

Requested by Senator PATTERSON

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2009**

1 On page 1 of the printed A-engrossed bill, delete lines 6 through 27 and
2 delete pages 2 through 12 and insert:

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

4 **“(a) The provisions of this section might affect the terms and con-**
5 **ditions of certain contracts into which residents of this state have**
6 **entered.**

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

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

20 **“(2) As used in this section:**

21 **“(a) ‘Borrower’ means a mortgagor of real property, a grantor, as**

1 defined in ORS 86.705, a purchaser in a land sale contract or a suc-
2 cessor in interest to the mortgagor, grantor, purchaser or person. As
3 used in this paragraph, ‘successor in interest’ means a person to whom
4 a borrower has transferred an interest in subject property under any
5 of the following circumstances:

6 “(A) The transfer of subject property occurs by devise, descent or
7 operation of law at the mortgagor’s, grantor’s, purchaser’s or person’s
8 death;

9 “(B) A relative of the mortgagor, grantor, purchaser or person re-
10 ceives the interest in subject property as a result of the mortgagor’s,
11 grantor’s, purchaser’s or person’s death;

12 “(C) The spouse or children of the mortgagor, grantor, purchaser
13 or person become owners of the subject property;

14 “(D) The transfer results from a decree of dissolution of marriage,
15 a legal separation agreement or an incidental separation agreement
16 under which the spouse of the mortgagor, grantor, purchaser or per-
17 son becomes an owner of the subject property; or

18 “(E) The transfer does not relate to rights to occupy the subject
19 property, but the subject property becomes trust property in an inter
20 vivos trust in which the mortgagor, grantor, purchaser or person re-
21 mains a beneficiary.

22 “(b) ‘Emergency period’ means a period that extends from 11:59
23 p.m. on December 31, 2020, to 11:59 p.m. on June 30, 2021, except that
24 the Governor may by executive order:

25 “(A) Not later than June 14, 2021, extend the emergency period to
26 11:59 p.m. on September 30, 2021; and

27 “(B) Not later than August 16, 2021, extend the emergency period
28 once more to not past 11:59 p.m. on December 31, 2021.

29 “(c) ‘Financing agreement’ means a contract under which a bor-
30 rower must make payments to a lender to satisfy an obligation that

1 is secured by a mortgage, a trust deed or a land sale contract for
2 subject property.

3 “(d) ‘Foreclosure avoidance measure’ has the meaning given that
4 term in ORS 86.707.

5 “(e) ‘Forfeiture remedy’ has the meaning given that term in ORS
6 93.905.

7 “(f) ‘Lender’ means a beneficiary, as defined in ORS 86.705, a
8 mortgagee, as defined in ORS 87.005, a seller in a land sale contract
9 or a licensee, as defined in ORS 86A.303.

10 “(g) ‘Subject property’ means real property located in this state.

11 “(h) ‘Trust deed’ has the meaning given that term in ORS 86.705.

12 “(i) ‘Trustee’ has the meaning given that term in ORS 86.705.

13 “(3)(a) During the emergency period, a lender may not treat as a
14 default a borrower’s failure to make a periodic installment payment
15 or failure to pay any other amount that is due to the lender on or in
16 connection with an obligation that is subject to a financing agreement
17 if, during the emergency period, the borrower notifies the lender that
18 the borrower cannot make the periodic installment payment or other
19 payment because of a loss of income that is related to the COVID-19
20 pandemic. If the subject property is commercial property or residential
21 property with more than four dwelling units, the notification must
22 include financial statements or other evidence that demonstrates a
23 loss of income related to the COVID-19 pandemic and must disclose
24 any funds the borrower received from the United States Small Busi-
25 ness Administration under the Paycheck Protection Program, as im-
26 plemented under the Paycheck Protection Program Flexibility Act of
27 2020 (P.L. 116-142) or other state or federal relief programs. In lieu of
28 treating the failure to pay as a default, and only if the lender and
29 borrower do not otherwise agree to modify, defer or otherwise mitigate
30 the obligation, including by agreeing to a foreclosure avoidance

