

**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, 88.010,
3 646.607 and 646.638 and sections 2, 4 and 4a, chapter 112, Oregon Laws 2012;
4 repealing sections 2a and 3, chapter 112, Oregon Laws 2012; and declaring
5 an emergency.”.

6 Delete lines 6 through 22 and delete pages 2 through 5 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 with the beneficiary before the beneficiary or the
13 trustee files a notice of default under ORS 86.735 or before the benefi-
14 ciary brings suit under ORS 88.010.**

15 **“(b)(A) The requirement to request or participate in a resolution
16 conference with a grantor in accordance with subsection (2) or (3) of
17 this section does not apply to a beneficiary if the beneficiary submits
18 to the Attorney General a sworn affidavit that states that during the
19 preceding calendar year the beneficiary did not complete or cause an
20 affiliate, subsidiary or agent of the beneficiary to complete more than
21 175 actions to foreclose a residential trust deed by advertisement and
22 sale under ORS 86.735 or by suit under ORS 88.010. A beneficiary that**

1 is a trustee shall include as part of the total number of foreclosure
2 actions that the beneficiary completed in the previous calendar year
3 all foreclosure actions that the beneficiary completed under ORS 86.735
4 or 88.010 in the beneficiary's capacity as a trustee. A beneficiary that
5 intends in any calendar year to claim an exemption under this para-
6 graph shall submit the affidavit either:

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

10 “(ii) At the time the beneficiary files a notice of default under ORS
11 86.735 or brings suit under ORS 88.010.

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

15 “(c) A beneficiary that claims an exemption under this subsection
16 is not exempt from the requirements set forth in section 4a, chapter
17 112, Oregon Laws 2012.

18 “(2)(a) The beneficiary shall notify the grantor that the grantor
19 may request a resolution conference if the grantor makes the request
20 within 30 days after receiving the beneficiary's notice. The beneficiary
21 shall notify the service provider electronically, by facsimile or by mail
22 that the beneficiary has sent a notice to the grantor under this sub-
23 section. The beneficiary's notice under this subsection must identify
24 the residential trust deed that the beneficiary intends to foreclose,
25 specify that the grantor must pay a fee that will not exceed \$200 for
26 the grantor's share of the expenses of the resolution conference, list
27 additional documents the beneficiary requires to determine if the
28 grantor is eligible for a foreclosure avoidance measure, state that if
29 the grantor requests a resolution conference the service provider will
30 schedule a resolution conference not later than 85 days after the date

1 of the notice and list the name, title, address, telephone number and
2 other available contact information for:

3 “(A) The beneficiary;

4 “(B) Any person other than the beneficiary that will receive, on the
5 beneficiary’s behalf, notices or other communications related to the
6 resolution conference; and

7 “(C) The grantor.

8 “(b) Not later than 10 days after sending the notice described in
9 paragraph (a) of this subsection, the service provider shall send a
10 second notice to the grantor that states that the grantor has a right
11 to request a resolution conference, specifying the deadline for the
12 grantor’s request and stating that if the grantor has already requested
13 a resolution conference, the grantor may ignore the second notice.

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

16 “(A) The beneficiary or the trustee has not filed a notice of default
17 under ORS 86.735 or the beneficiary has not commenced a suit under
18 ORS 88.010;

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

21 “(C) The grantor first obtains from a housing counselor a certifi-
22 cation in writing that the grantor is more than 30 days in default on
23 the obligation that the residential trust deed secures or, if the grantor
24 is not in default, that the grantor has a financial hardship that the
25 housing counselor reasonably believes may qualify the grantor for a
26 foreclosure avoidance measure.

27 “(b) A grantor shall request a resolution conference through the
28 service provider. The grantor shall submit the request to the service
29 provider electronically or by mail and shall enclose with the request
30 the written certification the housing counselor provides under para-

1 graph (a)(C) of this subsection. The Attorney General by rule shall
2 specify the information that the request must include.

3 “(c) A beneficiary that receives a notice from a service provider
4 after the service provider receives a request from a grantor under
5 paragraph (b) of this subsection is subject to the requirements set
6 forth in this section and sections 3, 4 and 5 of this 2013 Act and section
7 4a, chapter 112, Oregon Laws 2012.

