

**Minority Report**  
**A-Engrossed**  
**House Bill 2009**

Ordered by the House March 31  
Including House Minority Report Amendments dated March 31

Sponsored by nonconcurring members of the House Committee on Business and Labor: Representatives BONHAM,  
BOSHART DAVIS

**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.

Establishes temporary limitations on lenders' remedies for borrowers' failures to make payments on obligations secured by mortgages, trust deeds or land sale contracts for certain real property.  
Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to strategies to protect Oregonians from the effects of the COVID-19 pandemic; creating  
3 new provisions; amending ORS 86.707, 86.726, 86.729, 86.732 and 86.736 and section 2, chapter  
4 4, Oregon Laws 2020 (first special session); and declaring an emergency.

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

6 **SECTION 1. (1) The Legislative Assembly finds and declares that:**

7 **(a) The provisions of this section might affect the terms and conditions of certain con-**  
8 **tracts into which residents of this state have entered.**

9 **(b) The effects of the provisions of this section are not substantial because the provisions**  
10 **have a limited scope and duration and are necessary to protect the public health, safety and**  
11 **welfare. For these reasons the provisions do not undermine a contractual bargain, interfere**  
12 **with a party's reasonable expectations or prevent a party from safeguarding or reinstating**  
13 **the party's rights.**

14 **(c) Even if a provision of this section has the effect of undermining a contractual bar-**  
15 **gain, interfering with a party's reasonable expectations or preventing a party from safe-**  
16 **guarding or reinstating the party's rights, the provision is appropriate and reasonable as a**  
17 **means by which to implement the significant and legitimate public purpose of responding to**  
18 **the COVID-19 pandemic emergency that began on March 8, 2020, and has continued to date.**

19 **(2) As used in this section:**

20 **(a) "Emergency period" means a period that extends from the effective date of this 2021**  
21 **Act to June 30, 2021.**

22 **(b) "Forfeiture remedy" has the meaning given that term in ORS 93.905.**

23 **(c) "Lender" means a beneficiary, as defined in ORS 86.705, a mortgagee, as defined in**  
24 **ORS 87.005, a seller in a land sale contract or a licensee, as defined in ORS 86A.303.**

25 **(d) "Subject property" means real property upon which is situated four or fewer dwelling**

**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 units, as defined in ORS 90.100, used primarily and designed solely for residential use.

2 (e) "Trust deed" has the meaning given that term in ORS 86.705.

3 (f) "Trustee" has the meaning given that term in ORS 86.705.

4 (3) Notwithstanding ORS 18.860 to 18.993, 86.752, 88.010 and 93.905 to 93.940, and except  
5 as provided in subsection (7) of this section, with respect to subject property, a lender or  
6 trustee may not at any time during the emergency period:

7 (a) Foreclose a trust deed by advertisement and sale;

8 (b) Bring an action or suit to foreclose a mortgage or trust deed; or

9 (c) Enforce a forfeiture remedy.

10 (4)(a) Notwithstanding ORS 18.920, 18.924, 86.764 and 93.915 and except as provided in  
11 subsection (7) of this section, if a lender or trustee recorded a notice of default and served  
12 a notice of sale for a foreclosure by advertisement and sale, commenced a suit under ORS  
13 88.010 or otherwise initiated a foreclosure with respect to subject property on or after June  
14 30, 2020, the foreclosure is stayed during the emergency period. After the emergency period  
15 expires, a trustee's sale may occur if the lender or trustee complies with the provisions of  
16 ORS 86.782 (12), a lender may obtain a forfeiture remedy if the lender complies with the  
17 provisions of ORS 93.918 and, for other types of foreclosure proceedings, a foreclosure may  
18 continue if the lender complies with the requirements of applicable law.

19 (b) Notwithstanding the 180-day limit specified for postponing a trustee's sale set forth  
20 in ORS 86.782 (2)(a), a trustee, an attorney for the trustee or an agent that the trustee or  
21 attorney designates shall, for the duration of the emergency period, postpone all trustee's  
22 sales of subject property with respect to which the trustee, attorney or agent acts in the  
23 capacity of a trustee on behalf of a lender.