1 **measure, the lender shall:**

2 **“(A) Defer, during the emergency period, from collecting the peri-**
3 **odic installment payment or other payment; and**

4 **“(B) Permit the borrower to pay an amount the borrower owes to**
5 **the lender as a result of a deferral under this subsection at the**
6 **scheduled or anticipated date on which full performance of the obli-**
7 **gation is due, unless the scheduled or anticipated date on which full**
8 **performance is due is within the emergency period, in which case the**
9 **lender shall defer payment of the amount until after the emergency**
10 **period expires.**

11 **“(b) If the borrower’s obligation is a line of credit under which the**
12 **period in which the borrower may receive advances has not ended, the**
13 **lender shall defer the amount the borrower owes until the beginning**
14 **of the repayment period specified in the financing agreement, at which**
15 **time the lender, in accordance with the terms of the financing agree-**
16 **ment, may include the deferred amount in the balance the lender uses**
17 **to calculate the amount of each payment due during the repayment**
18 **period unless the repayment period begins during the emergency pe-**
19 **riod, in which case the lender, with an appropriate calculation of the**
20 **balance, shall defer the amount due until after the emergency period**
21 **expires.**

22 **“(c) For the purposes of negotiating and agreeing to a foreclosure**
23 **avoidance measure, a lender may request from a borrower with subject**
24 **properties that are residential and have four or fewer dwelling units,**
25 **in addition to the notice the borrower must provide under paragraph**
26 **(a) of this subsection, information about any hardship or reduction in**
27 **income that caused the borrower’s failure to make a payment. A**
28 **borrower’s failure to provide the information does not disqualify the**
29 **borrower from negotiating and agreeing to a foreclosure avoidance**
30 **measure or from obtaining the protections described in paragraph (a)**

1 of this subsection.

2 “(d) After an escrow analysis and in accordance with the Real Es-
3 tate Settlement Procedures Act (12 U.S.C. 2601 et seq.), a lender may
4 adjust the amount of any escrow impound payment the borrower has
5 an obligation to make under the financing agreement and may take
6 into account any shortage or deficiency that results from deferring
7 payments under this subsection.

8 “(e)(A) Except as provided in subparagraph (B) of this paragraph,
9 a borrower does not need to provide a notice to a lender under para-
10 graph (a) of this subsection more than once. If a borrower provides the
11 notice orally, a lender may request confirmation in writing that the
12 borrower cannot make a periodic installment payment or other pay-
13 ment because of a loss of income that is related to the COVID-19
14 pandemic.

15 “(B) A borrower’s notice to a lender before the effective date of this
16 2021 Act is not effective as notice under paragraph (a) of this sub-
17 section. The borrower must notify the lender as provided in this sub-
18 section to receive the protections described in paragraph (a) of this
19 subsection.

20 “(f) During the emergency period, if a borrower gives notice as
21 provided in paragraph (a) of this subsection, a lender may not:

22 “(A) Impose or collect charges, fees, penalties, attorney fees or
23 other amounts that, but for the provisions of this section, the lender
24 might have imposed or collected from a borrower for failing, during
25 the emergency period, to make a periodic installment payment or to
26 pay another amount due on or in connection with the borrower’s ob-
27 ligation;

28 “(B) Impose a default rate of interest that, but for the provisions
29 of this section, the lender might have imposed or collected from a
30 borrower for failing, during the emergency period, to make a periodic

1 **installment payment or to pay another amount due on or in con-**
2 **nection with the borrower’s obligation;**

3 **“(C) Treat in any manner the borrower’s failure during the emer-**
4 **gency period to make a periodic installment payment or pay another**
5 **amount due on or in connection with the obligation as an ineligibility**
6 **for a foreclosure avoidance measure;**

7 **“(D) Require or charge for an inspection, appraisal or broker opin-**
8 **ion of value during the emergency period;**

9 **“(E) Initiate cash management not already in existence before the**
10 **effective date of this 2021 Act;**

11 **“(F) Implement lockbox procedures not already in existence before**
12 **the effective date of this 2021 Act;**