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

12 **“SECTION 3. (1)(a) Within 10 days after a service provider receives**
13 **a request for a resolution conference under section 2 of this 2013 Act,**
14 **the service provider shall schedule the resolution conference and mail**
15 **a notice to the beneficiary and to the grantor. The service provider**
16 **shall schedule the resolution conference to occur within 55 days after**
17 **the date on which the service provider sends the notice.**

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

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

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

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

25 “(D) State that the grantor must consult a housing counselor before
26 attending the resolution conference unless the grantor notifies the
27 service provider that the grantor could not obtain an appointment
28 with a housing counselor before the date of the resolution conference;
29 and

30 “(E) State that the grantor may have an attorney or housing

1 counselor present to represent the grantor at the resolution confer-
2 ence.

3 “(2) Within 25 days after the date on which the service provider
4 sends a notice under subsection (1) of this section:

5 “(a) The grantor shall pay a fee to the service provider in an
6 amount and in a manner the Attorney General specifies by rule. The
7 grantor’s fee may not exceed \$200. The service provider shall pay to
8 the Attorney General, for deposit into the Foreclosure Avoidance Fund
9 established under section 4, chapter 112, Oregon Laws 2012, moneys the
10 service provider receives from the grantor under this paragraph.

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

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

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

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

16 “(D) Any other information the beneficiary has indicated that the
17 beneficiary needs to evaluate the grantor’s eligibility for a foreclosure
18 avoidance measure.

19 “(3) The grantor shall consult a housing counselor before attending
20 the resolution conference unless the grantor cannot obtain an ap-
21 pointment with a housing counselor before the date of the resolution
22 conference.

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

26 “(a) Pay a fee to the service provider for the facilitator’s services
27 in an amount and in a manner the Attorney General specifies by rule.
28 The beneficiary’s fee may not exceed \$600. The service provider shall
29 pay to the Attorney General, for deposit into the Foreclosure Avoid-
30 ance Fund established under section 4, chapter 112, Oregon Laws 2012,

1 moneys the service provider receives from the beneficiary under this
2 paragraph.

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

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

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

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

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

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

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

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

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

22 **“(F) The portion of any pooling agreement, servicing agreement or**
23 **other agreement that the beneficiary cites as a limitation or prohibi-**
24 **tion on modifying the terms of the obligation; and**

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

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

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

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

4 **“(C) The beneficiary does not pay the fee required under subsection**
5 **(4)(a) of this section by the date the fee is due. The service provider**
6 **may wait until the beneficiary has paid the fee before rescheduling the**
7 **resolution conference.**

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

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

17 **“(b) A facilitator is not subject to a subpoena and cannot be com-**
18 **pelled to testify in any proceeding that is related to a resolution con-**
19 **ference, other than a proceeding against a facilitator for an act or**
20 **omission for which the facilitator may be liable under paragraph (c)**
21 **of this subsection.**

22 **“(c) A facilitator is not civilly liable for any act or omission done**
23 **or made while engaged in efforts to assist or facilitate a resolution**
24 **conference unless the facilitator acted or made an omission in bad**
25 **faith, with malicious intent or in an manner that exhibited a willful**
26 **or wanton disregard of the rights, safety or property of another per-**
27 **son.**

28 **“(d) The limitations on liability provided by this subsection apply**
29 **to the officers, directors, employees and agents of the service provider**
30 **and any dispute resolution program engaged in facilitating resolution**

1 **conferences.**

2 **“(e) Information that a beneficiary or grantor submits under this**
3 **section is not subject to ORS 192.410 to 192.505.**

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

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

16 **“(c) A grantor may have an attorney or a housing counselor, or**
17 **both, present to represent the grantor at the resolution conference,**
18 **but the grantor, or any individual that a court appoints to act on the**
19 **grantor’s behalf, must attend the resolution conference in person.**

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

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

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

29 **“(b) After a suspension or postponement under paragraph (a) of this**
30 **subsection only if the beneficiary and the grantor agree to the addi-**

1 tional suspension or postponement; or

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

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

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

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

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

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

24 **“(2) Notwithstanding the requirements set forth in subsection (1)
25 of this section, if a service provider cancels a resolution conference
26 under section 3 (5)(b) of this 2013 Act or if the grantor does not appear
27 in person at the resolution conference, the service provider shall issue
28 a certificate of compliance to the beneficiary within five days after
29 canceling the resolution conference or five days after the date on
30 which the grantor failed to appear in person at the resolution confer-**

1 **ence.**

2 **“SECTION 6. (1) The Attorney General shall:**

3 **“(a) Appoint and enter into an agreement with a service provider**
4 **to coordinate and manage a program to implement the provisions of**
5 **sections 2, 3, 4 and 5 of this 2013 Act.**

6 **“(b) Enter into an agreement for information technology goods or**
7 **services.**