24 (5) Notwithstanding ORS 18.860 to 18.993 and 88.010 and except as provided in subsection  
25 (7) of this section, during the emergency period a court may not enter a judgment of fore-  
26 closure and sale or issue a writ of execution with respect to subject property that secures  
27 an obligation on which a mortgagor, a grantor or a purchaser in a land-sale contract has  
28 failed to make a periodic installment payment or other payment.

29 (6)(a) Notwithstanding ORS 86.782 and except as provided in subsection (7) of this section,  
30 a trustee's sale of subject property may not occur during the emergency period. Any pur-  
31 ported trustee's sale of subject property during the emergency period is void and does not  
32 transfer or foreclose any rights to the subject property.

33 (b) Notwithstanding ORS 18.860 to 18.993 and except as provided in subsection (7) of this  
34 section, an execution sale of subject property that secures an obligation on which a  
35 mortgagor, grantor or purchaser in a land sale contract has defaulted may not occur during  
36 the emergency period. Any purported execution sale of subject property during the emer-  
37 gency period is void and does not transfer or foreclose any rights to the subject property.

38 (7) This section does not:

39 (a) Apply to judgments of foreclosure and sale, writs of execution or notices of a  
40 trustee's sale:

41 (A) Under which a trustee's sale or execution sale concluded before June 30, 2020;

42 (B) That occur in connection with a tax foreclosure proceeding under ORS 312.010 to  
43 312.120 or 312.130 to 312.240;

44 (C) That dispose of vacant or abandoned property; or

45 (D) That result from waste, destruction or illegal use of subject property or a failure to

1 **prevent waste, destruction or illegal use of subject property; or**

2 **(b) Relieve a borrower of the duty to repay the full amount of any obligation that is**  
3 **subject to a waiver, deferral, modification or forbearance under the provisions of this sec-**  
4 **tion.**

5 **SECTION 2.** Section 2, chapter 4, Oregon Laws 2020 (first special session), is amended to read:

6 **Sec. 2.** Section 1 [*of this 2020 special session Act*], **chapter 4, Oregon Laws 2020 (first special**  
7 **session)**, is repealed [*90 days after the expiration of the emergency period as defined in section 1 of*  
8 *this 2020 special session Act*] **on the effective date of this 2021 Act.**

9 **SECTION 3.** ORS 86.707 is amended to read:

10 86.707. As used in this section and ORS 86.726, 86.729, 86.732, 86.736, 86.741, 86.744 and 86.748:

11 (1) “Facilitator” means a person that a service provider selects to conduct a resolution confer-  
12 ence.

13 (2) “Foreclosure avoidance measure” means an agreement between a beneficiary and a grantor  
14 that uses one or more of the following methods to modify an obligation that is secured by a resi-  
15 dential trust deed:

16 (a) The beneficiary defers or forbears from collecting one or more payments due on the obli-  
17 gation.

18 (b) The beneficiary modifies, temporarily or permanently, the payment terms or other terms of  
19 the obligation.

20 (c) The beneficiary accepts a deed in lieu of foreclosure from the grantor.

21 (d) The grantor conducts a short sale.

22 (e) The beneficiary provides the grantor with other assistance that enables the grantor to avoid  
23 a foreclosure.

24 (3) “Housing counselor” means a counselor employed by a nonprofit housing counseling agency  
25 that the Housing and Community Services Department or a successor state agency approves.

26 (4) **“Remote audio or video communication” means a method of remote communication**  
27 **that gives a participant in the communication the capability and opportunity to clearly**  
28 **transmit and, as appropriate, perceive at substantially the same time the participant’s own,**  
29 **and other participants’, spoken or sign language, visual or audio aids, gestures, expressions,**  
30 **tones of voice and other indicators of meaning apart from spoken or written language.**

31 [(4)] (5) “Resolution conference” means a meeting at which a grantor and a beneficiary attempt  
32 to negotiate and agree upon a foreclosure avoidance measure.

33 [(5)] (6) “Service provider” means a person that the Attorney General appoints under ORS  
34 86.741 to coordinate a program to implement the provisions of ORS 86.726, 86.729, 86.732 and 86.736.

