

House Bill 4033

Sponsored by Representative ESQUIVEL; Representatives CONGER, HUFFMAN, JOHNSON, KRIEGER, MATTHEWS, OLSON, RICHARDSON, THOMPSON, WEIDNER, WHISNANT, WHITSETT, WITT, Senator WHITSETT (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires beneficiary or beneficiary's agent to prepare and deliver note that is evidence of obligation grantor owes to beneficiary and beneficiary statement within 21 days after receiving demand for statement from entitled person. Specifies time within which entitled person may make demand.

Requires beneficiary or beneficiary's agent to prepare and deliver payoff statement to entitled person within 21 days after receiving demand for payoff statement. Specifies exceptions to requirement.

Provides that entitled person may rely on beneficiary statement or payoff statement in accordance with terms of statement. Specifies that beneficiary or beneficiary's agent must deliver amendment to statement in writing one business day after providing notice of amendment by means other than in writing.

Provides that beneficiary or beneficiary's agent may require reasonable proof that person demanding statement is entitled person or authorized agent of entitled person. Defines "reasonable proof."

Provides that beneficiary or beneficiary's agent is liable to entitled person for entitled person's actual damages plus statutory penalty of \$300 if beneficiary or beneficiary's agent willfully fails to prepare and deliver statement. Permits beneficiary or beneficiary's agent, with some exceptions, to charge fee of not more than \$30 to prepare and deliver statement.

Provides that if beneficiary or beneficiary's agent fails to include sum owed to beneficiary in statement or amended statement, beneficiary or beneficiary's agent may recover sum only as unsecured creditor after specified dates.

A BILL FOR AN ACT

1
2 Relating to statements concerning obligations owed to beneficiaries that are secured by real prop-
3 erty.

4 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. (1) As used in this section:

6 (a) **"Beneficiary" means a mortgagee or a beneficiary as defined in ORS 86.705.**

7 (b) **"Beneficiary statement" means a written statement that shows, with respect to an**
8 **obligation that is owed to a beneficiary and that is secured by a mortgage or trust deed:**

9 (A) **The amount of the unpaid balance of the obligation;**

10 (B) **The interest rate that applies to the obligation;**

11 (C) **The amounts of any overdue installments of principal or interest for the obligation;**

12 (D) **The amounts of any periodic installment payments due under a promissory note that**
13 **is evidence of the obligation;**

14 (E) **The date on which the obligation is due, in whole or in part;**

15 (F) **The last date or dates on which the grantor or an agent of the grantor paid property**
16 **taxes, insurance premiums or other assessments for the property that secures the obli-**
17 **gation, to the extent that the beneficiary knows the date or dates;**

18 (G) **The amount of hazard insurance that is in effect for the property that secures the**
19 **obligation, along with the term and premium for the insurance, to the extent that the ben-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **eficiary knows the amount, term or premium;**

2 **(H) The current balance in any escrow account by means of which a grantor makes pe-**
3 **riodic prepayments of property taxes, insurance premiums and other charges or assessments**
4 **to the beneficiary and from which the beneficiary pays the property taxes, insurance premi-**
5 **ums or other charges or assessments due for the property that secures the obligation;**

6 **(I) The amount and a description of any other charges, costs, expenses or assessments**
7 **that the beneficiary has paid and that have become a lien on the property that secures the**
8 **obligation; and**

9 **(J) Whether the obligation can be assigned or otherwise transferred to another person.**

10 **(c) "Deliver" means to send by first class or certified mail, postage prepaid, or to send**
11 **by electronic mail, facsimile or similar electronic means.**

12 **(d) "Entitled person" means:**

13 **(A) A grantor, a beneficiary, a lien holder or claimant with a subordinate encumbrance**
14 **or lien on property that secures an obligation owed to the beneficiary, or an escrow agent,**
15 **as defined in ORS 696.505, that holds an escrow related to the property; or**