8 **“(c) Receive affidavits submitted under section 2 (1)(b) of this 2013**
9 **Act.**

10 **“(d) Specify the amount a beneficiary must pay to the service pro-**
11 **vider and the amount that the grantor must pay to the service pro-**
12 **vider.**

13 **“(e) Prescribe qualifications, training and experience requirements**
14 **for facilitators that conduct or assist resolution conferences.**

15 **“(f) Specify procedures and guidelines for conducting a resolution**
16 **conference.**

17 **“(g) Adopt additional rules to implement sections 2, 3, 4 and 5 of**
18 **this 2013 Act and sections 4 and 4a, chapter 112, Oregon Laws 2012.**

19 **“(2) The Attorney General shall pay for the service provider’s ser-**
20 **vices and for information technology goods and services from the**
21 **Foreclosure Avoidance Fund established under section 4, chapter 112,**
22 **Oregon Laws 2012. The Attorney General is not subject to ORS chapter**
23 **279A, 279B or 279C in appointing a service provider or entering into an**
24 **agreement under subsection (1)(a) or (b) of this section.**

25 **“(3) In addition to and not in lieu of any other penalty provided by**
26 **law, a beneficiary’s violation of section 2 (1)(a) or (2), 3 (4) or 4 (1) or**
27 **(2) of this 2013 Act is an unlawful practice under ORS 646.607 that is**
28 **subject to enforcement under ORS 646.632.”.**

29 On page 6, delete lines 1 through 21.

30 In line 40, delete “by rule”.

1 On page 9, line 32, restore the bracketed material.

2 In line 33, delete “a service provider to coordinate a”.

3 In line 36, restore “the expenses of coordinating” and delete “a service
4 provider to”.

5 In line 37, delete “coordinate”.

6 On page 10, delete lines 17 through 45 and insert:

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

9 **“Sec. 4a. [(1)(a)] (1) Whether or not a beneficiary participates in a**
10 **resolution conference under section 2 of this 2013 Act, if [a] the bene-**
11 **fiary does not offer the grantor of a residential trust deed a foreclo-**
12 **sure avoidance measure, the grantor and the beneficiary do not enter**
13 **into a written agreement for a foreclosure avoidance measure or the**
14 **beneficiary determines that [a] the grantor is not eligible for any foreclosure**
15 **avoidance measure or that the grantor has not complied with the terms of**
16 **a foreclosure avoidance measure to which the grantor has agreed, the bene-**
17 **fiary or the beneficiary’s agent[, at least 30 days before the date specified**
18 **for the trustee’s sale in a notice served under ORS 86.740 or 86.755 (2)(b), shall**
19 **notify the grantor in writing of the beneficiary’s determination and shall cause**
20 **the notice to be served as provided in ORS 86.740 (1).] shall notify the**
21 **grantor, within 10 days after the beneficiary determines that a condi-**
22 **tion described in this subsection exists, by mailing a written notice**
23 **that explains in plain language the basis for the beneficiary’s deter-**
24 **mination.**

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

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

30 *“[(3)(a)] (2) At least [20] five days before [the date specified for the*

1 trustee's sale in a notice served under ORS 86.740 or 86.755 (2)(b),] **the trustee**
2 **sells the property that is subject to foreclosure,** the beneficiary [or
3 the beneficiary's agent shall:]

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

9 “[B] *Mail a copy of the affidavit to the department.*]

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

11 “[A] *Identify the property that is the subject of the trustee's sale;*]

12 “[B] *Identify the grantor and, as of the date of the affidavit, the trustee*
13 *and the beneficiary;*]

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

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

18 “[4] *The Attorney General by rule shall specify a form for and the contents*
19 *of the notice of the determination described in subsection (1) of this section and*
20 *shall identify an address to which the beneficiary or beneficiary's agent must*
21 *mail the copy of the notice under subsection (2) of this section and the affidavit*
22 *under subsection (3) of this section.*]

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

28 “(b) A grantor may bring an action against a beneficiary [or an agent of
29 the beneficiary] in a circuit court of this state to recover the [amounts]
30 **amount** described in paragraph (a) of this subsection. The grantor shall

1 commence the action within [*two years*] **one year** after the date on which
2 the beneficiary [*or the beneficiary’s agent*] should have complied, but did not
3 comply, with the provisions of this section. **The remedy provided for the**
4 **grantor in this section is the grantor’s exclusive remedy for a violation**
5 **of this section.**

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

10 On page 11, delete lines 1 through 16.

11 Delete lines 36 through 39 and insert:

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

14 “(b) A copy of the affidavit with which the beneficiary claimed, under
15 section 2 (1)(b) of this 2013 Act, an exemption that has not expired, unless
16 the beneficiary or the beneficiary’s agent has previously filed the affidavit
17 with the Attorney General;”.

