

House Bill 4065

Sponsored by Representative WHITSETT; Representatives CONGER, FREDERICK, GALLEGOS, GILLIAM, HOYLE, HUFFMAN, JENSON, JOHNSON, KENNEMER, KENY-GUYER, KOTEK, OLSON, SPRENGER, THOMPSON, WEIDNER, WHISNANT, Senators BAERTSCHIGER JR, JOHNSON, OLSEN, ROBLAN, SHIELDS, STEINER HAYWARD (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 notice of trustee's sale in connection with foreclosure of residential property to include language that warns prospective purchasers that residential property may have been used in manufacturing methamphetamines.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to required disclosures in connection with sales of real property; amending ORS 86.771 and
3 86.774; and declaring an emergency.

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

5 **SECTION 1.** ORS 86.771 is amended to read:

6 86.771. The notice of sale [*shall*] **must:**

7 (1) List the names of the grantor, trustee and beneficiary in the trust deed, and the mailing ad-
8 dress of the trustee.

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

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

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

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

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

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

15 (8) State that the right exists under ORS 86.778 to have the proceeding dismissed and the trust
16 deed reinstated by paying the entire amount then due, together with costs, trustee's fees and attor-
17 ney fees, and by curing any other default complained of in the notice of default, at any time that is
18 not later than five days before the date last set for the sale.

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

20
21
22 **Without limiting the trustee's disclaimer of representations or warranties, Oregon law**
23 **requires the trustee to state in this notice that some residential property sold at a trustee's**
24 **sale may have been used in manufacturing methamphetamines, the chemical components of**
25 **which are known to be toxic. Prospective purchasers of residential property should be aware**
26 **of this potential danger before deciding to place a bid for this property at the trustee's sale.**
27
28

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 [(9)] (10) If the property includes one or more dwelling units that are subject to ORS chapter
2 90, include a notice addressed clearly to any individual who occupies the property and who is or
3 might be a residential tenant. The notice required under this subsection must:

- 4 (a) Include contact information for the Oregon State Bar and a person or organization that
- 5 provides legal help to individuals at no charge to the individual;
- 6 (b) Include information concerning the right the individual has to notice under ORS 86.782 (6)(c);
- 7 (c) Be set apart from other text in the notice of sale; and
- 8 (d) Be in substantially the following form:

9 _____
10
11 NOTICE TO RESIDENTIAL TENANTS

12 The property in which you are living is in foreclosure. A foreclosure sale is scheduled for
13 _____ (date). The date of this sale may be postponed. Unless the lender that is foreclosing on this
14 property is paid before the sale date, the foreclosure will go through and someone new will own this
15 property. After the sale, the new owner is required to provide you with contact information and
16 notice that the sale took place.

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

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

25 PROTECTION FROM EVICTION

26 IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING THIS PROPERTY AS A
27 RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROP-
28 ERTY AFTER THE FORECLOSURE SALE FOR:

- 29 • THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED TERM
- 30 LEASE; OR
- 31 • AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION
- 32 NOTICE.

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

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

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

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

44 ABOUT YOUR TENANCY
45 BETWEEN NOW AND THE

FORECLOSURE SALE: RENT

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

SECURITY DEPOSIT

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

ABOUT YOUR TENANCY

AFTER THE FORECLOSURE SALE

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

Otherwise:

- You do not owe rent;
- The new owner is not your landlord and is not responsible for maintaining the property on your behalf; and
- You must move out by the date the new owner specifies in a notice to you.

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

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

SECTION 2. ORS 86.771, as amended by section 6, chapter 510, Oregon Laws 2011, is amended to read:

86.771. The notice of sale *[shall]* **must**:

- (1) List the names of the grantor, trustee and beneficiary in the trust deed, and the mailing address of the trustee.
- (2) Describe the property the trust deed covers.

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

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

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

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

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

6 (8) State that the right exists under ORS 86.778 to have the proceeding dismissed and the trust
7 deed reinstated by paying the entire amount then due, together with costs, trustee's fees and attor-
8 ney fees, and by curing any other default complained of in the notice of default, at any time that is
9 not later than five days before the date last set for the sale.