13 **“(G) Take control of the operating revenue from real property se-**
14 **cured by the financing document unless the control was established**
15 **before the effective date of this 2021 Act; or**

16 **“(H) Declare a default based on the failure of a borrower to meet**
17 **financial covenants due to inadequate operating revenue resulting**
18 **from the COVID-19 pandemic.**

19 **“(4) Notwithstanding ORS 18.860 to 18.993, 86.752, 88.010 and 93.905**
20 **to 93.940, and except as provided in subsection (10) of this section, with**
21 **respect to subject property, a lender or trustee may not at any time**
22 **during the emergency period:**

23 **“(a) Foreclose a trust deed by advertisement and sale;**

24 **“(b) Bring an action or suit to foreclose a mortgage or trust deed;**
25 **or**

26 **“(c) Enforce a forfeiture remedy.**

27 **“(5)(a) Notwithstanding ORS 18.920, 18.924, 86.764 and 93.915 and ex-**
28 **cept as provided in subsection (10) of this section, if a lender or trustee**
29 **recorded a notice of default and served a notice of sale for a foreclo-**
30 **sure by advertisement and sale, commenced a suit under ORS 88.010**

1 or otherwise initiated a foreclosure with respect to subject property
2 on or after March 8, 2020, the foreclosure is stayed during the emer-
3 gency period. After the emergency period expires, a trustee's sale may
4 occur if the lender or trustee complies with the provisions of ORS
5 86.782 (12), a lender may obtain a forfeiture remedy if the lender com-
6 plies with the provisions of ORS 93.918 and, for other types of foreclo-
7 sure proceedings, a foreclosure may continue if the lender complies
8 with the requirements of applicable law.

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

15 “(6)(a) Notwithstanding ORS 18.860 to 18.993 and 88.010 and except
16 as provided in subsection (10) of this section, during the emergency
17 period a court may not enter a judgment of foreclosure and sale or
18 issue a writ of execution with respect to subject property that secures
19 an obligation on which a mortgagor, a grantor or a purchaser in a
20 land-sale contract has failed to make a periodic installment payment
21 or other payment.

22 “(b) A court shall dismiss without prejudice any action or suit
23 commenced during the emergency period that seeks to foreclose a lien
24 upon subject property.

25 “(7)(a) Notwithstanding ORS 86.782 and except as provided in sub-
26 section (10) of this section, a trustee's sale of subject property may
27 not occur during the emergency period. Any purported trustee's sale
28 of subject property during the emergency period is void and does not
29 transfer or foreclose any rights to the subject property.

30 “(b) Notwithstanding ORS 18.860 to 18.993 and except as provided in

1 subsection (10) of this section, an execution sale of subject property
2 that secures an obligation on which a mortgagor, grantor or purchaser
3 in a land sale contract has defaulted may not occur during the emer-
4 gency period. Any purported execution sale of subject property during
5 the emergency period is void and does not transfer or foreclose any
6 rights to the subject property.

7 “(8)(a) Except as provided in paragraph (b) of this subsection, a
8 borrower that suffers an ascertainable loss of moneys or property be-
9 cause a lender or trustee took an action prohibited under this section
10 may bring an action in a circuit court of this state to recover the
11 borrower’s actual damages. A borrower who prevails in the action may
12 also recover the borrower’s court costs and attorney fees.

13 “(b) A lender is not liable to a borrower for damages under para-
14 graph (a) of this subsection if:

15 “(A) The lender’s action violated the prohibitions set forth in sub-
16 section (3)(a) or (f) of this section, but the action occurred before the
17 lender received a notice from the borrower under subsection (3)(a) of
18 this section; or

19 “(B) The lender sent to the borrower a periodic statement, billing
20 notice or other communication that appeared to seek payment for an
21 obligation the lender deferred in compliance with subsection (3) of this
22 section, if:

23 “(i) The communication resulted from a bona fide clerical error, an
24 error in calculation, a computer malfunction, a printing error or a
25 genuine incapacity in the lender’s billing system to provide a correct
26 and current notice of the amount of the borrower’s obligation despite
27 the lender having maintained procedures reasonably adapted to avoid
28 the error or after having determined in good faith that a commercially
29 reasonable method for overcoming the incapacity does not exist;

30 “(ii) The lender does not attempt any substantive action to collect

1 any amount the lender deferred in compliance with subsection (3) of
2 this section; and

3 “(iii) The lender confirms in writing that the amount shown in the
4 communication as due remains deferred.