18 On page 13, delete lines 25 through 28 and insert:

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

21 “(B) The affidavit the beneficiary submitted under section 2 (1)(b) of this
22 2013 Act, provided that the exemption the beneficiary claimed in the affidavit
23 has not expired; or”.

24 After line 41, insert:

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

27 “86.705. As used in ORS 86.705 to 86.795:

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

30 “(2) ‘Beneficiary’ means [*a*] **the** person named or otherwise designated in

1 a trust deed as *[the person for whose benefit a trust deed is given]* **the ben-**
2 **eficiary**, or the person’s successor in interest, and who is not the trustee
3 unless the beneficiary is qualified to be a trustee under ORS 86.790 (1)(d).

4 “(3) ‘Eligible covenant holder’ has the meaning given that term in ORS
5 456.270.

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

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

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

15 “(7) ‘Trust deed’ means a deed executed in conformity with ORS 86.705 to
16 86.795 that conveys an interest in real property to a trustee in trust to secure
17 the performance of an obligation the grantor or other person named in the
18 deed owes to a beneficiary.

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

23 **“SECTION 14.** ORS 86.750 is amended to read:

24 “86.750. (1)(a) *[Except as provided in paragraph (b) of this subsection,]* **At**
25 **least 120 days before the day the trustee conducts the sale**, the notice
26 prescribed in ORS 86.745 must be served upon an occupant of the property
27 described in the trust deed in the manner in which a summons is served
28 *[pursuant to]* **under** ORCP 7 D(2) and 7 D(3) *[at least 120 days before the day*
29 *the trustee conducts the sale]* **or mailed by both first class and certified**
30 **mail with return receipt requested to the last-known address of the**

1 **occupant.**

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

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

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

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

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

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

30 “(3) At or before the time the trustee conducts the sale, the trustee shall

1 file for recording in the official record of the county or counties in which
2 the property described in the deed is situated the following affidavits with
3 respect to the notice of sale:

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

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

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

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

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

12 **“SECTION 15.** ORS 86.755, as amended by section 9, chapter 112, Oregon
13 Laws 2012, is amended to read:

14 “86.755. (1)(a) A trustee shall hold a trustee’s sale on the date and at the
15 time and place designated in the notice of sale given under ORS 86.740. The
16 designated time of the trustee’s sale must be after 9 a.m. and before 4 p.m.,
17 based on the standard of time set forth in ORS 187.110, and the designated
18 place of the trustee’s sale must be in the county or one of the counties in
19 which the property is situated. Except as provided in paragraph (b) of this
20 subsection, the trustee may sell the property in one parcel or in separate
21 parcels and shall sell the parcel or parcels at auction to the highest bidder
22 for cash. Any person, including the beneficiary under the trust deed, but
23 excluding the trustee, may bid at the trustee’s sale. An attorney for the
24 trustee, or an agent that the trustee or the attorney designates, may conduct
25 the sale and act in the sale as the trustee’s auctioneer.

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

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

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

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

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

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

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

28 “(3) The purchaser shall pay at the time of sale the price bid or the price
29 determined in accordance with subsection (1)(b) of this section, and, within
30 10 days following payment, the trustee shall execute and deliver the trustee’s

1 deed to the purchaser.

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

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

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

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

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

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

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

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

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

25 “(A) Personal delivery to the tenant.

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

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

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

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

6 “ _____

7 NOTICE TO RESIDENTIAL TENANTS OF
8 CHANGE IN OWNERSHIP

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

13

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

17 • THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE
18 A FIXED TERM LEASE; OR

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

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

25 You must be provided with at least 90 days’ written notice after the
26 foreclosure sale before you can be required to move.

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

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

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

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

5 IMPORTANT:

6 YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S
7 REPRESENTATIVE AT THE ADDRESS LISTED ON THIS NOTICE AS
8 SOON AS POSSIBLE TO LET THE NEW OWNER KNOW IF YOU ARE A
9 BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE
10 OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF
11 YOU HAVE A FIXED TERM RENTAL AGREEMENT OR LEASE WITH
12 MORE THAN 90 DAYS LEFT. Written evidence of your rental agreement
13 can be a copy of your lease or rental agreement, or other documentation of
14 the existence of your rental agreement. Keep your original documents and
15 a record of any information you give to the new owner.

