

Senate Bill 381

Sponsored by Senator HANSELL; Representative BARRETO (Pre-session 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 certain notices related to real estate loans to be mailed to all addresses on file for recipient, including post office boxes.

A BILL FOR AN ACT

1
2 Relating to mailing of notices; creating new provisions; and amending ORS 86.157, 86.720, 86.729,
3 86.748, 86.756, 86.764 and 86.782.

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

5 **SECTION 1.** ORS 86.157 is amended to read:

6 86.157. (1) As used in this section:

7 (a) "Borrower" means an individual who, directly or indirectly and individually or together with
8 another person, is obligated on a real estate loan agreement, including but not limited to a
9 mortgagor or a grantor, as defined in ORS 86.705, or an assignee or successor in interest.

10 (b) "Lender" means a person that makes, extends or holds a real estate loan agreement, in-
11 cluding but not limited to a mortgagee or a beneficiary, as defined in ORS 86.705, or an assignee
12 or successor in interest.

13 (c) "Payoff statement" means a written statement that sets forth, as of the date the lender pre-
14 pares the statement, amounts a borrower must pay in order to fully satisfy the borrower's obligation
15 under a real estate loan agreement.

16 (d) "Real estate loan agreement" means an arrangement between a lender and a borrower, in-
17 cluding but not limited to a mortgage or a trust deed, by means of which the lender agrees to extend
18 a loan and the borrower agrees to secure the loan in whole or in part with residential property, or
19 an interest in residential property, that is located in this state.

20 (e) "Residential property" means real property upon which is situated four or fewer improve-
21 ments designed for residential use, one of which a borrower occupies as the borrower's residence.

22 (f) "Residual debt" means an amount due on a loan, evidence of which exists in a real estate
23 loan agreement, note, bond, contract or similar written agreement, that a borrower is unable to pay
24 out of the proceeds from a sale of the residential property that secures the loan.

25 (g) "Short sale" means a sale of residential property that is subject to foreclosure under ORS
26 86.705 to 86.815 or ORS chapter 88 for an amount that is less than the remaining amount due on the
27 loan that the residential property secures.

28 (2) If a lender reports to the Internal Revenue Service that as a consequence of or in conjunc-
29 tion with a short sale of residential property the lender has canceled all or a portion of a borrower's
30 obligation under a real estate loan agreement and the lender provides to the borrower written evi-
31 dence of the lender's report to the Internal Revenue Service, the lender or an assignee of the lender

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 may not bring an action or otherwise seek payment for the residual debt following the short sale.

2 (3)(a) Except as provided in paragraph (b) of this subsection, a borrower or an agent of the
3 borrower may rely on a payoff statement for the purpose of establishing the amount the borrower
4 must pay to satisfy the borrower's obligation under a real estate loan agreement other than a real
5 estate loan agreement for a construction loan.

6 (b) A borrower or an agent of the borrower may not rely on a payoff statement after a lender
7 prepares and delivers an amended payoff statement to the borrower or borrower's agent. For pur-
8 poses of this paragraph, a lender delivers an amended payoff statement to the borrower or
9 borrower's agent if the lender provides the amended payoff statement by electronic means in ac-
10 cordance with ORS chapter 84, sends the amended payoff statement by United States mail postage
11 prepaid and correctly addressed to the borrower or borrower's agent **at all addresses on file with**
12 **the lender for the borrower or borrower's agent, including post office boxes**, or sends the
13 amended payoff statement by facsimile, provided that the borrower or borrower's agent receives the
14 amended payoff statement before the borrower disburses funds for the purpose of satisfying the ob-
15 ligation in accordance with subsection (5) of this section.

16 (4) If an amount that a borrower owes under a real estate loan agreement, other than a real
17 estate loan agreement for a construction loan, does not appear on a payoff statement or amended
18 payoff statement and the borrower or an agent of the borrower satisfies the obligation set forth in
19 the payoff statement in accordance with subsection (5) of this section, the lender may recover the
20 amount only as an unsecured obligation or only by foreclosing a mortgage, trust deed or security
21 agreement for any other property that secures the obligation.

22 (5) To satisfy an obligation set forth in a payoff statement or an amended payoff statement, a
23 borrower must submit the amount shown in the payoff statement or amended payoff statement, in-
24 struct the lender to close any line of credit that is related to the obligation and request a certificate
25 described in ORS 86.100 or a reconveyance under ORS 86.720 before any deadline, expiration date
26 or maturity date specified in the payoff statement or amended payoff statement. A borrower that
27 disburses funds to a lender in the amount shown in the payoff statement or an amended payoff
28 statement has discharged a mortgage for the purpose of requesting a certificate under ORS 86.100
29 or performed the borrower's obligation for the purpose of requesting a reconveyance under ORS
30 86.720.