5 “(9)(a) Each lender shall notify all of the lender’s borrowers who
6 cannot make a periodic installment payment or other payment on an
7 obligation because of a loss of income related to the COVID-19
8 pandemic that the borrowers may be entitled to relief under this sec-
9 tion. The notice must state that the borrower must provide notice
10 under subsection (3)(a) of this section even if the borrower has pro-
11 vided notice previously and must include the following text:

12 “ _____
13 If you have experienced a loss of income related to the COVID-19
14 pandemic, Oregon law allows you to defer payments due on your
15 mortgage loan until June 30, 2021, or later if the law is extended.
16 Deferral is not automatic. You must notify us that you have a hard-
17 ship to qualify for the deferral. If you notified us before (the effective
18 date of this 2021 Act), you must notify us again if your hardship has
19 continued and you cannot make payments due on your mortgage loan.
20 Contact us at (contact information) for further information and to
21 request a deferral.

22 “ _____
23 “(b) A lender complies with paragraph (a) of this subsection if the
24 lender notifies by mail:

25 “(A) All of the lender’s borrowers within 60 days after the effective
26 date of this 2021 Act; or

27 “(B) Every borrower who fails to make a periodic installment pay-
28 ment or other payment in connection with the borrower’s obligation
29 within 30 days after the borrower fails to make the payment.

30 “(10) This section does not:

1 “(a) Apply to judgments of foreclosure and sale, writs of execution
2 or notices of a trustee’s sale:

3 “(A) Under which a trustee’s sale or execution sale concluded before
4 June 30, 2020;

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

7 “(C) That dispose of vacant or abandoned property; or

8 “(D) That result from a borrower’s waste, destruction or illegal use
9 of subject property or the borrower’s failure to prevent another
10 person’s waste, destruction or illegal use of the subject property; or

11 “(b) Relieve a borrower of the duty to repay the full amount of any
12 obligation that is subject to a waiver, deferral, modification or
13 forbearance under the provisions of this section.

14 “**SECTION 2.** Section 2, chapter 4, Oregon Laws 2020 (first special ses-
15 sion), is amended to read:

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

20 “**SECTION 3.** ORS 86.707 is amended to read:

21 “86.707. As used in this section and ORS 86.726, 86.729, 86.732, 86.736,
22 86.741, 86.744 and 86.748:

23 “(1) ‘Facilitator’ means a person that a service provider selects to conduct
24 a resolution conference.

25 “(2) ‘Foreclosure avoidance measure’ means an agreement between a ben-
26 eficiary and a grantor that uses one or more of the following methods to
27 modify an obligation that is secured by a residential trust deed:

28 “(a) The beneficiary defers or forbears from collecting one or more pay-
29 ments due on the obligation.

30 “(b) The beneficiary modifies, temporarily or permanently, the payment

1 terms or other terms of the obligation.

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

3 “(d) The grantor conducts a short sale.

4 “(e) The beneficiary provides the grantor with other assistance that ena-
5 bles the grantor to avoid a foreclosure.

6 “(3) ‘Housing counselor’ means a counselor employed by a nonprofit
7 housing counseling agency that the Housing and Community Services De-
8 partment or a successor state agency approves.

9 “(4) **‘Remote audio or video communication’ means a method of**
10 **remote communication that gives a participant in the communication**
11 **the capability and opportunity to clearly transmit and, as appropriate,**
12 **perceive at substantially the same time the participant’s own, and**
13 **other participants’, spoken or sign language, visual or audio aids,**
14 **gestures, expressions, tones of voice and other indicators of meaning**
15 **apart from spoken or written language.**

16 “[4] (5) ‘Resolution conference’ means a meeting at which a grantor and
17 a beneficiary attempt to negotiate and agree upon a foreclosure avoidance
18 measure.