16 YOUR TENANCY

17 BETWEEN NOW

18 AND THE MOVE-OUT DATE

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

26 • You do not owe rent;

27 • The new owner is not your landlord and is not responsible for main-
28 taining the property; and

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

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

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

16 “ _____
17 “(6)(a) Except as provided in paragraph (b) or (c) of this subsection, the
18 purchaser at the trustee’s sale is entitled to possession of the property on
19 the 10th day after the sale. A person that remains in possession after the
20 10th day under any interest, except an interest prior to the trust deed, or
21 an interest the grantor or a successor of the grantor created voluntarily, is
22 a tenant at sufferance. The purchaser may obtain possession of the property
23 from a tenant at sufferance by following the procedures set forth in ORS
24 105.105 to 105.168 or other applicable judicial procedure.

25 “(b) Except as provided in paragraph (c) of this subsection, at any time
26 after the trustee’s sale the purchaser may follow the procedures set forth in
27 ORS 105.105 to 105.168 or other applicable judicial procedure to obtain pos-
28 session of the property from a person that holds possession under an interest
29 that the grantor or a successor of the grantor created voluntarily if, not
30 earlier than 30 days before the date first set for the sale, the person was

1 served with not less than 30 days' written notice of the requirement to sur-
2 render or deliver possession of the property.

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

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

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

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

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

17 “(d) If a purchaser gives a 90-day written termination notice pursuant to
18 paragraph (c) of this subsection, the purchaser may include in the notice a
19 request that a tenant with a fixed term tenancy provide written evidence of
20 the existence of the tenancy to the purchaser at an address described in the
21 notice. Written evidence includes a copy of the rental agreement or another
22 document that shows the existence of the fixed term tenancy. Failure of the
23 tenant to provide the requested written evidence before the purchaser files
24 an action for possession based on a 90-day notice:

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

27 “(B) Prevents the tenant from recovering prevailing party attorney fees
28 or costs and disbursements pursuant to subsection (11)(b) of this section. The
29 90-day notice must describe the provisions of this paragraph.

30 “(e) A purchaser may not commence a proceeding under ORS 105.105 to

1 105.168 that is authorized under this subsection before the later of:

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

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

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

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

12 “(f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to
13 105.168 must attach proof of service of a written termination notice required
14 by paragraph (c) of this subsection to the pleadings.

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

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

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

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

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

29 “(a) Personal delivery to the tenant.

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

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

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

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

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

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

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

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

22 “(c) The purchaser is subject to the provisions of ORS 90.322, 90.375,
23 105.165, 659A.421 and 659A.425. The application of ORS 90.375 to a purchaser
24 that does not become a landlord does not impose an affirmative duty to pay
25 for or provide services. For the purpose of damages pursuant to this para-
26 graph, ‘rent’ refers to the amount paid by the tenant to the landlord for the
27 right to occupy the unit before the foreclosure.

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

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

2 “(B) Returning a security deposit.

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

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

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

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

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

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

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

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

26 “(12)(a) Notwithstanding subsection (2) of this section, except when a
27 beneficiary has participated in obtaining a stay, foreclosure proceedings that
28 are stayed by order of the court, by proceedings in bankruptcy or for any
29 other lawful reason shall, after release from the stay, continue as if unin-
30 terrupted, if within 30 days after release the trustee sends amended notice

1 of sale by registered or certified mail to the last-known address of the per-
2 sons listed in ORS 86.740 and 86.750 (1).

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

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

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

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

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

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

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

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

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

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

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

25 “(14) If the publication of the notice of sale was not completed before the
26 date the foreclosure proceedings were stayed by order of the court, by pro-
27 ceedings in bankruptcy or for any other lawful reason, after release from the
28 stay, in addition to complying with the provisions of subsections (12) and (13)
29 of this section, the trustee shall complete the publication by publishing an
30 amended notice of sale that states that the notice has been amended follow-

1 ing release from the stay and that contains the amended date of sale. The
2 amended notice must be published in a newspaper of general circulation in
3 each of the counties in which the property is situated once a week for four
4 successive weeks, except that the required number of publications must be
5 reduced by the number of publications that were completed before the effec-
6 tive date of the stay. The last publication must be made more than 20 days
7 before the date the trustee conducts the sale.

