with costs and disbursements.

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

27 “(A) Did not know, and did not have reasonable cause to know, of the
28 existence of a fixed term tenancy when commencing the action for pos-
29 session; and

30 “(B) Promptly dismissed the action upon becoming aware of the existence

1 of a fixed term tenancy.

2 “(c) As used in this subsection, ‘prevailing party’ means the party in
3 whose favor final judgment is rendered.

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

11 “(b) In addition to the notice required under paragraph (a) of this sub-
12 section, the trustee shall send amended notice of sale:

13 “(A) By registered or certified mail to:

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

16 “(ii) The address provided by each member of the Oregon State Bar who
17 by registered or certified mail requests the amended notice of sale and in-
18 cludes with the request the notice of default or an identification number for
19 the trustee’s sale that would assist the trustee in identifying the property
20 subject to the trustee’s sale and a self-addressed, stamped envelope measuring
21 at least 8.5 by 11 inches in size; or

22 “(B) By posting a true copy or a link to a true copy of the amended notice
23 of sale on the trustee’s Internet website.

24 “(13) The amended notice of sale must:

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

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

29 “(c) Specify the time and place for sale;

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

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

3 “(14) If the publication of the notice of sale was not completed before the
4 date the foreclosure proceedings were stayed by order of the court, by pro-
5 ceedings in bankruptcy or for any other lawful reason, after release from the
6 stay, in addition to complying with the provisions of subsections (12) and (13)
7 of this section, the trustee shall complete the publication by publishing an
8 amended notice of sale that states that the notice has been amended follow-
9 ing release from the stay and that contains the amended date of sale. The
10 amended notice must be published in a newspaper of general circulation in
11 each of the counties in which the property is situated once a week for four
12 successive weeks, except that the required number of publications must be
13 reduced by the number of publications that were completed before the effec-
14 tive date of the stay. The last publication must be made more than 20 days
15 before the date the trustee conducts the sale.

16 “**SECTION 16.** ORS 88.010 is amended to read:

17 “88.010. (1) Except as otherwise provided by law, a lien upon real or
18 personal property, other than that of a judgment, whether created by mort-
19 gage or otherwise, [*shall*] **must** be foreclosed, and the property adjudged to
20 be sold to satisfy the debt [*secured thereby*] **the lien secures**, by [*a*] **bring-**
21 **ing** suit. Except as provided in ORS 88.070, in addition to the judgment of
22 foreclosure and sale, if **the lien debtor or another person, as principal**
23 **or otherwise, has given** a promissory note or other personal obligation for
24 the payment of the debt [*has been given by the lien debtor or any other person*
25 *as principal or otherwise*], the court also shall enter a judgment for the
26 amount of the debt against the [*person or persons*] **lien debtor or other**
27 **person.** The provisions of this chapter as to liens upon personal property
28 [*are not intended to*] **do not** exclude a person [*having such*] **that has a** lien
29 from any other remedy or right [*in regard to such property*] **that the person**
30 **otherwise has with respect to the property.**

1 **“(2)(a) A complaint in a suit to foreclose a residential trust deed**
2 **under this section must include as an attachment a true copy of:**

3 **“(A) A valid certificate of compliance that a service provider issued**
4 **to a beneficiary under section 5 of this 2013 Act;**

5 **“(B) The affidavit the person submitted under section 2 (1)(b) of this**
6 **2013 Act, provided that the exemption the person claimed in the affi-**
7 **davit has not expired; or**

8 **“(C) The notice the beneficiary received under section 5 (1)(b) of**
9 **this 2013 Act.**

10 **“(b)(A) A court on the court’s own motion or in response to a mo-**
11 **tion from a defendant may dismiss without prejudice a suit that a**
12 **person brings under this section to foreclose a residential trust deed,**
13 **or may stay proceedings on the suit, if the person:**

14 **“(i) Fails to file with the court the certificate described in para-**
15 **graph (a)(A) of this subsection or the affidavit described in paragraph**
16 **(a)(B) of this subsection; or**

17 **“(ii) Files with the court the notice described in paragraph (a)(C)**
18 **of this subsection.**

19 **“(B) The court may release a stay the court granted under subpar-**
20 **agraph (A) of this paragraph if the person files with the court the**
21 **certificate described in paragraph (a)(A) of this subsection or the af-**
22 **fidavit described in paragraph (a)(B) of this subsection.**

23 **“(C) The court may award a defendant that prevails on a motion**
24 **under this paragraph reasonable costs and attorney fees associated**
25 **with bringing the motion and any other relief the court deems proper.**

26 **“SECTION 17. Sections 2a and 3, chapter 112, Oregon Laws 2012, are**
27 **repealed.**

28 **“SECTION 18. (1) Sections 2 to 6 of this 2013 Act, the amendments**
29 **to ORS 86.705, 86.735, 86.740, 86.750, 86.755 and 88.010 and sections 2, 4**
30 **and 4a, chapter 112, Oregon Laws 2012, by sections 7 to 16 of this 2013**

1 Act and the repeal of sections 2a and 3, chapter 112, Oregon Laws 2012,
2 by section 17 of this 2013 Act become operative 91 days after the ef-
3 fective date of this 2013 Act.

4 “(2) The Attorney General may take any action before the operative
5 date specified in subsection (1) of this section that is necessary to en-
6 able the Attorney General to exercise, on and after the operative date
7 specified in subsection (1) of this section, all of the duties, functions
8 and powers conferred on the Attorney General by sections 2 to 6 of this
9 2013 Act and the amendments to ORS 86.705, 86.735, 86.740, 86.750, 86.755
10 and 88.010 and sections 2, 4 and 4a, chapter 112, Oregon Laws 2012, by
11 sections 7 to 16 of this 2013 Act.

12 “SECTION 19. Sections 2 to 6 of this 2013 Act, the amendments to
13 ORS 86.705, 86.735, 86.740, 86.750, 86.755 and 88.010 and sections 2, 4 and
14 4a, chapter 112, Oregon Laws 2012, by sections 7 to 16 of this 2013 Act
15 and the repeal of sections 2a and 3, chapter 112, Oregon Laws 2012, by
16 section 17 of this 2013 Act apply to all foreclosures of residential trust
17 deeds, whether commenced before, on or after the effective date of this
18 2013 Act.

19 “SECTION 20. This 2013 Act being necessary for the immediate
20 preservation of the public peace, health and safety, an emergency is
21 declared to exist, and this 2013 Act takes effect on its passage.”.

22