19 “[5] (6) ‘Service provider’ means a person that the Attorney General
20 appoints under ORS 86.741 to coordinate a program to implement the pro-
21 visions of ORS 86.726, 86.729, 86.732 and 86.736.

22 **“SECTION 4.** ORS 86.726 is amended to read:

23 “86.726. (1)(a) Except as provided in paragraph (b) of this subsection and
24 subsection (5) of this section, a beneficiary that intends to foreclose a resi-
25 dential trust deed shall first request a resolution conference with the grantor
26 before the beneficiary or the trustee files a notice of default under ORS
27 86.752 or before the beneficiary brings suit under ORS 88.010.

28 “(b)(A) The requirement to request or participate in a resolution confer-
29 ence with a grantor in accordance with subsection (2) or (3) of this section
30 does not apply to a beneficiary if the beneficiary submits to the Attorney

1 General a sworn affidavit that states that during the preceding calendar year
2 the beneficiary did not commence or cause an affiliate, subsidiary or agent
3 of the beneficiary to commence more than [175] **30** actions to foreclose a
4 residential trust deed by advertisement and sale under ORS 86.752 or by suit
5 under ORS 88.010. A beneficiary that is a trustee shall include as part of the
6 total number of foreclosure actions that the beneficiary commenced in the
7 previous calendar year all foreclosure actions that the beneficiary com-
8 menced under ORS 86.752 or 88.010 in the beneficiary's capacity as a trustee.
9 A beneficiary that intends to claim an exemption under this subparagraph
10 shall submit the affidavit in a form and with the contents the Attorney
11 General specifies by rule either:

12 “(i) Not later than January 31 in any calendar year in which the benefi-
13 ciary intends to claim the exemption for the remainder of the calendar year;
14 or

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

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

19 “(c) Except as provided in subsection (5) of this section, a beneficiary that
20 claims an exemption under this subsection is not exempt from the require-
21 ments set forth in ORS 86.748.

22 “(2) The beneficiary shall request a resolution conference through the
23 service provider. The beneficiary shall submit the request to the service
24 provider electronically, by facsimile or by mail and shall submit a processing
25 fee in an amount and in a manner that the Attorney General specifies by
26 rule. The service provider shall pay to the Attorney General, for deposit into
27 the Foreclosure Avoidance Fund established under ORS 86.744, moneys the
28 service provider receives from the beneficiary under this subsection. The
29 beneficiary's request under this subsection must identify the residential trust
30 deed that the beneficiary intends to foreclose and list the name, title, ad-

1 dress, telephone number and other available contact information for:

2 “(a) The beneficiary;

3 “(b) Any agent of the beneficiary that will attend the resolution confer-
4 ence;

5 “(c) Any person other than a person identified in paragraph (a) or (b) of
6 this subsection that will receive, on the beneficiary’s behalf, notices or other
7 communications related to the resolution conference; and

8 “(d) The grantor.

9 “(3)(a) If a beneficiary does not request a resolution conference under
10 subsection (1) of this section, a grantor may request a resolution conference
11 with the beneficiary if:

12 “(A) The beneficiary or the trustee has not filed a notice of default under
13 ORS 86.752 or the beneficiary has not commenced a suit under ORS 88.010;
14 and

15 “(B) The grantor first obtains from a housing counselor a certification in
16 writing that the grantor is more than 30 days in default on the obligation
17 that the residential trust deed secures or, if the grantor is not in default,
18 that the grantor has a financial hardship that the housing counselor believes
19 may qualify the grantor for a foreclosure avoidance measure.

20 “(b) A grantor shall request a resolution conference through the service
21 provider. The grantor shall submit the request to the service provider elec-
22 tronically, by facsimile or by mail and shall enclose with the request the
23 written certification the housing counselor provides under paragraph (a)(B)
24 of this subsection. The Attorney General by rule shall specify the informa-
25 tion that the request must include.