8 **“SECTION 16.** ORS 86.755, as amended by section 7, chapter 510, Oregon
9 Laws 2011, and section 10, chapter 112, Oregon Laws 2012, is amended to
10 read:

11 “86.755. (1)(a) A trustee shall hold a trustee’s sale on the date and at the
12 time and place designated in the notice of sale given under ORS 86.740. The
13 designated time of the trustee’s sale must be after 9 a.m. and before 4 p.m.,
14 based on the standard of time set forth in ORS 187.110, and the designated
15 place of the trustee’s sale must be in the county or one of the counties in
16 which the property is situated. Except as provided in paragraph (b) of this
17 subsection, the trustee may sell the property in one parcel or in separate
18 parcels and shall sell the parcel or parcels at auction to the highest bidder
19 for cash. Any person, including the beneficiary under the trust deed, but
20 excluding the trustee, may bid at the trustee’s sale. An attorney for the
21 trustee, or an agent that the trustee or the attorney designates, may conduct
22 the sale and act in the sale as the trustee’s auctioneer.

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

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

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

30 “(c)(A) Except as provided in subparagraph (B) of this paragraph, if an

1 eligible covenant holder purchases the property in accordance with para-
2 graph (b) of this subsection, the sale forecloses and terminates all other in-
3 terests in the property as provided in ORS 86.770 (1).

4 “(B) If an interest in the property exists that is prior to the eligible
5 covenant holder’s interest, other than the interest set forth in the trust deed
6 that was the subject of the foreclosure proceeding under ORS 86.735, not-
7 withstanding the provisions of ORS 86.770 (1) the sale does not foreclose and
8 terminate the prior interest and the eligible covenant holder’s title to the
9 property is subject to the prior interest.

10 “[~~(2)(a)~~] (2) The trustee or the attorney for the trustee, or an agent that
11 the trustee or the attorney conducting the sale designates, may postpone the
12 sale for one or more periods that total not more than 180 days from the or-
13 iginal sale date, giving notice of each postponement by public proclamation
14 made at the time and place set for sale. The trustee, the attorney or an agent
15 that the trustee or the attorney designates may make the proclamation.

16 “[~~(b)~~ *If a person postpones the sale date as provided in paragraph (a) of this*
17 *subsection, the trustee, in the manner provided for service of the notice of sale*
18 *under ORS 86.740 (1), shall cause written notice of the new time, date and*
19 *place for the sale to be served on the grantor and on any person to whom notice*
20 *of the sale was given under ORS 86.745. The notice must be given at least 15*
21 *days before the new sale date. The person may postpone the sale once, for not*
22 *more than two calendar days, without giving notice as provided in this para-*
23 *graph. The person may not postpone the sale for more than two calendar days*
24 *or more than once without giving notice as provided in this paragraph.]*

25 “(3) The purchaser shall pay at the time of sale the price bid or the price
26 determined in accordance with subsection (1)(b) of this section, and, within
27 10 days following payment, the trustee shall execute and deliver the trustee’s
28 deed to the purchaser.

29 “(4) The trustee’s deed shall convey to the purchaser the interest in the
30 property that the grantor had, or had the power to convey, at the time the

1 grantor executed the trust deed, together with any interest the grantor or
2 the grantor's successors in interest acquire after the execution of the trust
3 deed.

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

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

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

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

14 “(C) Include the name, contact address and contact telephone number of
15 the purchaser or the purchaser's representative.

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

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

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

22 “(A) Personal delivery to the tenant.

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

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

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

30 “(d) A notice that contains the information required under paragraph

1 (b)(B) and (C) of this subsection meets the requirements of paragraph (b) of
2 this subsection if the notice is in substantially the following form:

3 “ _____

4 NOTICE TO RESIDENTIAL TENANTS OF
5 CHANGE IN OWNERSHIP

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

10

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

- 14 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMI-
15 NATION NOTICE, IF YOU HAVE A FIXED TERM LEASE; OR
- 16 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRIT-
17 TEN TERMINATION NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR
18 WEEK-TO-WEEK RENTAL AGREEMENT.

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

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

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

- 28 • Is the result of an arm’s-length transaction;
- 29 • Requires the payment of rent that is not substantially less than fair
30 market rent for the property, unless the rent is reduced or subsidized due to

1 a federal, state or local subsidy; and

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

3 IMPORTANT:

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

14 YOUR TENANCY

15 BETWEEN NOW

16 AND THE MOVE-OUT DATE

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

24 • You do not owe rent;

25 • The new owner is not your landlord and is not responsible for main-
26 taining the property; and

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

29 The new owner may offer to pay your moving expenses and any other
30 costs or amounts you and the new owner agree on in exchange for your

1 agreement to leave the premises in less than 30 or 60 days. You should speak
2 with a lawyer to fully understand your rights before making any decisions
3 regarding your tenancy.