31 **SECTION 2.** ORS 86.720 is amended to read:

32 86.720. (1) Within 30 days after performance of the obligation secured by the trust deed, the
33 beneficiary shall deliver a written request to the trustee to reconvey the estate of real property
34 described in the trust deed to the grantor. Within 30 days after the beneficiary delivers the written
35 request to reconvey to the trustee, the trustee shall reconvey the estate of real property described
36 in the trust deed to the grantor. In the event the obligation is performed and the beneficiary refuses
37 to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee
38 so refusing shall be liable as provided by ORS 86.140 in the case of refusal to execute a discharge
39 or satisfaction of a mortgage on real property. The trustee may charge a reasonable fee for all
40 services involved in the preparation, execution and recordation of any reconveyance executed pur-
41 suant to this section.

42 (2) If a full reconveyance of a trust deed has not been executed and recorded pursuant to the
43 provisions of subsection (1) of this section within 60 calendar days of the date the obligation secured
44 by the trust deed was fully satisfied, then:

45 (a) If the obligation was satisfied by a title insurance company or insurance producer or by

1 payment through an escrow transacted by a title insurance company or insurance producer, upon
2 the written request of the grantor or the grantor's successor in interest, the tender of reasonable
3 charges and the compliance with the notice requirements of subsection (3) of this section, the title
4 insurance company or insurance producer shall prepare, execute and record a release of trust deed.

5 (b) Upon compliance with the notice requirements of subsection (3) of this section, any title in-
6 surance company or insurance producer may prepare, execute and record a release of trust deed.

7 (3) Prior to the issuance and recording of a release pursuant to this section, the title insurance
8 company or insurance producer shall give notice of the intention to record a release of trust deed
9 to the beneficiary of record and, if different, the party to whom the full satisfaction payment was
10 made. The notice shall:

11 (a) Provide that the parties to whom the notice is sent shall have a period of 30 days from the
12 date of mailing to send to the title insurance company or insurance producer their written ob-
13 jections to the execution and recording of the release of trust deed;

14 (b) Be sent by first class mail with postage prepaid, addressed to the named interested parties
15 at their last-known addresses, **including post office boxes**; and

16 (c) Identify the trust deed by the name of the original grantor and any successor in interest on
17 whose behalf payment was made and by the recording reference.

18 (4) The release of trust deed shall recite on the first page that it has been executed and recorded
19 pursuant to the provisions of this section. The release shall be properly acknowledged and shall set
20 forth:

21 (a) The name of the beneficiary to whom the payment was made;

22 (b) The name of the original grantor of the trust deed and any successor in interest on whose
23 behalf payment was made;

24 (c) The recording reference to the trust deed that is to be released;

25 (d) A recital that the obligation secured by the trust deed has been paid in full;

26 (e) The date and amount of payment;

27 (f) The date of mailing of notice required by this section; and

28 (g) A recital that no written objections were received by the title insurance company or insur-
29 ance producer.

30 (5) The release of trust deed executed pursuant to this section shall be entitled to recordation
31 and, when recorded, shall be deemed to be the equivalent of a reconveyance of a trust deed.

32 (6) The title insurance company or insurance producer shall not record or cause to be recorded
33 a release of trust deed when any of the following circumstances exist:

34 (a) The 30-day period following notice given under this section has not expired; or

35 (b) Written objection to such recordation has been received by the title insurance company or
36 insurance producer from any of the parties to whom notice was sent.

37 (7) The trustee, title insurance company or insurance producer may charge a reasonable fee for
38 all services involved in the preparation, execution, recordation and compliance with this section, to
39 effect the release of trust deed.

40 (8) Subsection (2) of this section does not excuse the beneficiary or trustee from compliance with
41 subsection (1) of this section.

42 (9) In addition to any other remedy provided by law, a title insurance company or insurance
43 producer preparing, executing or recording a release of trust deed shall be liable to any party for
44 damages that the party sustains by reason of the negligence or willful misconduct of the title in-
45 surance company or insurance producer in connection with the issuance, execution or recording of

1 the release pursuant to this section. Except as provided in subsection (10) of this section, the court
2 may award reasonable attorney fees to the prevailing party in an action under this section.

3 (10) The court may not award attorney fees to a prevailing defendant under the provisions of
4 subsection (9) of this section if the action under this section is maintained as a class action pursuant
5 to ORCP 32.

6 (11) As used in this section, "insurance producer" means an authorized issuer of title insurance
7 policies of a title insurance company who is licensed as an insurance producer for that purpose
8 pursuant to ORS chapter 744.

9 (12) Subsections (2) to (11) of this section shall be applicable only to full reconveyances of the
10 property described in the trust deed and not to reconveyances of parts or portions of the property.

11 (13) Subsections (1) to (12) of this section are applicable to all trust deeds, whether executed
12 before, on or after November 4, 1993.

