

# Senate Bill 79

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## 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**.

Permits Department of Veterans' Affairs, in seeking judicial or nonjudicial foreclosure on residential trust deed, to file affidavit that states that department is exempt from requirement to request or participate in resolution conference.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to foreclosures of residential trust deeds by the Department of Veterans' Affairs; creating  
3 new provisions; amending ORS 86.752 and 88.010; and declaring an emergency.

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

5 **SECTION 1.** ORS 86.752 is amended to read:

6 86.752. A trustee may not foreclose a trust deed by advertisement and sale in the manner pro-  
7 vided in ORS 86.764 to 86.782 unless:

8 (1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any  
9 appointment of a successor trustee are recorded in the mortgage records in the counties in which  
10 the property described in the deed is situated;

11 (2) There is a default by the grantor or other person that owes an obligation, the performance  
12 of which is secured by the trust deed, or by the grantor's or other person's successors in interest  
13 with respect to a provision in the deed that authorizes sale in the event of default of the provision;

14 (3) The trustee or beneficiary has filed for [*record*] **recording** in the county clerk's office in each  
15 county [*where*] **in which** the trust property, or some part of the trust property, is situated, a notice  
16 of default containing the information required by ORS 86.771 and containing the trustee's or  
17 beneficiary's election to sell the property to satisfy the obligation;

18 (4) The beneficiary has filed for recording in the official records of the county or counties in  
19 which the property that is subject to the residential trust deed is located:

20 (a) A certificate of compliance that a service provider issued to the beneficiary under ORS  
21 86.736 that is valid and unexpired at the time the notice of default is recorded; [*or*]

22 (b) A copy of the affidavit with which the beneficiary claimed, under ORS 86.726 (1)(b), an ex-  
23 emption that has not expired; **or**

24 (c) **A signed affidavit from the Director of Veterans' Affairs that states that the De-**  
25 **partment of Veterans' Affairs, in the department's capacity as a beneficiary of loans made**  
26 **under ORS 407.125, is exempt from the requirement under ORS 86.726 to request or partic-**  
27 **ipate in a resolution conference with a grantor;**

28 (5) The beneficiary has complied with the provisions of ORS 86.748;

**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 (6) The grantor has not complied with the terms of any foreclosure avoidance measure upon  
 2 which the beneficiary and the grantor have agreed; and

3 (7) An action has not been commenced to recover the debt or any part of the debt then re-  
 4 maining secured by the trust deed, or, if an action has been commenced, the action has been dis-  
 5 missed, except that:

6 (a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action may  
 7 be commenced to appoint a receiver or to obtain a temporary restraining order during foreclosure  
 8 of a trust deed by advertisement and sale, except that a receiver may not be appointed with respect  
 9 to a single-family residence that the grantor, the grantor’s spouse or the grantor’s minor or de-  
 10 pendent child occupies as a principal residence.

11 (b) An action may be commenced to foreclose, judicially or nonjudicially, the same trust deed  
 12 as to any other property covered by the trust deed, or any other trust deeds, mortgages, security  
 13 agreements or other consensual or nonconsensual security interests or liens that secure repayment  
 14 of the debt.

15 **SECTION 2.** ORS 88.010 is amended to read:

16 88.010. (1)(a) Except as otherwise provided by law, a lien upon real or personal property, other  
 17 than that of a judgment, whether created by mortgage or otherwise, must be foreclosed, and the  
 18 property adjudged to be sold to satisfy the debt the lien secures, by bringing suit. A judgment in the  
 19 suit must include a declaration of the amount of the debt that the lien secures.

20 (b) Except as provided in ORS 86.797 or 88.103 or other applicable law, if the lien debtor or  
 21 another person, as principal or otherwise, has given a promissory note or other personal obligation  
 22 to pay the debt and if the plaintiff in the complaint asks the court for a money award in the judg-  
 23 ment, the court shall include in the judgment a money award against the lien debtor or other person  
 24 for the amount of the debt.

25 (c) The provisions of this chapter as to liens upon personal property do not exclude a person  
 26 that has a lien from any other remedy or right that the person otherwise has with respect to the  
 27 property.

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

30 (A) A valid and unexpired certificate of compliance that a service provider issued to a benefi-  
 31 ciary under ORS 86.736;

32 (B) The affidavit the person submitted under ORS 86.726 (1)(b), provided that the exemption the  
 33 person claimed in the affidavit has not expired; *[or]*

34 (C) The notice the beneficiary received under ORS 86.736 (1)(c)[.]; **or**

35 **(D) A signed affidavit from the Director of Veterans’ Affairs that states that the De-**  
 36 **partment of Veterans’ Affairs, in the department’s capacity as a beneficiary of loans made**  
 37 **under ORS 407.125, is exempt from the requirement under ORS 86.726 to request or partic-**  
 38 **ipate in a resolution conference with a grantor.**

39 (b)(A) A court on the court’s own motion or in response to a motion from a defendant may dis-  
 40 miss without prejudice a suit that a person brings under this section to foreclose a residential trust  
 41 deed, or may stay proceedings on the suit, if the person:

42 (i) Fails to file with the court the certificate described in paragraph (a)(A) of this subsection or  
 43 the affidavit described in paragraph (a)(B) **or (D)** of this subsection; or

44 (ii) Files with the court the notice described in paragraph (a)(C) of this subsection.

45 (B) The court may release a stay the court granted under subparagraph (A) of this paragraph

1 if the person files with the court the certificate described in paragraph (a)(A) of this subsection or  
2 the affidavit described in paragraph (a)(B) **or (D)** of this subsection.

3 (C) The court may award a defendant that prevails on a motion under this paragraph reasonable  
4 costs and attorney fees associated with bringing the motion and any other relief the court deems  
5 proper.

6 **SECTION 3. (1) The amendments to ORS 86.752 and 88.010 by sections 1 and 2 of this 2017**  
7 **Act become operative 91 days after the effective date of this 2017 Act.**

8 **(2) The Director of Veterans' Affairs may adopt rules and take any other action before**  
9 **the operative date specified in subsection (1) of this section that is necessary to enable the**  
10 **director to exercise, on and after the operative date specified in subsection (1) of this section,**  
11 **all of the duties, functions and powers conferred on the director by the amendments to ORS**  
12 **86.752 and 88.010 by sections 1 and 2 of this 2017 Act.**

13 **SECTION 4. This 2017 Act being necessary for the immediate preservation of the public**  
14 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**  
15 **on its passage.**

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