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

14 “ _____
15 “(6)(a) Except as provided in paragraph (b) or (c) of this subsection, the
16 purchaser at the trustee’s sale is entitled to possession of the property on
17 the 10th day after the sale. A person that remains in possession after the
18 10th day under any interest, except an interest prior to the trust deed, or
19 an interest the grantor or a successor of the grantor created voluntarily, is
20 a tenant at sufferance. The purchaser may obtain possession of the property
21 from a tenant at sufferance by following the procedures set forth in ORS
22 105.105 to 105.168 or other applicable judicial procedure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 “(f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to
11 105.168 must attach proof of service of a written termination notice required
12 by paragraph (c) of this subsection to the pleadings.

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

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

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

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

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

27 “(a) Personal delivery to the tenant.

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

29 “(c) First class mail to the tenant at the dwelling unit and attachment
30 of a second notice copy. The second notice copy must be attached in a secure

1 manner to the main entrance to the portion of the premises in the possession
2 of the tenant.

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

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

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

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

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

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

20 “(c) The purchaser is subject to the provisions of ORS 90.322, 90.375,
21 105.165, 659A.421 and 659A.425. The application of ORS 90.375 to a purchaser
22 that does not become a landlord does not impose an affirmative duty to pay
23 for or provide services. For the purpose of damages pursuant to this para-
24 graph, ‘rent’ refers to the amount paid by the tenant to the landlord for the
25 right to occupy the unit before the foreclosure.

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

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

30 “(B) Returning a security deposit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(14) If the publication of the notice of sale was not completed before the
24 date the foreclosure proceedings were stayed by order of the court, by pro-
25 ceedings in bankruptcy or for any other lawful reason, after release from the
26 stay, in addition to complying with the provisions of subsections (12) and (13)
27 of this section, the trustee shall complete the publication by publishing an
28 amended notice of sale that states that the notice has been amended follow-
29 ing release from the stay and that contains the amended date of sale. The
30 amended notice must be published in a newspaper of general circulation in

1 each of the counties in which the property is situated once a week for four
2 successive weeks, except that the required number of publications must be
3 reduced by the number of publications that were completed before the effec-
4 tive date of the stay. The last publication must be made more than 20 days
5 before the date the trustee conducts the sale.”.

6 In line 42, delete “13” and insert “17”.

7 On page 14, line 14, delete “section 3 (3) or section” and insert “3 (4)
8 or”.

9 Delete lines 16 through 36 and insert:

10 **“SECTION 18.** ORS 646.638 is amended to read:

11 “646.638. (1) Except as provided in subsections (8) and (9) of this section,
12 *[any]* **a** person *[who]* **that** suffers *[any]* **an** ascertainable loss of money or
13 property, real or personal, as a result of *[willful use or employment by]* an-
14 other *[person]* **person’s willful use or employment** of a method, act or
15 practice declared unlawful *[by]* **under** ORS 646.608, may bring an individual
16 action in an appropriate court to recover actual damages or statutory dam-
17 ages of \$200, whichever is greater. The court or the jury~~, as the case may~~
18 *be,* may award punitive damages and the court may provide *[the]* **any** equi-
19 table relief the court considers necessary or proper.

20 “(2) *[Upon commencement of any action brought]* **A person that brings**
21 **an action** under subsection (1) of this section *[the party bringing the*
22 *action]* shall mail a copy of the complaint or other initial pleading to the
23 Attorney General **at the time the action commences** and, upon entry of
24 any judgment in the action, shall mail a copy of the judgment to the Attor-
25 ney General. Failure to mail a copy of the complaint *[shall not be]* **is not** a
26 jurisdictional defect, but a court may not enter judgment for the plaintiff
27 until proof of mailing is filed with the court. Proof of mailing may be by
28 affidavit or by return receipt of mailing.

29 “(3) The court may award reasonable attorney fees and costs at trial and
30 on appeal to a prevailing plaintiff in an action under this section. The court

1 may award reasonable attorney fees and costs at trial and on appeal to a
2 prevailing defendant only if the court finds *[there was no]* **that an** objec-
3 tively reasonable basis for bringing the action or asserting the ground for
4 appeal **did not exist**.

5 “(4) The court may not award attorney fees to a prevailing defendant
6 under the provisions of subsection (3) of this section if the action under this
7 section is maintained as a class action pursuant to ORCP 32.