35 **SECTION 4.** ORS 86.726 is amended to read:

36 86.726. (1)(a) Except as provided in paragraph (b) of this subsection and subsection (5) of this  
37 section, a beneficiary that intends to foreclose a residential trust deed shall first request a resolu-  
38 tion conference with the grantor before the beneficiary or the trustee files a notice of default under  
39 ORS 86.752 or before the beneficiary brings suit under ORS 88.010.

40 (b)(A) The requirement to request or participate in a resolution conference with a grantor in  
41 accordance with subsection (2) or (3) of this section does not apply to a beneficiary if the beneficiary  
42 submits to the Attorney General a sworn affidavit that states that during the preceding calendar  
43 year the beneficiary did not commence or cause an affiliate, subsidiary or agent of the beneficiary  
44 to commence more than [175] **30** actions to foreclose a residential trust deed by advertisement and  
45 sale under ORS 86.752 or by suit under ORS 88.010. A beneficiary that is a trustee shall include as

1 part of the total number of foreclosure actions that the beneficiary commenced in the previous cal-  
2 endar year all foreclosure actions that the beneficiary commenced under ORS 86.752 or 88.010 in the  
3 beneficiary's capacity as a trustee. A beneficiary that intends to claim an exemption under this  
4 subparagraph shall submit the affidavit in a form and with the contents the Attorney General  
5 specifies by rule either:

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

8 (ii) At the time the beneficiary files a notice of default under ORS 86.752 or brings suit under  
9 ORS 88.010.

10 (B) An exemption under subparagraph (A) of this paragraph expires at the end of the calendar  
11 year in which the beneficiary claims the exemption.

12 (c) Except as provided in subsection (5) of this section, a beneficiary that claims an exemption  
13 under this subsection is not exempt from the requirements set forth in ORS 86.748.

14 (2) The beneficiary shall request a resolution conference through the service provider. The  
15 beneficiary shall submit the request to the service provider electronically, by facsimile or by mail  
16 and shall submit a processing fee in an amount and in a manner that the Attorney General specifies  
17 by rule. The service provider shall pay to the Attorney General, for deposit into the Foreclosure  
18 Avoidance Fund established under ORS 86.744, moneys the service provider receives from the ben-  
19 eficiary under this subsection. The beneficiary's request under this subsection must identify the  
20 residential trust deed that the beneficiary intends to foreclose and list the name, title, address,  
21 telephone number and other available contact information for:

22 (a) The beneficiary;

23 (b) Any agent of the beneficiary that will attend the resolution conference;

24 (c) Any person other than a person identified in paragraph (a) or (b) of this subsection that will  
25 receive, on the beneficiary's behalf, notices or other communications related to the resolution con-  
26 ference; and

27 (d) The grantor.

28 (3)(a) If a beneficiary does not request a resolution conference under subsection (1) of this sec-  
29 tion, a grantor may request a resolution conference with the beneficiary if:

30 (A) The beneficiary or the trustee has not filed a notice of default under ORS 86.752 or the  
31 beneficiary has not commenced a suit under ORS 88.010; and

32 (B) The grantor first obtains from a housing counselor a certification in writing that the grantor  
33 is more than 30 days in default on the obligation that the residential trust deed secures or, if the  
34 grantor is not in default, that the grantor has a financial hardship that the housing counselor be-  
35 lieves may qualify the grantor for a foreclosure avoidance measure.

36 (b) A grantor shall request a resolution conference through the service provider. The grantor  
37 shall submit the request to the service provider electronically, by facsimile or by mail and shall  
38 enclose with the request the written certification the housing counselor provides under paragraph  
39 (a)(B) of this subsection. The Attorney General by rule shall specify the information that the request  
40 must include.

41 (c) A beneficiary that receives a notice from a service provider after the service provider re-  
42 ceives a request from a grantor under paragraph (b) of this subsection is subject to the requirements  
43 set forth in this section and ORS 86.729, 86.732, 86.736 and 86.748.

44 (d) This subsection does not apply to a beneficiary that has submitted an affidavit and is exempt  
45 under subsection (1)(b) of this section.