13 (14) A title insurance company or agent is not required to prepare, execute and record a release
14 of trust deed under subsections (2) to (12) of this section if the obligation secured by the trust deed
15 was satisfied prior to November 4, 1993.

16 **SECTION 3.** ORS 86.729 is amended to read:

17 86.729. (1)(a) Within 10 days after a service provider receives a request for a resolution confer-
18 ence under ORS 86.726, the service provider shall schedule the resolution conference and mail a
19 notice to the beneficiary and to the grantor **at all addresses on file with the service provider for**
20 **the beneficiary and grantor, including post office boxes.** The service provider shall schedule the
21 resolution conference to occur within 75 days after the date on which the service provider sends the
22 notice.

23 (b) A notice under this subsection must:

24 (A) Specify a range of dates within which and a location at which the resolution conference will
25 occur;

26 (B) State that the beneficiary and the grantor each must pay the facilitator's fees for the resol-
27 ution conference;

28 (C) List and describe the documents that the beneficiary and the grantor must submit to the
29 service provider;

30 (D) State that the grantor must consult a housing counselor before attending the resolution
31 conference unless the grantor notifies the service provider that the grantor could not obtain an
32 appointment with a housing counselor before the date of the resolution conference;

33 (E) State that the grantor may have an attorney or housing counselor present to represent the
34 grantor at the resolution conference, and that the attorney or housing counselor must attend the
35 resolution conference in person unless there are compelling circumstances that prevent attendance
36 in person; and

37 (F) Include any other information the Attorney General requires by rule.

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

40 (a) The grantor shall pay a fee to the service provider in an amount and in a manner that the
41 Attorney General specifies by rule. The grantor's fee may not exceed \$200. Within five days after
42 receiving the fee from the grantor, the service provider shall send a written notice to the grantor
43 and the beneficiary that specifies the date, time and location of the resolution conference.

44 (b) The service provider shall pay to the Attorney General, for deposit into the Foreclosure
45 Avoidance Fund established under ORS 86.744, moneys the service provider receives from the

1 grantor under paragraph (a) of this subsection.

2 (c) The grantor shall submit to the service provider:

3 (A) Information about the grantor's income, expenses, debts and other obligations;

4 (B) A description of the grantor's financial hardship, if any;

5 (C) Documents that verify the grantor's income; and

6 (D) Any other information the Attorney General requires by rule.

7 (3) The grantor shall consult a housing counselor before attending the resolution conference
8 unless the grantor cannot obtain an appointment with a housing counselor before the date of the
9 resolution conference.

10 (4) Within 25 days after the service provider makes the information the grantor submitted under
11 subsection (2) of this section available to the beneficiary, the beneficiary shall:

12 (a) Pay a fee to the service provider in an amount that is not more than \$600 and in a manner
13 that the Attorney General specifies by rule. The service provider shall pay to the Attorney General,
14 for deposit into the Foreclosure Avoidance Fund established under ORS 86.744, moneys the service
15 provider receives from the beneficiary under this paragraph.

16 (b) Submit to the service provider:

17 (A) Copies of:

18 (i) The residential trust deed; and

19 (ii) The promissory note that is evidence of the obligation that the residential trust deed secures
20 and that the beneficiary or beneficiary's agent certifies is a true copy;

21 (B) The name and address of the person that owns the obligation that is secured by the resi-
22 dential trust deed;

23 (C) A record of the grantor's payment history for the longer of the preceding 12 months or since
24 the beneficiary last deemed the grantor current on the obligation;

25 (D) An itemized statement that shows:

26 (i) The amount the grantor owes on the obligation, itemized to reflect the principal, interest,
27 fees, charges and any other amounts included within the obligation; and

28 (ii) The amount the grantor must pay to cure the grantor's default;

29 (E) A document that identifies:

30 (i) The input values for each net present value model that the beneficiary or the beneficiary's
31 agent uses; and

32 (ii) The output values that each net present value model produces;

33 (F) The appraisal or price opinion the beneficiary relied on most recently to determine the value
34 of the property that is the subject of the residential trust deed;

35 (G) The portion of any pooling agreement, servicing agreement or other agreement that the
36 beneficiary cites as a limitation or prohibition on modifying the terms of the obligation, together
37 with a statement that describes the extent to which the beneficiary sought to have the limitation
38 or prohibition waived;

39 (H) A description of any additional documents the beneficiary requires to evaluate the grantor's
40 eligibility for a foreclosure avoidance measure; and

41 (I) Any other information the Attorney General requires by rule.

42 (5)(a) The service provider may postpone or reschedule a resolution conference that the service
43 provider scheduled under subsection (1) of this section if:

44 (A) The beneficiary and the grantor agree to a new date;

45 (B) The beneficiary or the grantor requests a new date in writing that is not more than 30 days

1 after the original date scheduled for the resolution conference and can show good cause for the re-
2 quest; or

3 (C) The beneficiary does not pay the fee required under subsection (4)(a) of this section by the
4 date the fee is due. The service provider may wait until the beneficiary has paid the fee before re-
5 scheduling the resolution conference.