26 “(c) A beneficiary that receives a notice from a service provider after the
27 service provider receives a request from a grantor under paragraph (b) of this
28 subsection is subject to the requirements set forth in this section and ORS
29 86.729, 86.732, 86.736 and 86.748.

30 “(d) This subsection does not apply to a beneficiary that has submitted

1 an affidavit and is exempt under subsection (1)(b) of this section.

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

8 “(5) The requirement to request or participate in a resolution conference
9 with a grantor in accordance with subsection (2) or (3) of this section does
10 not apply to the Department of Veterans’ Affairs in its capacity as a bene-
11 ficiary of loans made under ORS 407.125.

12 **“SECTION 5. Section 6 of this 2021 Act is added to and made a part**
13 **of ORS 86.705 to 86.815.**

14 **“SECTION 6. (1) A beneficiary that submits a sworn affidavit to the**
15 **Attorney General under ORS 86.726 (1)(b)(A) during the calendar year**
16 **2021 or 2022 shall make the statement required in the affidavit on the**
17 **basis of the beneficiary’s actions, or the actions of the beneficiary’s**
18 **affiliate, subsidiary or agent, to foreclose a residential trust deed by**
19 **advertisement and sale under ORS 86.752 or by suit under ORS 88.010**
20 **during the calendar year 2019.**

21 **“(2) A beneficiary may not during calendar year 2021 or 2022 submit**
22 **an affidavit to the Attorney General and does not qualify for an ex-**
23 **emption from the requirement to participate in a resolution confer-**
24 **ence if the beneficiary, or the beneficiary’s affiliate, subsidiary or**
25 **agent, during the calendar year 2019 commenced more than 30 actions**
26 **to foreclose a residential trust deed by advertisement and sale under**
27 **ORS 86.752 or by suit under ORS 88.010, notwithstanding the quali-**
28 **fication established for the exemption in ORS 86.726 (1)(b)(A), as in**
29 **effect before the effective date of this 2021 Act. Any affidavit that a**
30 **beneficiary submitted on or after January 1, 2021, and before the ef-**

1 **fective date of this 2021 Act that under this subsection does not qualify**
2 **the beneficiary for an exemption is without effect and the beneficiary**
3 **is subject to the requirements of ORS 86.726, 86.729, 86.732, 86.736 and**
4 **86.748 during the calendar year 2021.**

5 **“SECTION 7. Section 6 of this 2021 Act is repealed on January 2,**
6 **2024.**

7 **“SECTION 8. ORS 86.732 is amended to read:**

8 “86.732. (1)(a) Except as provided in paragraph (b) of this subsection, a
9 beneficiary that must request a resolution conference with a grantor under
10 ORS 86.726 shall attend and participate in the resolution conference in per-
11 son **or by remote audio or video communication.**

12 “(b)(A) A beneficiary may send an agent to the resolution conference if
13 the agent attends the resolution conference in person **or by remote audio**
14 **or video communication** and **the agent** has complete authority to negoti-
15 ate on the beneficiary’s behalf and commit the beneficiary to a foreclosure
16 avoidance measure or, if the agent who attends the resolution conference in
17 person **or by remote audio or video communication** does not have com-
18 plete authority, the beneficiary also requires the participation, by remote
19 **audio or video** communication, of a person who does have complete au-
20 thority to negotiate on the beneficiary’s behalf and commit the beneficiary
21 to a foreclosure avoidance measure.

22 “(B) A grantor may have an attorney or a housing counselor, or both,
23 present to represent the grantor at the resolution conference, but the
24 grantor, or any individual that a court appoints to act on the grantor’s be-
25 half, must attend the resolution conference in person **or by remote audio**
26 **or video communication** [*unless there are compelling circumstances that*
27 *prevent attendance in person*].

28 “(2) If the beneficiary agrees to a foreclosure avoidance measure with the
29 grantor, the beneficiary and the grantor shall sign a written document that
30 sets forth the terms of the foreclosure avoidance measure.