1 (4) A beneficiary that submitted an affidavit in accordance with subsection (1)(b) of this section  
2 may, without waiving the exemption the beneficiary claimed in the affidavit, request a resolution  
3 conference with a grantor. The beneficiary shall submit a request under this subsection in accord-  
4 ance with the requirements set forth in subsection (2) of this section, except that submitting the  
5 request does not require a processing fee.

6 (5) The requirement to request or participate in a resolution conference with a grantor in ac-  
7 cordance with subsection (2) or (3) of this section does not apply to the Department of Veterans'  
8 Affairs in its capacity as a beneficiary of loans made under ORS 407.125.

9 **SECTION 5.** ORS 86.726, as amended by section 4 of this 2021 Act, is amended to read:

10 86.726. (1)(a) Except as provided in paragraph (b) of this subsection and subsection (5) of this  
11 section, a beneficiary that intends to foreclose a residential trust deed shall first request a resol-  
12 ution conference with the grantor before the beneficiary or the trustee files a notice of default under  
13 ORS 86.752 or before the beneficiary brings suit under ORS 88.010.

14 (b)(A) The requirement to request or participate in a resolution conference with a grantor in  
15 accordance with subsection (2) or (3) of this section does not apply to a beneficiary if the beneficiary  
16 submits to the Attorney General a sworn affidavit that states that during the preceding calendar  
17 year the beneficiary did not commence or cause an affiliate, subsidiary or agent of the beneficiary  
18 to commence more than [30] **175** actions to foreclose a residential trust deed by advertisement and  
19 sale under ORS 86.752 or by suit under ORS 88.010. A beneficiary that is a trustee shall include as  
20 part of the total number of foreclosure actions that the beneficiary commenced in the previous cal-  
21 endar year all foreclosure actions that the beneficiary commenced under ORS 86.752 or 88.010 in the  
22 beneficiary's capacity as a trustee. A beneficiary that intends to claim an exemption under this  
23 subparagraph shall submit the affidavit in a form and with the contents the Attorney General  
24 specifies by rule either:

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

27 (ii) At the time the beneficiary files a notice of default under ORS 86.752 or brings suit under  
28 ORS 88.010.

29 (B) An exemption under subparagraph (A) of this paragraph expires at the end of the calendar  
30 year in which the beneficiary claims the exemption.

31 (c) Except as provided in subsection (5) of this section, a beneficiary that claims an exemption  
32 under this subsection is not exempt from the requirements set forth in ORS 86.748.

33 (2) The beneficiary shall request a resolution conference through the service provider. The  
34 beneficiary shall submit the request to the service provider electronically, by facsimile or by mail  
35 and shall submit a processing fee in an amount and in a manner that the Attorney General specifies  
36 by rule. The service provider shall pay to the Attorney General, for deposit into the Foreclosure  
37 Avoidance Fund established under ORS 86.744, moneys the service provider receives from the ben-  
38 eficiary under this subsection. The beneficiary's request under this subsection must identify the  
39 residential trust deed that the beneficiary intends to foreclose and list the name, title, address,  
40 telephone number and other available contact information for:

41 (a) The beneficiary;

42 (b) Any agent of the beneficiary that will attend the resolution conference;

43 (c) Any person other than a person identified in paragraph (a) or (b) of this subsection that will  
44 receive, on the beneficiary's behalf, notices or other communications related to the resolution con-  
45 ference; and

1 (d) The grantor.

2 (3)(a) If a beneficiary does not request a resolution conference under subsection (1) of this sec-  
3 tion, a grantor may request a resolution conference with the beneficiary if:

4 (A) The beneficiary or the trustee has not filed a notice of default under ORS 86.752 or the  
5 beneficiary has not commenced a suit under ORS 88.010; and

6 (B) The grantor first obtains from a housing counselor a certification in writing that the grantor  
7 is more than 30 days in default on the obligation that the residential trust deed secures or, if the  
8 grantor is not in default, that the grantor has a financial hardship that the housing counselor be-  
9 lieves may qualify the grantor for a foreclosure avoidance measure.

10 (b) A grantor shall request a resolution conference through the service provider. The grantor  
11 shall submit the request to the service provider electronically, by facsimile or by mail and shall  
12 enclose with the request the written certification the housing counselor provides under paragraph  
13 (a)(B) of this subsection. The Attorney General by rule shall specify the information that the request  
14 must include.

