

Senate Bill 491

Sponsored by Senator BONAMICI; Senator DINGFELDER (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies requirements for notice of foreclosure and termination of tenancy for residential dwellings in foreclosure.

A BILL FOR AN ACT

Relating to residential rental dwellings in foreclosure; amending ORS 86.745, 86.755 and 90.300.

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

SECTION 1. ORS 86.745, as amended by sections 1 and 2, chapter 28, Oregon Laws 2010, is amended to read:

86.745. The notice of sale shall:

(1) List the names of the grantor, trustee and beneficiary in the trust deed, and the mailing address of the trustee.

(2) Describe the property the trust deed covers.

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

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

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

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

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

(8) State that the right exists under ORS 86.753 to have the proceeding dismissed and the trust deed reinstated by paying the entire amount then due, together with costs, trustee's fees and attorney fees, and by curing any other default complained of in the notice of default, at any time that is not later than five days before the date last set for the sale.

(9) If the property includes one or more dwelling units[, *as defined in ORS 90.100*] **that are subject to ORS chapter 90**, include a notice addressed clearly to any [*person*] **individual** who occupies the property and who is or might be a residential tenant. The notice required under this subsection must:

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

(b) Include information concerning the right the [*person*] **individual** has to notice under ORS 86.755 [(5)(c)] **(6)(c)** and state that the [*person*] **individual** may have additional rights under federal law;

(c) Be set apart from other text in the notice of sale; and

(d) Be in substantially the following form:

[_____]

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.

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NOTICE TO RESIDENTIAL TENANTS

The property in which you are living is in foreclosure. A foreclosure sale is scheduled for _____ Unless the lender who is foreclosing on this property is paid, the foreclosure will go through and someone new will own this property.

The following information applies to you only if you occupy and rent this property as a residential dwelling under a legitimate rental agreement. The information does not apply to you if you own this property or if you are not a residential tenant.

If the foreclosure goes through, the business or individual who buys this property at the foreclosure sale has the right to require you to move out. The buyer must first give you an eviction notice in writing that specifies the date by which you must move out. The buyer may not give you this notice until after the foreclosure sale happens. If you do not leave before the move-out date, the buyer can have the sheriff remove you from the property after a court hearing. You will receive notice of the court hearing.

**FEDERAL LAW REQUIRES
YOU TO BE NOTIFIED**

IF YOU ARE OCCUPYING AND RENTING THIS PROPERTY AS A RESIDENTIAL DWELLING UNDER A LEGITIMATE RENTAL AGREEMENT, FEDERAL LAW REQUIRES THE BUYER TO GIVE YOU NOTICE IN WRITING A CERTAIN NUMBER OF DAYS BEFORE THE BUYER CAN REQUIRE YOU TO MOVE OUT. THE FEDERAL LAW THAT REQUIRES THE BUYER TO GIVE YOU THIS NOTICE IS EFFECTIVE UNTIL DECEMBER 31, 2012. Under federal law, the buyer must give you at least 90 days’ notice in writing before requiring you to move out. If you are renting this property under a fixed-term lease (for example, a six-month or one-year lease), you may stay until the end of your lease term. If the buyer wants to move in and use this property as the buyer’s primary residence, the buyer can give you written notice and require you to move out after 90 days, even if you have a fixed-term lease with more than 90 days left.

STATE LAW NOTIFICATION REQUIREMENTS

IF THE FEDERAL LAW DOES NOT APPLY, STATE LAW STILL REQUIRES THE BUYER TO GIVE YOU NOTICE IN WRITING BEFORE REQUIRING YOU TO MOVE OUT IF YOU ARE OCCUPYING AND RENTING THE PROPERTY AS A TENANT IN GOOD FAITH. EVEN IF THE FEDERAL LAW REQUIREMENT IS NO LONGER EFFECTIVE AFTER DECEMBER 31, 2012, THE REQUIREMENT UNDER STATE LAW STILL APPLIES TO YOUR SITUATION. Under state law, if you have a fixed-term lease (for example, a six-month or one-year lease), the buyer must give you at least 60 days’ notice in writing before requiring you to move out. If the buyer wants to move in and use this property as the buyer’s primary residence, the buyer can give you written notice and require you to move out after 30 days, even if you have a fixed-term lease with more than 30 days left.