1 “(3) A facilitator may suspend or postpone a resolution conference after
2 the resolution conference has begun:

3 “(a) One time only on the facilitator’s initiative or in response to a re-
4 quest for a suspension or postponement from the beneficiary or the grantor;

5 “(b) After a suspension or postponement under paragraph (a) of this sub-
6 section only if the beneficiary and the grantor agree to the additional sus-
7 pension or postponement; or

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

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

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

13 “(b) Lists the name, title, address, telephone number and other available
14 contact information for each person that participated in the resolution con-
15 ference, noting whether the person attended the resolution conference in
16 person or participated by remote **audio or video** communication;

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

20 “(d) Summarizes the terms of the foreclosure avoidance measure to which
21 the beneficiary and the grantor agreed or notes that the beneficiary and the
22 grantor did not agree to a foreclosure avoidance measure; and

23 “(e) Provides any other information the Attorney General requires by
24 rule.

25 **“SECTION 9.** ORS 86.729 is amended to read:

26 “86.729. (1)(a) Within 10 days after a service provider receives a request
27 for a resolution conference under ORS 86.726, the service provider shall
28 schedule the resolution conference and mail a notice to the beneficiary and
29 to the grantor at all addresses on file with the service provider for the ben-
30 eficiary and grantor, including post office boxes. The service provider shall

1 schedule the resolution conference to occur within 75 days after the date on
2 which the service provider sends the notice.

3 “(b) A notice under this subsection must:

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

7 “(B) State that the beneficiary and the grantor each must pay the
8 facilitator’s fees for the resolution conference;

9 “(C) List and describe the documents that the beneficiary and the grantor
10 must submit to the service provider;

11 “(D) State that the grantor must consult a housing counselor before at-
12 tending the resolution conference unless the grantor notifies the service
13 provider that the grantor could not obtain an appointment with a housing
14 counselor before the date of the resolution conference;

15 “(E) State that the grantor may have an attorney or housing counselor
16 present to represent the grantor at the resolution conference, and that the
17 attorney or housing counselor must attend the resolution conference in per-
18 son **or by remote audio or video communication** [*unless there are com-*
19 *PELLING circumstances that prevent attendance in person*]; and

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

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

23 “(a) The grantor shall pay a fee to the service provider in an amount and
24 in a manner that the Attorney General specifies by rule. The grantor’s fee
25 may not exceed \$200. Within five days after receiving the fee from the
26 grantor, the service provider shall send a written notice to the grantor and
27 the beneficiary that specifies the date, time and location of, **and, if neces-**
28 **sary, a method of remote audio or video communication for,** the resol-
29 ution conference.

30 “(b) The service provider shall pay to the Attorney General, for deposit

1 into the Foreclosure Avoidance Fund established under ORS 86.744, moneys
2 the service provider receives from the grantor under paragraph (a) of this
3 subsection.

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

5 “(A) Information about the grantor’s income, expenses, debts and other
6 obligations;

7 “(B) A description of the grantor’s financial hardship, if any;

8 “(C) Documents that verify the grantor’s income; and

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

10 “(3) The grantor shall consult a housing counselor before attending the
11 resolution conference unless the grantor cannot obtain an appointment with
12 a housing counselor before the date of the resolution conference.

13 “(4) Within 25 days after the service provider makes the information the
14 grantor submitted under subsection (2) of this section available to the bene-
15 ficiary, the beneficiary shall:

16 “(a) Pay a fee to the service provider in an amount that is not more than
17 \$600 and in a manner that the Attorney General specifies by rule. The ser-
18 vice provider shall pay to the Attorney General, for deposit into the Fore-
19 closure Avoidance Fund established under ORS 86.744, moneys the service
20 provider receives from the beneficiary under this paragraph.