15 (c) A beneficiary that receives a notice from a service provider after the service provider re-  
16 ceives a request from a grantor under paragraph (b) of this subsection is subject to the requirements  
17 set forth in this section and ORS 86.729, 86.732, 86.736 and 86.748.

18 (d) This subsection does not apply to a beneficiary that has submitted an affidavit and is exempt  
19 under subsection (1)(b) of this section.

20 (4) A beneficiary that submitted an affidavit in accordance with subsection (1)(b) of this section  
21 may, without waiving the exemption the beneficiary claimed in the affidavit, request a resolution  
22 conference with a grantor. The beneficiary shall submit a request under this subsection in accord-  
23 ance with the requirements set forth in subsection (2) of this section, except that submitting the  
24 request does not require a processing fee.

25 (5) The requirement to request or participate in a resolution conference with a grantor in ac-  
26 cordance with subsection (2) or (3) of this section does not apply to the Department of Veterans'  
27 Affairs in its capacity as a beneficiary of loans made under ORS 407.125.

28 **SECTION 6. Section 7 of this 2021 Act is added to and made a part of ORS 86.705 to 86.815.**

29 **SECTION 7. (1) A beneficiary that submits a sworn affidavit to the Attorney General**  
30 **under ORS 86.726 (1)(b)(A) during the calendar year 2021 or 2022 shall make the statement**  
31 **required in the affidavit on the basis of the beneficiary's actions, or the actions of the**  
32 **beneficiary's affiliate, subsidiary or agent, to foreclose a residential trust deed by advertise-**  
33 **ment and sale under ORS 86.752 or by suit under ORS 88.010 during the calendar year 2019.**

34 **(2) A beneficiary may not during calendar year 2021 or 2022 submit an affidavit to the**  
35 **Attorney General and does not qualify for an exemption from the requirement to participate**  
36 **in a resolution conference if the beneficiary, or the beneficiary's affiliate, subsidiary or**  
37 **agent, during the calendar year 2019 commenced more than 30 actions to foreclose a resi-**  
38 **dential trust deed by advertisement and sale under ORS 86.752 or by suit under ORS 88.010,**  
39 **notwithstanding the qualification established for the exemption in ORS 86.726 (1)(b)(A), as in**  
40 **effect before the effective date of this 2021 Act. Any affidavit that a beneficiary submitted**  
41 **on or after January 1, 2021, and before the effective date of this 2021 Act that under this**  
42 **subsection does not qualify the beneficiary for an exemption is without effect and the bene-**  
43 **ficiary is subject to the requirements of ORS 86.726, 86.729, 86.732, 86.736 and 86.748 during**  
44 **the calendar year 2021.**

45 **SECTION 8. Section 7 of this 2021 Act is repealed on January 2, 2023.**

1        **SECTION 9.** ORS 86.732 is amended to read:

2        86.732. (1)(a) Except as provided in paragraph (b) of this subsection, a beneficiary that must re-  
3        quest a resolution conference with a grantor under ORS 86.726 shall attend and participate in the  
4        resolution conference in person **or by remote audio or video communication.**

5        (b)(A) A beneficiary may send an agent to the resolution conference if the agent attends the  
6        resolution conference in person **or by remote audio or video communication** and **the agent** has  
7        complete authority to negotiate on the beneficiary's behalf and commit the beneficiary to a foreclo-  
8        sure avoidance measure or, if the agent who attends the resolution conference in person **or by re-**  
9        **note audio or video communication** does not have complete authority, the beneficiary also  
10       requires the participation, by remote **audio or video** communication, of a person who does have  
11       complete authority to negotiate on the beneficiary's behalf and commit the beneficiary to a foreclo-  
12       sure avoidance measure.

13       (B) A grantor may have an attorney or a housing counselor, or both, present to represent the  
14       grantor at the resolution conference, but the grantor, or any individual that a court appoints to act  
15       on the grantor's behalf, must attend the resolution conference in person **or by remote audio or**  
16       **video communication** [*unless there are compelling circumstances that prevent attendance in person*].