6 (b) The service provider shall cancel a resolution conference that the service provider scheduled
7 under subsection (1) of this section if the grantor does not pay the fee required under subsection
8 (2)(a) of this section by the date the fee is due.

9 (6)(a) A resolution conference conducted in accordance with this section and ORS 86.726, 86.732
10 and 86.736 is not subject to ORS chapter 36 and does not preclude mediation that a court or another
11 provision of law requires.

12 (b) A facilitator is not subject to a subpoena and cannot be compelled to testify in any pro-
13 ceeding that is related to a resolution conference, other than a proceeding against a facilitator for
14 an act or omission for which the facilitator may be liable under paragraph (c) of this subsection.

15 (c) A facilitator is not civilly liable for any act or omission done or made while engaged in ef-
16 forts to assist or facilitate a resolution conference unless the facilitator acted or made an omission
17 in bad faith, with malicious intent or in a manner that exhibited a willful or wanton disregard of
18 the rights, safety or property of another person.

19 (d) The limitations on liability provided by this subsection apply to the officers, directors, em-
20 ployees and agents of the service provider and any dispute resolution program engaged in facilitat-
21 ing resolution conferences.

22 (e) Information that a beneficiary or grantor submits under this section is not subject to ORS
23 192.410 to 192.505.

24 **SECTION 4.** ORS 86.748 is amended to read:

25 86.748. (1)(a) Whether or not a beneficiary participates in a resolution conference under ORS
26 86.726, if the beneficiary determines that a grantor of a residential trust deed is not eligible for a
27 foreclosure avoidance measure or that the grantor has not complied with the terms of a foreclosure
28 avoidance measure to which the grantor has agreed, the beneficiary shall mail a written notice to
29 the grantor **at all of the addresses for the grantor on file with the beneficiary, including post**
30 **office boxes**, within 10 days after making the determination. The beneficiary shall mail a copy of
31 the notice to the Department of Justice on the same date that the beneficiary mails the notice to
32 the grantor.

33 (b) The notice described in paragraph (a) of this subsection must in plain language explain the
34 basis for the beneficiary's determination. The notice and any information in the notice are not sub-
35 ject to disclosure under ORS 192.410 to 192.505.

36 (c) This subsection does not impose an affirmative duty on the beneficiary to determine if a
37 grantor is eligible for a foreclosure avoidance measure.

38 (2) At least five days before the trustee sells the property that is subject to foreclosure, the
39 beneficiary shall record in the mortgage records in the county or in one of the counties in which
40 the property is located an affidavit that states that the beneficiary has complied with the require-
41 ments set forth in subsection (1) of this section.

42 (3)(a) A beneficiary that fails to substantially comply with subsection (1)(b) of this section, or
43 otherwise fails to comply with subsection (1)(a) or (2) of this section, is liable to the grantor in the
44 amount of \$500 plus the amount of the grantor's actual damages for each failure.

45 (b) A grantor may bring an action against a beneficiary in a circuit court of this state to recover

1 the amounts described in paragraph (a) of this subsection. The grantor shall commence the action
2 within one year after the date on which the beneficiary should have complied, but did not comply,
3 with the provisions of this section.

4 (c) Notwithstanding an agreement to the contrary, a court may award reasonable attorney fees,
5 costs and disbursements to a grantor that obtains a final judgment in the grantor's favor.

6 **SECTION 5.** ORS 86.756 is amended to read:

7 86.756. (1) If a notice of default is recorded for property that is subject to a residential trust
8 deed, the sender of a notice of sale under ORS 86.764 shall, on or before the date the notice of sale
9 is served or mailed, give notice under this section to the grantor by both first class and certified
10 mail with return receipt requested **to all addresses on file with the sender for the grantor, in-**
11 **cluding post office boxes.** Subject to any rules adopted under subsection (2) of this section, the
12 notice must be in substantially the following form and printed in at least 14-point type:

13 _____

14
15 NOTICE:
16 YOU ARE IN DANGER OF LOSING
17 YOUR PROPERTY IF YOU DO NOT
18 TAKE ACTION IMMEDIATELY

19
20 This notice is about your mortgage loan on your property at _____ (address).

21
22 Your lender has decided to sell this property because the money due on your mortgage loan has not
23 been paid on time or because you have failed to fulfill some other obligation to your lender. This
24 is sometimes called "foreclosure."

25
26 The amount you would have had to pay as of _____ (date) to bring your mortgage loan current
27 was \$_____. The amount you must now pay to bring your loan current may have increased since
28 that date.

29
30 By law, your lender has to provide you with details about the amount you owe, if you ask. You may
31 call _____ (telephone number) to find out the exact amount you must pay to bring your
32 mortgage loan current and to get other details about the amount you owe. You may also get these
33 details by sending a request by certified mail to: _____.