16 **(B) A successor in interest to a person identified in subparagraph (A) of this paragraph.**

17 **(e) "Grantor" means a mortgagor or a grantor as defined in ORS 86.705.**

18 **(f) "Payoff statement" means a written statement that a beneficiary or a beneficiary's**
19 **agent prepares in response to a demand from an entitled person that shows:**

20 **(A) The amount the grantor must pay to fully satisfy the obligation that the grantor's**
21 **mortgage or trust deed secures, as of the date on which the beneficiary or beneficiary's**
22 **agent prepares the statement; and**

23 **(B) Information that would be reasonably necessary to calculate the amount the grantor**
24 **would need to pay on a per diem basis to satisfy the obligation within a period of time, not**
25 **to exceed 30 days, during which the per diem amount does not change under the terms of**
26 **the note that is evidence of the obligation.**

27 **(g) "Reasonable proof" means:**

28 **(A) An original or photocopy of a document that shows the entitled person's status as**
29 **an entitled person, including but not limited to a trust deed or mortgage, a recorded lien or**
30 **a document that establishes the entitled person's status as an escrow agent for the grantor**
31 **or beneficiary;**

32 **(B) A written declaration that an entitled person signs to appoint an authorized agent**
33 **and delivers personally or by registered mail, return receipt requested, to the beneficiary or**
34 **beneficiary's agent; or**

35 **(C) An original or photocopy of documents that establish the entitled person as a suc-**
36 **cessor in interest to another entitled person, including but not limited to a title insurance**
37 **policy, a title company's preliminary report, a deed, letters testamentary or documents es-**
38 **tablishing guardianship or conservatorship, provided that in the demand the entitled person**
39 **specifically states that the entitled person is a successor in interest to another entitled**
40 **person.**

41 **(2)(a) Within 21 days after receiving a written demand from an entitled person or an**
42 **authorized agent of the entitled person, a beneficiary or beneficiary's agent shall prepare and**
43 **deliver to the entitled person a true, correct and complete copy of the note that is evidence**
44 **of a grantor's obligation, together with all modifications to the note, and a beneficiary**
45 **statement.**

1 **(b) An entitled person or an authorized agent of the entitled person may make a demand**
 2 **described in paragraph (a) of this subsection at any time before, or within two months after,**
 3 **a notice of default has been recorded for the obligation under ORS 86.752 or an action has**
 4 **commenced under ORS 88.010.**

5 **(3)(a) Except as provided in paragraph (b) of this subsection, within 21 days after re-**
 6 **ceiving a written demand from an entitled person or an authorized agent of the entitled**
 7 **person, a beneficiary or beneficiary’s agent shall prepare and deliver a payoff statement to**
 8 **the entitled person.**

9 **(b) If a notice of default was recorded under ORS 86.752 or an action was commenced**
 10 **under ORS 88.010 with respect to the property that is the subject of the demand described**
 11 **in paragraph (a) of this subsection, a beneficiary or beneficiary’s agent is not obligated to**
 12 **prepare and deliver a payoff statement to an entitled person unless the entitled person made**
 13 **the demand before a notice of sale for the property was served under ORS 86.764 or before**
 14 **a court administrator issues a writ of execution for the property under ORS 18.865.**

15 **(4)(a) An entitled person or an authorized agent of the entitled person may rely on a**
 16 **beneficiary statement or a payoff statement in accordance with the terms of the statement.**
 17 **With respect to a payoff statement, the entitled person or the authorized agent of the enti-**
 18 **tled person may rely on the statement to establish the amount that the grantor must pay**
 19 **to fully satisfy the obligation.**

20 **(b) If a beneficiary or beneficiary’s agent amends the beneficiary statement or the payoff**
 21 **statement, the entitled person or the authorized agent of the entitled person may rely on the**
 22 **amended beneficiary statement or payoff statement as provided in this section. The benefi-**
 23 **ciary or beneficiary’s agent shall deliver the amendment or the amended beneficiary state-**
 24 **ment or payoff statement to the entitled person or the authorized agent of the entitled**
 25 **person in writing within one business day after giving notice of the amendment in a manner**
 26 **other than in writing.**