17       (2) If the beneficiary agrees to a foreclosure avoidance measure with the grantor, the beneficiary  
18       and the grantor shall sign a written document that sets forth the terms of the foreclosure avoidance  
19       measure.

20       (3) A facilitator may suspend or postpone a resolution conference after the resolution conference  
21       has begun:

22       (a) One time only on the facilitator's initiative or in response to a request for a suspension or  
23       postponement from the beneficiary or the grantor;

24       (b) After a suspension or postponement under paragraph (a) of this subsection only if the bene-  
25       ficiary and the grantor agree to the additional suspension or postponement; or

26       (c) If the beneficiary or the grantor needs additional time to write or sign a document that sets  
27       forth the terms of a foreclosure avoidance measure.

28       (4) After the resolution conference concludes, the facilitator shall submit to the service provider  
29       a written report that:

30       (a) Lists the date or dates on which the resolution conference occurred;

31       (b) Lists the name, title, address, telephone number and other available contact information for  
32       each person that participated in the resolution conference, noting whether the person attended the  
33       resolution conference in person or participated by remote **audio or video** communication;

34       (c) States whether the beneficiary or the agent of the beneficiary who attended the resolution  
35       conference had complete authority to negotiate and commit to a foreclosure avoidance measure;

36       (d) Summarizes the terms of the foreclosure avoidance measure to which the beneficiary and the  
37       grantor agreed or notes that the beneficiary and the grantor did not agree to a foreclosure avoid-  
38       ance measure; and

39       (e) Provides any other information the Attorney General requires by rule.

40       **SECTION 10.** ORS 86.729 is amended to read:

41       86.729. (1)(a) Within 10 days after a service provider receives a request for a resolution confer-  
42       ence under ORS 86.726, the service provider shall schedule the resolution conference and mail a  
43       notice to the beneficiary and to the grantor at all addresses on file with the service provider for the  
44       beneficiary and grantor, including post office boxes. The service provider shall schedule the resol-  
45       ution conference to occur within 75 days after the date on which the service provider sends the

1 notice.

2 (b) A notice under this subsection must:

3 (A) Specify a range of dates within which and a location at which **or means of remote audio**  
4 **or video communication by which** the resolution conference will occur;

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

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

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

12 (E) State that the grantor may have an attorney or housing counselor present to represent the  
13 grantor at the resolution conference, and that the attorney or housing counselor must attend the  
14 resolution conference in person **or by remote audio or video communication** [*unless there are*  
15 *compelling circumstances that prevent attendance in person*]; and

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

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

19 (a) The grantor shall pay a fee to the service provider in an amount and in a manner that the  
20 Attorney General specifies by rule. The grantor's fee may not exceed \$200. Within five days after  
21 receiving the fee from the grantor, the service provider shall send a written notice to the grantor  
22 and the beneficiary that specifies the date, time and location of, **and, if necessary, a method of**  
23 **remote audio or video communication for**, the resolution conference.

24 (b) The service provider shall pay to the Attorney General, for deposit into the Foreclosure  
25 Avoidance Fund established under ORS 86.744, moneys the service provider receives from the  
26 grantor under paragraph (a) of this subsection.

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

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

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

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

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

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

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

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

41 (b) Submit to the service provider:

42 (A) Copies of:

43 (i) The residential trust deed; and

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



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

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

5 (D) An itemized statement that shows:

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

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

9 (E) A document that identifies:

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

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

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

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

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

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

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

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

25 (B) The beneficiary or the grantor requests a new date in writing that is not more than 30 days  
26 after the original date scheduled for the resolution conference and can show good cause for the re-  
27 quest; or

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

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

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

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

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

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

1 ing resolution conferences.

2 (e) Information that a beneficiary or grantor submits under this section is not subject to ORS  
3 192.311 to 192.478.