34
35 THIS IS WHEN AND WHERE
36 YOUR PROPERTY WILL BE SOLD
37 IF YOU DO NOT TAKE ACTION:

38
39 Date and time: _____, 2_____ at _____

40
41 Place: _____

42
43 THIS IS WHAT YOU CAN DO
44 TO STOP THE SALE:

- 1 1. You can pay the amount past due or correct any other default, up to five days before the sale.
- 2 2. You can refinance or otherwise pay off the loan in full anytime before the sale.
- 3 3. You can call _____ (name) at _____ (telephone number) to find out if your
- 4 lender is willing to give you more time or change the terms of your loan.
- 5 4. You can sell your home, provided the sale price is enough to pay what you owe.

6

7 There are government agencies and nonprofit organizations that can give you information about

8 foreclosure and help you decide what to do. For the name and telephone number of an organization

9 near you, please call the statewide telephone contact number at _____. You may also

10 wish to talk to a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar's

11 Lawyer Referral Service at _____ or toll-free in Oregon at _____ or you may

12 visit its website at: _____. Legal assistance may be available if you have a low income

13 and meet federal poverty guidelines. For more information and a directory of legal aid programs,

14 go to _____.

15

16

17 **WARNING:** You may get offers from people who tell you they can help you keep your property. You

18 should be careful about those offers. Make sure you understand any papers you are asked to sign.

19 If you have any questions, talk to a lawyer or one of the organizations mentioned above before

20 signing.

21

22 DATED: _____, 2_____

23

24 Trustee name: _____ (print)

25

26 Trustee signature: _____

27

28 Trustee telephone number: _____

29 _____

30

31 (2) The Department of Consumer and Business Services may adopt rules prescribing the format,

32 font size and other physical characteristics of the notice form set forth in subsection (1) of this

33 section. The department shall adopt rules specifying the resource telephone contact numbers and

34 website addresses the sender is to insert in completing the notice.

35 (3) When filling blanks in the notice form set forth in subsection (1) of this section, the sender

36 of the notice shall include, stated in plain language:

37 (a) The amount of payment that was needed to bring the mortgage loan current as of the date

38 stated in the notice; and

39 (b) One or more telephone numbers consisting of:

40 (A) A telephone number that will allow the grantor access during regular business hours to

41 details regarding the grantor's loan delinquency and repayment information; and

42 (B) A telephone number that will allow the grantor access during regular business hours to

43 person-to-person consultation with an individual authorized by the beneficiary to discuss the

44 grantor's payment and loan term negotiation and modification options.

45 (4) Telephone numbers described in subsection (3) of this section must be toll-free numbers un-

1 less the beneficiary:

2 (a) Made the loan with the beneficiary's own money;

3 (b) Made the loan for the beneficiary's own investment; and

4 (c) Is not in the business of making loans secured by an interest in real estate.

5 (5) If the sender giving notice under subsection (1) of this section has actual knowledge that the
6 grantor is not the occupant of the residential real property, the sender shall also give notice to the
7 occupant of the property by both first class and certified mail with return receipt requested **to all**
8 **addresses on file with the trustee for the occupant, including post office boxes.**

9 **SECTION 6.** ORS 86.764 is amended to read:

10 86.764. (1) After recording a notice of default as provided in ORS 86.752 and at least 120 days
11 before the day the trustee conducts the sale, notice of the sale with the contents described in ORS
12 86.771 must be served pursuant to ORCP 7 D(2) and 7 D(3) or mailed by both first class and certified
13 mail with return receipt requested.

14 (2) The notice described in subsection (1) of this section must be served or mailed to [*the last-*
15 *known address of the following persons or the legal representatives of the persons, if any*] **all ad-**
16 **resses on file with the trustee for the following persons or the legal representatives of the**
17 **persons, including post office boxes:**

18 (a) The grantor in the trust deed.

19 (b) Any successor in interest to the grantor whose interest appears of record, or of whose in-
20 terest the trustee or the beneficiary has actual notice.

21 (c) Any person, including the Department of Revenue or another state agency, that has a lien
22 or interest subsequent to the trust deed if the lien or interest appears of record or the beneficiary
23 has actual notice of the lien or interest.

24 (d) A person that requests notice as provided in ORS 86.806.

25 (3) A notice served by mail under subsection (1) of this section is effective when the notice is
26 mailed.

27 (4)(a) The disability, insanity or death of a person to whom the notice required under this sec-
28 tion must be given does not delay or impair in any way the trustee's right under a trust deed to
29 foreclose under the deed. If the disability, insanity or death occurs before the notice of default is
30 recorded, the notice required under this section must be given instead to the guardian, the
31 conservator of the estate of the person or the administrator or personal representative of the person
32 in the manner and by the time set forth in this section.