27 **(5)(a) With respect to a demand for a beneficiary statement or a payoff statement from**
 28 **an entitled person or an authorized agent of the entitled person:**

29 **(A) The beneficiary or beneficiary’s agent shall treat the demand as a demand for a**
 30 **payoff statement if the entitled person does not specify which statement the entitled person**
 31 **wants; and**

32 **(B) The beneficiary or beneficiary’s agent shall provide, without charge and as part of the**
 33 **response to the demand, a copy of the trust deed or mortgage, if the entitled person or the**
 34 **authorized agent of the entitled person requests the copy.**

35 **(b)(A) A beneficiary or beneficiary’s agent, before delivering a beneficiary statement or**
 36 **payoff statement under this section, may require reasonable proof that the person making**
 37 **a demand for the statement is an entitled person or an authorized agent of an entitled per-**
 38 **son.**

39 **(B) A beneficiary or beneficiary’s agent is not subject to the penalty provided in sub-**
 40 **section (6) of this section for willfully failing to prepare and deliver a beneficiary statement**
 41 **or payoff statement if the beneficiary or beneficiary’s agent has requested reasonable proof**
 42 **that a person is an entitled person, unless the beneficiary or beneficiary’s agent willfully fails**
 43 **to prepare or deliver the beneficiary statement or payoff statement within 21 days after re-**
 44 **ceiving the proof.**

45 **(6)(a) A beneficiary or beneficiary’s agent that willfully fails to prepare and deliver a**

1 beneficiary statement or payoff statement that an entitled person has demanded under this
2 section is liable to the entitled person for the actual damages the entitled person sustains
3 as a consequence of the failure and, whether or not the entitled person sustains any actual
4 damages, the sum of \$300 as a statutory penalty.

5 (b) Each instance in which a beneficiary or beneficiary's agent willfully fails to prepare
6 and deliver a beneficiary statement or payoff statement with respect to the same obligation
7 for which an entitled person makes a demand in accordance with the provisions of this sec-
8 tion constitutes a separate cause of action, but an entitled person that receives a judgment
9 under this subsection may not recover actual damages or a statutory penalty for any other
10 instance of failure that occurred within six months before or after the failure for which the
11 entitled person obtained the judgment.

12 (c) As used in this subsection, "willfully" means intentionally taking a course of action
13 without just cause or excuse.

14 (7)(a) Except as provided in paragraph (b) of this subsection, a beneficiary or
15 beneficiary's agent may charge an entitled person a fee of not more than \$30 for a benefi-
16 ciary statement or payoff statement that the beneficiary or beneficiary's agent prepares and
17 delivers under this section.

18 (b) A beneficiary or beneficiary's agent may not charge an entitled person for a benefi-
19 ciary statement or payoff statement in connection with an obligation that the Federal
20 Housing Administration or the United States Department of Veterans Affairs insures or
21 guarantees.

22 (8) If a beneficiary or beneficiary's agent does not include in a beneficiary statement or
23 payoff statement, or in an amendment to a beneficiary statement or payoff statement, a sum
24 that a grantor owes to the beneficiary as part of the obligation, on or after the following
25 dates, the beneficiary or beneficiary's agent may recover the omitted sum only as an unse-
26 cured creditor:

27 (a) For a voluntary transaction, the date on which escrow closed, title to the property
28 transferred or a lien on the property was recorded, whichever date is earliest; or

29 (b) For a transaction that occurs as a consequence of a trustee's sale or an execution
30 sale, the date of the trustee's sale or execution sale.

31 (9) A beneficiary or beneficiary's agent does not, as a consequence of preparing and de-
32 livering a beneficiary statement or payoff statement, change or otherwise affect a date es-
33 tablished for a trustee's sale or an execution sale.

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