If you are renting under a month-to-month or week-to-week rental agreement, the buyer must give you at least 30 days’ notice in writing before requiring you to move out.

IMPORTANT: For the buyer to be required to give you notice under state law, you must prove to the business or individual who is handling the foreclosure sale that you are occupying and renting this property as a residential dwelling under a legitimate rental agreement. The name and address of the business or individual who is handling the foreclosure sale is shown on this notice under the heading “TRUSTEE.” You must mail or deliver your proof not later than _____ (30 days before the date first set for the foreclosure sale). Your proof must be in writing and should be a copy of your rental agreement or lease. If you do not have a written rental agreement or lease, you can

1 provide other proof, such as receipts for rent you paid.

2 ABOUT YOUR SECURITY DEPOSIT

3 Under state law, you may apply your security deposit and any rent you paid in advance against
4 the current rent you owe your landlord. To do this, you must notify your landlord in writing that you
5 want to subtract the amount of your security deposit or prepaid rent from your rent payment. You may
6 do this only for the rent you owe your current landlord. If you do this, you must do so before the
7 foreclosure sale. The business or individual who buys this property at the foreclosure sale is not re-
8 sponsible to you for any deposit or prepaid rent you paid to your landlord.

9 ABOUT YOUR TENANCY

10 AFTER THE FORECLOSURE SALE

11 The business or individual who buys this property at the foreclosure sale may be willing to allow
12 you to stay as a tenant instead of requiring you to move out. You should contact the buyer to discuss
13 that possibility if you would like to stay. Under state law, if the buyer accepts rent from you, signs a
14 new residential rental agreement with you or does not notify you in writing within 30 days after the
15 date of the foreclosure sale that you must move out, the buyer becomes your new landlord and must
16 maintain the property. Otherwise, the buyer is not your landlord and is not responsible for maintaining
17 the property on your behalf and you must move out by the date the buyer specifies in a notice to you.

18 YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY
19 IS SOLD TO ANOTHER BUSINESS OR INDIVIDUAL OR UNTIL A COURT OR A LENDER
20 TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED. AS EX-
21 PLAINED ABOVE, YOU MAY BE ABLE TO APPLY A DEPOSIT YOU MADE OR PREPAID
22 RENT YOU PAID AGAINST YOUR CURRENT RENT OBLIGATION. BE SURE TO KEEP
23 PROOF OF ANY PAYMENTS YOU MAKE AND OF ANY NOTICE YOU GIVE OR RECEIVE
24 CONCERNING THE APPLICATION OF YOUR DEPOSIT OR YOUR PREPAID RENT.

25 IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR HOME
26 WITHOUT FIRST GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT
27 YOUR RIGHTS, YOU MAY WISH TO CONSULT A LAWYER. If you believe you need legal as-
28 sistance, contact the Oregon State Bar and ask for the lawyer referral service. Contact information for
29 the Oregon State Bar is included with this notice. If you do not have enough money to pay a lawyer
30 and are otherwise eligible, you may be able to receive legal assistance for free. Information about whom
31 to contact for free legal assistance is included with this notice.

32 [_____]

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36 NOTICE TO RESIDENTIAL TENANTS

37 The property in which you are living is in foreclosure. A foreclosure sale is scheduled for
38 _____. Unless the lender who is foreclosing on this property is paid before the sale
39 date, the foreclosure will go through and someone new will own this property.

40 The following information applies to you only if you occupy and rent this property as a
41 residential dwelling under a legitimate rental agreement. The information does not apply to
42 you if you own this property or if you are not a residential tenant.

43 If the foreclosure sale goes through, the new owner will have the right to require you
44 to move out. Before the new owner can require you to move, the new owner must give you
45 a written notice that specifies the date by which you must move out. If you do not leave

1 before the move-out date, the new owner can have the sheriff remove you from the property
2 after a court hearing. You will be given notice of the court hearing.