33 (b) If the disability, insanity or death of a person to whom the notice required under this section
34 must be given occurs on or after the notice of default is recorded, the trustee shall, if and when the
35 trustee has knowledge of the disability, insanity or death, promptly give the guardian, the
36 conservator of the estate or the administrator or personal representative the required notice by
37 sending the notice by first class and certified mail with return receipt requested to [*the last-known*
38 *address of*] **all addresses on file with the trustee for the guardian, conservator or administrator**
39 **or personal representative, including post office boxes.**

40 (c) If there is no administrator or personal representative of the estate of the person to whom
41 the notice required under this section must be given, the notice may be given instead to the heirs
42 at law or devisees of the deceased person in the manner and by the time set forth in this section.

43 (5) If the owner of real property subject to foreclosure dies and the real property is also subject
44 to a transfer on death deed, as provided by ORS 93.948 to 93.979, the notice required under this
45 section must be given to the beneficiary designated under the transfer on death deed.

1 **SECTION 7.** ORS 86.782 is amended to read:

2 86.782. (1)(a) A trustee shall hold a trustee's sale on the date and at the time and place desig-
3 nated in the notice of sale given under ORS 86.764. The designated time of the trustee's sale must
4 be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the
5 designated place of the trustee's sale must be in the county or one of the counties in which the
6 property is situated. Except as provided in paragraph (b) of this subsection, the trustee may sell the
7 property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the
8 highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding
9 the trustee, may bid at the trustee's sale. An attorney for the trustee, or an agent that the trustee
10 or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

11 (b) If the trustee sells property upon which a single residential unit that is subject to an af-
12 fordable housing covenant is situated, the eligible covenant holder may purchase the property from
13 the trustee at the trustee's sale for cash or cash equivalent in an amount that is the lesser of:

14 (A) The sum of the amounts payable under ORS 86.794 (1) and (2); or

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

16 (c)(A) Except as provided in subparagraph (B) of this paragraph, if an eligible covenant holder
17 purchases the property in accordance with paragraph (b) of this subsection, the sale forecloses and
18 terminates all other interests in the property as provided in ORS 86.797 (1).

19 (B) If an interest in the property exists that is prior to the eligible covenant holder's interest,
20 other than the interest set forth in the trust deed that was the subject of the foreclosure proceeding
21 under ORS 86.752, notwithstanding the provisions of ORS 86.797 (1) the sale does not foreclose and
22 terminate the prior interest and the eligible covenant holder's title to the property is subject to the
23 prior interest.

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

29 (b) If a person postpones the sale date as provided in paragraph (a) of this subsection, the
30 trustee, in the manner provided for the notice of sale under ORS 86.764 (1), shall provide written
31 notice of the new time, date and place for the sale to the grantor and to any person to whom notice
32 of the sale was given under ORS 86.771. The notice must be given at least 15 days before the new
33 sale date. The person may postpone the sale once, for not more than two calendar days, without
34 giving notice as provided in this paragraph. The person may not postpone the sale for more than two
35 calendar days or more than once without giving notice as provided in this paragraph.

36 (3) The purchaser shall pay at the time of sale the price bid or the price determined in accord-
37 ance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee shall
38 execute and deliver the trustee's deed to the purchaser.

39 (4)(a) Within 10 calendar days after the date of the trustee's sale, the trustee may rescind the
40 trustee's sale and void the trustee's deed only if:

41 (A) The trustee asserts that during the trustee's sale a bona fide error occurred in:

42 (i) Setting, advertising or otherwise specifying the opening bid amount for the property that is
43 the subject of the trustee's sale;

44 (ii) Providing a correct legal description of the property that is the subject of the trustee's sale;

45 or

1 (iii) Complying with a requirement or procedure that is imposed by law;

2 (B) The grantor and the beneficiary agreed to a foreclosure avoidance measure, as defined in
 3 ORS 86.707, that would postpone or discontinue the trustee’s sale; or

4 (C) The beneficiary accepted funds to reinstate the trust deed and obligation in accordance with
 5 ORS 86.778, even if the beneficiary did not have a legal duty to do so.

6 (b) Within 10 calendar days after the date of the trustee’s sale that the trustee rescinded under
 7 paragraph (a) of this subsection, the trustee shall provide notice of the rescission of the trustee’s
 8 sale to any person to whom notice of the sale was given. The trustee shall mail or serve notice of
 9 the rescission in the manner provided for serving or mailing the notice of sale under ORS 86.764 (1).
 10 The notice of rescission must:

11 (A) Display the date on which the trustee mailed the notice, served the notice or delivered the
 12 notice for service; and

13 (B) State that, and explain why, the trustee rescinded the trustee’s sale and voided the trustee’s
 14 deed.

15 (c) Not later than three calendar days after the date displayed on the rescission notice described
 16 in paragraph (b) of this subsection, the trustee shall refund to the purchaser the amount the pur-
 17 chaser paid for the property that is the subject of the rescission notice.