21 “(b) Submit to the service provider:

22 “(A) Copies of:

23 “(i) The residential trust deed; and

24 “(ii) The promissory note that is evidence of the obligation that the resi-
25 dential trust deed secures and that the beneficiary or beneficiary’s agent
26 certifies is a true copy;

27 “(B) The name and address of the person that owns the obligation that
28 is secured by the residential trust deed;

29 “(C) A record of the grantor’s payment history for the longer of the pre-
30 ceding 12 months or since the beneficiary last deemed the grantor current

1 on the obligation;

2 “(D) An itemized statement that shows:

3 “(i) The amount the grantor owes on the obligation, itemized to reflect

4 the principal, interest, fees, charges and any other amounts included within

5 the obligation; and

6 “(ii) The amount the grantor must pay to cure the grantor’s default;

7 “(E) A document that identifies:

8 “(i) The input values for each net present value model that the beneficiary

9 or the beneficiary’s agent uses; and

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

11 “(F) The appraisal or price opinion the beneficiary relied on most recently

12 to determine the value of the property that is the subject of the residential

13 trust deed;

14 “(G) The portion of any pooling agreement, servicing agreement or other

15 agreement that the beneficiary cites as a limitation or prohibition on modi-

16 fying the terms of the obligation, together with a statement that describes

17 the extent to which the beneficiary sought to have the limitation or prohi-

18 bition waived;

19 “(H) A description of any additional documents the beneficiary requires

20 to evaluate the grantor’s 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

23 conference that the service provider scheduled under subsection (1) of this

24 section if:

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

26 “(B) The beneficiary or the grantor requests a new date in writing that

27 is not more than 30 days after the original date scheduled for the resolution

28 conference and can show good cause for the request; or

29 “(C) The beneficiary does not pay the fee required under subsection (4)(a)

30 of this section by the date the fee is due. The service provider may wait until

1 the beneficiary has paid the fee before rescheduling the resolution confer-
2 ence.

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

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

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

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

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

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

24 **“SECTION 10.** ORS 86.736 is amended to read:

25 “86.736. (1)(a) The service provider shall issue, within five days after re-
26 ceiving a report from a facilitator under ORS 86.732 (4), a certificate of
27 compliance to a beneficiary that:

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

29 “(B) Submitted the materials required under ORS 86.729 (4) to the service
30 provider;

1 “(C) Appeared in person **or by remote audio or video communication**
2 at, or sent an agent in person **or by remote audio or video communi-**
3 **cation** to, the resolution conference with complete authority to negotiate on
4 the beneficiary’s behalf and commit the beneficiary to a foreclosure avoid-
5 ance measure or, if the beneficiary or agent did not have complete authority,
6 required the participation by remote **audio or video** communication of a
7 person with complete authority to negotiate on the beneficiary’s behalf and
8 commit the beneficiary to a foreclosure avoidance measure; and

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

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

14 “(c) The service provider shall notify a beneficiary that failed to meet a
15 requirement to which the beneficiary was subject under ORS 86.726, 86.729
16 or 86.732 that the service provider will not issue a certificate of compliance,
17 explaining in the notice why the service provider will not issue the certif-
18 icate of compliance. The service provider shall provide a copy of the notice
19 under this paragraph to the grantor and to the Attorney General.

20 “(2) Notwithstanding the requirements set forth in subsection (1) of this
21 section, if a service provider cancels a resolution conference under ORS
22 86.729 (5)(b), the service provider shall issue a certificate of compliance to
23 the beneficiary within five days after canceling the resolution conference.

24 “**SECTION 11. Section 1 of this 2021 Act applies to actions that a**
25 **lender takes with respect to a borrower’s failure on or after December**
26 **31, 2020, to make a required periodic installment payment or other**
27 **payment on an obligation and to a lender’s or trustee’s action on or**
28 **after December 31, 2020, to foreclose a mortgage or trust deed by ad-**
29 **vertisement and sale or by suit or to enforce a forfeiture remedy with**
30 **respect to a land sale contract.**

1 **“SECTION 12. Section 1 of this 2021 Act is repealed 90 days after the**
2 **expiration of the emergency period as defined in section 1 of this 2021**
3 **Act.**

4 **“SECTION 13. This 2021 Act being necessary for the immediate**
5 **preservation of the public peace, health and safety, an emergency is**
6 **declared to exist, and this 2021 Act takes effect on its passage.”.**

7