4 **SECTION 11.** ORS 86.736 is amended to read:

5 86.736. (1)(a) The service provider shall issue, within five days after receiving a report from a  
6 facilitator under ORS 86.732 (4), a certificate of compliance to a beneficiary that:

7 (A) Complied with ORS 86.726, 86.729 and 86.732;

8 (B) Submitted the materials required under ORS 86.729 (4) to the service provider;

9 (C) Appeared in person **or by remote audio or video communication** at, or sent an agent in  
10 person **or by remote audio or video communication** to, the resolution conference with complete  
11 authority to negotiate on the beneficiary's behalf and commit the beneficiary to a foreclosure  
12 avoidance measure or, if the beneficiary or agent did not have complete authority, required the  
13 participation by remote **audio or video** communication of a person with complete authority to ne-  
14 gotiate on the beneficiary's behalf and commit the beneficiary to a foreclosure avoidance measure;  
15 and

16 (D) Signed a document that sets forth the terms of any foreclosure avoidance measure to which  
17 the beneficiary and the grantor agreed.

18 (b) A certificate of compliance expires one year after the date on which the service provider  
19 issues the certificate of compliance under paragraph (a) of this subsection.

20 (c) The service provider shall notify a beneficiary that failed to meet a requirement to which the  
21 beneficiary was subject under ORS 86.726, 86.729 or 86.732 that the service provider will not issue  
22 a certificate of compliance, explaining in the notice why the service provider will not issue the  
23 certificate of compliance. The service provider shall provide a copy of the notice under this para-  
24 graph to the grantor and to the Attorney General.

25 (2) Notwithstanding the requirements set forth in subsection (1) of this section, if a service  
26 provider cancels a resolution conference under ORS 86.729 (5)(b), the service provider shall issue a  
27 certificate of compliance to the beneficiary within five days after canceling the resolution confer-  
28 ence.

29 **SECTION 12.** The Housing and Community Services Department shall:

30 (1) **Apply at the earliest possible date to the United States Secretary of the Treasury for**  
31 **the maximum amount available to the state from the Homeowner Assistance Fund estab-**  
32 **lished under section 3206 of the American Rescue Plan Act of 2021, P.L. 117-2;**

33 (2) **Consult with housing counseling agencies, financial institutions and other mortgage**  
34 **lenders concerning the development and implementation, in the shortest feasible time, of**  
35 **methods for:**

36 (a) **Informing eligible borrowers of the existence of funds for mortgage payment assist-**  
37 **ance and other financial assistance to allow the borrower to reinstate a mortgage or to pay**  
38 **other eligible housing related costs; and**

39 (b) **Disbursing funds to or for the benefit of eligible borrowers; and**

40 (3) **Report to a committee of the Legislative Assembly within 30 days after the effective**  
41 **date of this 2021 Act and at the end of every successive 45-day period until December 31, 2021,**  
42 **concerning the department's progress in implementing the provisions of this section.**

43 **SECTION 13.** Section 1 of this 2021 Act does not apply to or affect:

44 (1) **Any mortgage loan that an agency or instrumentality of the United States, a**  
45 **government-sponsored enterprise or a Federal Home Loan Bank made, purchased, insured**

1 or securitized;

2 (2) The rights and obligations of a lender, issuer, servicer or trustee of a mortgage loan,  
3 including a servicer of the Government National Mortgage Association; or

4 (3) A mortgage loan that a lender made or serviced in accordance with the forbearance  
5 programs that the Federal Housing Finance Agency follows for the administration's mort-  
6 gage loans, including a mortgage loan that was not made, purchased, insured or securitized  
7 by any agency or instrumentality of the United States.

8 SECTION 14. Section 1 of this 2021 Act applies to a lender's or trustee's action during  
9 the emergency period, as defined in section 1 of this 2021 Act, to foreclose a mortgage or  
10 trust deed by advertisement and sale or by suit or to enforce a forfeiture remedy with re-  
11 spect to a land sale contract.

12 SECTION 15. The amendments to ORS 86.726 by section 5 of this 2021 Act become oper-  
13 ative on January 2, 2023.

14 SECTION 16. (1) Section 1 of this 2021 Act is repealed 90 days after the expiration of the  
15 emergency period as defined in section 1 of this 2021 Act.

16 (2) Section 12 of this 2021 Act is repealed on January 2, 2023.

17 SECTION 17. This 2021 Act being necessary for the immediate preservation of the public  
18 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect  
19 on its passage.  
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