18 (d) If the trustee rescinded a trustee’s sale and voided a trustee’s deed in accordance with this
 19 subsection, the trustee, not later than 21 days after the date of the trustee’s sale that resulted in
 20 the rescission, shall present for recording an affidavit that states that the trustee provided the no-
 21 tice of rescission described in paragraph (b) of this subsection. The affidavit must identify the trust
 22 deed that was subject to the rescinded trustee’s sale and the voided trustee’s deed.

23 (e) The trustee’s deed conveys to the purchaser the interest in the property that the grantor
 24 had, or had the power to convey, at the time the grantor executed the trust deed, together with any
 25 interest the grantor or the grantor’s successors in interest acquire after the execution of the trust
 26 deed.

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

31 (b) The notice required by this subsection must:

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

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

35 (C) Include the name, contact address and contact telephone number of the purchaser or the
 36 purchaser’s representative.

37 (D) Provide information about the rights of bona fide residential tenants as provided in sub-
 38 sections (6)(c) and (e) and (9)(a) of this section.

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

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

42 (A) Personal delivery to the tenant.

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

44 (C) First class mail to the tenant at the dwelling unit and attachment of a second notice copy.
 45 The second notice copy must be attached in a secure manner to the main entrance to the portion

1 of the premises in the possession of the tenant.

2 (D) If the purchaser does not know the names of the tenants, the notice may be addressed to
3 “occupants.”

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

7 _____
8
9 NOTICE TO RESIDENTIAL TENANTS OF
10 CHANGE IN OWNERSHIP

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

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

- 18 • 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF
19 YOU HAVE A FIXED TERM LEASE; OR
- 20 • AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION
21 NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO-WEEK RENTAL AGREEMENT.

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

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

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

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

33 IMPORTANT:

34 YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER’S REPRESENTATIVE AT
35 THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER
36 KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE
37 OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED
38 TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 30 DAYS LEFT. Written evidence
39 of your rental agreement can be a copy of your lease or rental agreement, or other documentation
40 of the existence of your rental agreement. Keep your original documents and a record of any infor-
41 mation you give to the new owner.

42 YOUR TENANCY
43 BETWEEN NOW
44 AND THE MOVE-OUT DATE

45 The new owner may be willing to allow you to stay as a tenant instead of requiring you to move

1 out after 30 or 60 days. You should contact the new owner if you would like to stay. If the new
 2 owner accepts rent from you, signs a new residential rental agreement with you or does not notify
 3 you in writing within 30 days after the date of the foreclosure sale that you must move out, the new
 4 owner becomes your new landlord and must maintain the property. Otherwise:

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

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

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

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

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

34 (c) If the property purchased at the trustee’s sale includes a dwelling unit that is subject to ORS
 35 chapter 90 and an individual occupies the unit under a bona fide tenancy, the purchaser may obtain
 36 possession by following the procedures set forth in ORS 105.105 to 105.168 and by using the com-
 37 plaint form provided in ORS 105.124 or 105.126:

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

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

41 (i) A fixed term tenancy and the purchaser intends to occupy, as the purchaser’s primary resi-
 42 dence, the dwelling unit that is subject to the fixed term tenancy; or

43 (ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS
 44 90.100.

45 (d) If a purchaser gives a 30-day written termination notice pursuant to paragraph (c) of this

1 subsection, the purchaser may include in the notice a request that a tenant with a fixed term
 2 tenancy provide written evidence of the existence of the tenancy to the purchaser at an address
 3 described in the notice. Written evidence includes a copy of the rental agreement or another docu-
 4 ment that shows the existence of the fixed term tenancy. The tenant's failure to provide the re-
 5 quested written evidence before the purchaser files an action for possession based on a 30-day
 6 notice:

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

9 (B) Prevents the tenant from recovering prevailing party attorney fees or costs and disburse-
 10 ments pursuant to subsection (11)(b) of this section. The 30-day notice must describe the provisions
 11 of this paragraph.

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

14 (A) The 10th day after the trustee's sale;

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

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

21 (D) The date on which the term of a fixed term tenancy ends, if the property is a dwelling unit
 22 and the purchaser has not terminated the tenancy in accordance with paragraph (c) of this sub-
 23 section.

24 (f) A purchaser that seeks to obtain possession pursuant to ORS 105.105 to 105.168 must attach
 25 proof of service of a written termination notice required by paragraph (c) of this subsection to the
 26 pleadings.

27 (g) In an action to obtain possession, violation of the procedures required by subsection (5) of
 28 this section or paragraph (c) of this subsection is a defense for a bona fide tenant seeking to retain
 29 possession.

30 (h) As used in this subsection, "bona fide tenancy" means tenancy of a dwelling unit that is
 31 subject to ORS chapter 90 that results from an arm's-length transaction that occurred before the
 32 date of a foreclosure sale in which:

33 (A) The mortgagor or the child, spouse or parent of the mortgagor under the contract is not the
 34 tenant; and

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

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

39 (a) Personal delivery to the tenant.