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

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

19
20 [(9)] (10) If the property includes one or more dwelling units that are subject to ORS chapter
21 90, include a notice addressed clearly to any individual who occupies the property and who is or
22 might be a residential tenant. The notice required under this subsection must:

- 23 (a) Include contact information for the Oregon State Bar and a person or organization that
24 provides legal help to individuals at no charge to the individual;
25 (b) Include information concerning the right the individual has to notice under ORS 86.782 (6)(c);
26 (c) Be set apart from other text in the notice of sale; and
27 (d) Be in substantially the following form:
28 _____

29
30 **NOTICE TO RESIDENTIAL TENANTS**

31 The property in which you are living is in foreclosure. A foreclosure sale is scheduled for
32 _____ (date). The date of this sale may be postponed. Unless the lender that is foreclosing on this
33 property is paid before the sale date, the foreclosure will go through and someone new will own this
34 property. After the sale, the new owner is required to provide you with contact information and
35 notice that the sale took place.

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

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

44 **PROTECTION FROM EVICTION**

45 **IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING THIS PROPERTY AS A**

1 RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROP-
2 erty AFTER THE FORECLOSURE SALE FOR:

- 3 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF
4 YOU HAVE A FIXED TERM LEASE; OR
- 5 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION
6 NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO- WEEK RENTAL AGREEMENT.

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

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

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

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

18 ABOUT YOUR TENANCY
19 BETWEEN NOW AND THE
20 FORECLOSURE SALE: RENT

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

24 SECURITY DEPOSIT

25 You may apply your security deposit and any rent you paid in advance against the current rent
26 you owe your landlord as provided in ORS 90.367. To do this, you must notify your landlord in
27 writing that you want to subtract the amount of your security deposit or prepaid rent from your rent
28 payment. You may do this only for the rent you owe your current landlord. If you do this, you must
29 do so before the foreclosure sale. The business or individual who buys this property at the foreclo-
30 sure sale is not responsible to you for any deposit or prepaid rent you paid to your landlord.

31 ABOUT YOUR TENANCY
32 AFTER THE FORECLOSURE SALE

33 The new owner that buys this property at the foreclosure sale may be willing to allow you to
34 stay as a tenant instead of requiring you to move out after 30 or 60 days. After the sale, you should
35 receive a written notice informing you that the sale took place and giving you the new owner's
36 name and contact information. You should contact the new owner if you would like to stay. If the
37 new owner accepts rent from you, signs a new residential rental agreement with you or does not
38 notify you in writing within 30 days after the date of the foreclosure sale that you must move out,
39 the new owner becomes your new landlord and must maintain the property. Otherwise:

- 40 • You do not owe rent;
- 41 • The new owner is not your landlord and is not responsible for maintaining the property on
42 your behalf; and
- 43 • You must move out by the date the new owner specifies in a notice to you.

44 The new owner may offer to pay your moving expenses and any other costs or amounts you and
45 the new owner agree on in exchange for your agreement to leave the premises in less than 30 or

1 60 days. You should speak with a lawyer to fully understand your rights before making any decisions
 2 regarding your tenancy.

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

11
 12
 13 **SECTION 3.** ORS 86.774 is amended to read:

14 86.774. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in
 15 ORS 86.771 must be served upon an occupant of the property described in the trust deed in the
 16 manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before
 17 the day the trustee conducts the sale.

18 (b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this sub-
 19 section on the first attempt, the person that attempts to effect service shall post a copy of the notice
 20 in a conspicuous place on the property on the date of the first attempt. The person that attempts
 21 to effect service shall make a second attempt to effect service on a day that is at least two days
 22 after the first attempt.

23 (B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection
 24 on the second attempt, the person that attempts to effect service shall post a copy of the notice in
 25 a conspicuous place on the property on the date of the second attempt. The person that attempts
 26 to effect service shall make a third attempt to effect service on a day that is at least two days after
 27 the second attempt.

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

32 (c) Service on an occupant is effected on the earlier of the date that notice is served as provided
 33 in paragraph (a) of this subsection or the first date on which notice is posted as described in para-
 34 graph (b)(A) of this subsection.

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

39 (b) The copy of the notice of sale required to be published under paragraph (a) of this subsection
 40 does not need to include the notice to tenants required under ORS 86.771 [(9)] (10).

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

- 44 (a) An affidavit of mailing, if any;
- 45 (b) An affidavit of service, if any;

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

2 (d) An affidavit of publication.

3 (4) At or before the time the trustee conducts the sale, the trustee shall file for recording in the
4 official record of the county or counties in which the property described in the deed is situated an
5 affidavit of mailing with respect to the notice to the grantor required under ORS 86.756.

6 **SECTION 4. This 2014 Act being necessary for the immediate preservation of the public**
7 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**
8 **on its passage.**

9