8 “(5) Any permanent injunction or final judgment or order *[of]* the court
9 *[made]* **makes** under ORS 646.632 or 646.636 is prima facie evidence in an
10 action brought under this section that the respondent used or employed a
11 method, act or practice declared unlawful *[by]* **under** ORS 646.608, but an
12 assurance of voluntary compliance, whether or not approved by the court,
13 *[shall not be]* **is not** evidence of the violation.

14 “(6) Actions brought under this section *[shall]* **must** be commenced within
15 one year *[from]* **after** the discovery of the unlawful method, act or practice.
16 *[However, whenever any complaint is filed by]* **Notwithstanding this limi-**
17 **tation, if** a prosecuting *[attorney]* **attorney filed a complaint** to prevent,
18 restrain or punish *[violations]* **a violation** of ORS 646.608, *[running of]* **the**
19 **complaint tolls** the statute of limitations with respect to every private right
20 of action under this section *[and]* **that is** based in whole or in part on any
21 matter **set forth in the prosecuting attorney’s complaint for the period**
22 **of time in which the proceeding that the prosecuting attorney initiated**
23 **is pending** *[complained of in said proceeding shall be suspended during the*
24 *pendency thereof]*.

25 “(7) Notwithstanding subsection (6) of this section, in any action *[brought*
26 *by]* **that** a seller or lessor **brings** against a purchaser or lessee of real estate,
27 goods or services, the purchaser or lessee may assert any counterclaim **that**
28 the purchaser or lessee has arising out of a violation of ORS 646.605 to
29 646.652.

30 “(8) A class action may be maintained under this section. In any class

1 action under this section:

2 “(a) Statutory damages under subsection (1) of this section may be re-
3 covered on behalf of class members only if the plaintiffs in the action es-
4 tablish that the members have sustained an ascertainable loss of money or
5 property as a result of a reckless or knowing use or employment by the de-
6 fendant of a method, act or practice declared unlawful by ORS 646.608;

7 “(b) The trier of fact may award punitive damages; and

8 “(c) The court may award appropriate equitable relief.

9 “(9) This section does not apply to:

10 “(a) Any method, act or practice described in ORS 646.608 (1)(aa). Actions
11 for violation of laws relating to odometers are provided under ORS 815.410
12 and 815.415.

13 “(b) **A violation of section 2 (1)(a) or (2), 3 (4) or 4 (1) or (2) of this**
14 **2013 Act.**

15 “SECTION 19. **Sections 2a and 3, chapter 112, Oregon Laws 2012, are**
16 **repealed.**

17 “SECTION 20. (1) **Sections 2 to 6 of this 2013 Act, the amendments**
18 **to ORS 86.705, 86.735, 86.740, 86.750, 86.755, 88.010, 646.607 and 646.638 and**
19 **sections 2, 4 and 4a, chapter 112, Oregon Laws 2012, by sections 7 to**
20 **18 of this 2013 Act and the repeal of sections 2a and 3, chapter 112,**
21 **Oregon Laws 2012, by section 19 of this 2013 Act become operative 121**
22 **days after the effective date of this 2013 Act.**

23 “(2) **The Attorney General may take any action before the operative**
24 **date specified in subsection (1) of this section that is necessary to en-**
25 **able the Attorney General to exercise, on and after the operative date**
26 **specified in subsection (1) of this section, all of the duties, functions**
27 **and powers conferred on the Attorney General by sections 2 to 6 of this**
28 **2013 Act and the amendments to ORS 86.705, 86.735, 86.740, 86.750,**
29 **86.755, 88.010, 646.607 and 646.638 and sections 2, 4 and 4a, chapter 112,**
30 **Oregon Laws 2012, by sections 7 to 18 of this 2013 Act.**

1 **SECTION 21. Sections 2 to 6 of this 2013 Act, the amendments to**
2 **ORS 86.705, 86.735, 86.740, 86.750, 86.755, 88.010, 646.607 and 646.638 and**
3 **sections 2, 4 and 4a, chapter 112, Oregon Laws 2012, by sections 7 to**
4 **18 of this 2013 Act and the repeal of sections 2a and 3, chapter 112,**
5 **Oregon Laws 2012, by section 19 of this 2013 Act apply to requests for**
6 **resolution conferences that a grantor submits, to notices of sale that**
7 **a trustee or beneficiary or an agent of the trustee or beneficiary sends**
8 **and to suits to foreclose a residential trust deed that commence on**
9 **or after the operative date specified in section 20 of this 2013 Act.**

10 **SECTION 22. This 2013 Act being necessary for the immediate**
11 **preservation of the public peace, health and safety, an emergency is**
12 **declared to exist, and this 2013 Act takes effect on its passage.”.**

13