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

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

44 (8) If the notice under subsection (6) of this section is served by mail pursuant to subsection
 45 (7)(b) of this section, the minimum period for compliance must be extended by three days and the

1 notice must include the extension in the period stated in the notice.

2 (9)(a) Notwithstanding the provisions of subsection (6)(c) of this section and except as provided
3 in paragraph (b) of this subsection, the purchaser is not a landlord subject to the provisions of ORS
4 chapter 90 unless the purchaser:

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

7 (B) Enters into a new rental agreement with the individual who possesses the property under
8 a tenancy described in subsection (6)(c) of this section; or

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

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

13 (c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and
14 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not
15 impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to
16 this paragraph, "rent" refers to the amount the tenant pays to the landlord for the right to occupy
17 the unit before the foreclosure.

18 (10)(a) Except as provided in paragraph (b) of this subsection, the purchaser is not liable to the
19 individual who possesses the property under a tenancy described in subsection (6)(c) of this section
20 for:

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

22 (B) Returning a security deposit.

23 (b) A purchaser that is a landlord under the provisions of subsection (9)(a) of this section is li-
24 able to the individual who possesses the property under a tenancy described in subsection (6)(c) of
25 this section for:

26 (A) Damage to the property or diminution in rental value that occurs after the date of the
27 trustee's sale; or

28 (B) Returning a security deposit the individual pays after the date of the trustee's sale.

29 (11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement
30 to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or
31 (9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the pre-
32 vailing party together with costs and disbursements.

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

36 (A) Did not know, and did not have reasonable cause to know, of the existence of a fixed term
37 tenancy when commencing the action for possession; and

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

39 (c) As used in this subsection, "prevailing party" means the party in whose favor final judgment
40 is rendered.

41 (12)(a) Notwithstanding subsection (2)(a) of this section, except when a beneficiary has partic-
42 ipated in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by pro-
43 ceedings in bankruptcy or for any other lawful reason shall, after release from the stay, continue
44 as if uninterrupted, if within 30 days after release the trustee sends amended notice of sale by reg-
45 istered or certified mail to [*the last-known address of*] the persons listed in ORS 86.764 and 86.774

1 (1).

2 (b) In addition to the notice required under paragraph (a) of this subsection, the trustee shall
 3 send amended notice of sale:

4 (A) By registered or certified mail to:

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

7 (ii) The address provided by each member of the Oregon State Bar who by registered or certified
 8 mail requests the amended notice of sale and includes with the request the notice of default or an
 9 identification number for 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 at least 8.5 by 11
 11 inches in size; or

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

14 (c) The amended notice of sale must:

15 (A) Be given at least 15 days before the amended date of sale;

16 (B) Set an amended date of sale that may be the same as the original sale date, or date to which
 17 the sale was postponed, provided the requirements of this paragraph and ORS 86.764 and 86.774 are
 18 satisfied;

19 (C) Specify the time and place for sale;

20 (D) Conform to the requirements of ORS 86.771; and

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

22 (d) If the publication of the notice of sale was not completed before the date the foreclosure
 23 proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other lawful
 24 reason, after release from the stay, in addition to complying with the provisions of paragraphs (b)
 25 and (c) of this subsection, the trustee shall complete the publication by publishing an amended no-
 26 tice of sale that states that the notice has been amended following release from the stay and that
 27 contains the amended date of sale. The amended notice must be published in a newspaper of general
 28 circulation in each of the counties in which the property is situated once a week for four successive
 29 weeks, except that the required number of publications must be reduced by the number of publica-
 30 tions that were completed before the effective date of the stay. The last publication must be made
 31 more than 20 days before the date the trustee conducts the sale.

32 (e) If a portion of the defaults specified in the original notice of default or in the original notice
 33 of sale was cured during the time the foreclosure proceedings were stayed, or if additional defaults
 34 have occurred during that time, the trustee shall describe in the amended notice of sale only those
 35 defaults that existed on the date on which the stay was terminated.

36 (f) After a release from a stay of proceedings, the trustee or the attorney for the trustee, or an
 37 agent that the trustee or the attorney designates, may postpone a sale for one or more periods that
 38 total not more than the greater of 60 days or the portion of the 180-day period allowed for
 39 postponement under subsection (2)(a) of this section that remained on the day before the stay began.
 40 A postponement under this paragraph must comply with the procedural and notice requirements
 41 specified in subsection (2) of this section.

42 **SECTION 8. The amendments to ORS 86.157, 86.720, 86.729, 86.748, 86.756, 86.764 and 86.782**
 43 **by sections 1 to 7 of this 2017 Act apply to notices mailed on or after the effective date of**
 44 **this 2017 Act.**