3 **PROTECTION FROM EVICTION**

4 **IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING THIS PROPERTY**
5 **AS A RESIDENTIAL DWELLING UNDER A LEGITIMATE RENTAL AGREEMENT, YOU**
6 **HAVE THE RIGHT TO CONTINUE LIVING IN THE PROPERTY AFTER THE FORECLO-**
7 **SURE SALE FOR:**

8 **1) THE REMAINDER OF YOUR FIXED-TERM LEASE (for example, a six-month or**
9 **one-year lease); OR**

10 **2) AT LEAST 90 DAYS FROM THE DATE THE NEW OWNER GIVES YOU NOTICE TO**
11 **MOVE, WHICHEVER IS LONGER.**

12 **If the new owner wants to move in and use this property as a primary residence, the new**
13 **owner can give you written notice and require you to move out after 90 days, even if you**
14 **have a fixed-term lease with more than 90 days left. In either case, the new owner must give**
15 **you at least 90 days' written notice AFTER the foreclosure sale before you can be required**
16 **to move.**

17 **A bona fide tenant is a residential tenant who is not the mortgagor or the child, spouse**
18 **or parent of the mortgagor of the home, whose rental agreement:**

- 19 • **Was the result of an arm's-length transaction;**
- 20 • **Requires the payment of rent that is not substantially less than fair market rent for**
21 **the property, unless the rent is reduced or subsidized due to a federal, state or local subsidy;**
22 **and**
- 23 • **Was entered prior to the date of the foreclosure sale.**

24 **IMPORTANT: Please contact the trustee at the address provided in this notice of sale**
25 **as soon as possible to let the trustee know that you are a bona fide tenant. If possible, pro-**
26 **vide some sort of written evidence of your rental agreement (a copy of your lease or rental**
27 **agreement, or other proof such as receipts for rent you paid). If you do not provide this ev-**
28 **idence to the trustee, you will not lose any legal rights, but the new owner may not know**
29 **if you are entitled to protection and may take eviction action against you.**

30 **ABOUT YOUR TENANCY**

31 **BETWEEN NOW AND THE FORECLOSURE SALE:**

32 **RENT**

33 **YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROP-**
34 **ERTY IS SOLD TO ANOTHER BUSINESS OR INDIVIDUAL OR UNTIL A COURT TELLS**
35 **YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED. BE SURE TO**
36 **KEEP PROOF OF ANY PAYMENTS YOU MAKE.**

37 **ABOUT YOUR SECURITY DEPOSIT**

38 **You may apply your security deposit and any rent you paid in advance against the cur-**
39 **rent rent you owe your landlord. To do this, you must notify your landlord in writing that**
40 **you want to subtract the amount of your security deposit or prepaid rent from your rent**
41 **payment. You may do this only for the rent you owe your current landlord. If you do this,**
42 **you must do so before the foreclosure sale. The business or individual who buys this property**
43 **at the foreclosure sale is not responsible to you for any deposit or prepaid rent you paid to**
44 **your landlord.**

45 **ABOUT YOUR TENANCY**

AFTER THE FORECLOSURE SALE

The business or individual who buys this property at the foreclosure sale may be willing to allow you to stay as a tenant instead of requiring you to move out within 90 days from the date the new owner gives you written notice to move or at the end of your fixed-term lease. You should contact the new owner to discuss that possibility if you would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement with you or does not notify you in writing within 30 days after the date of the foreclosure sale that you must move out, the new owner becomes your new landlord and must maintain the property. Otherwise, the new owner is not your landlord and is not responsible for maintaining the property and you must move out by the date the new owner specifies in a notice to you.

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

SECTION 2. ORS 86.755 is amended to read:

86.755. (1) The trustee shall hold the trustee's sale on the date and at the time and place designated in the notice of sale[, *which must be at a designated time after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110 and at a designated place in the county or one of the counties where the property is situated*]. **The designated time of the trustee's sale must be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the designated place of the trustee's sale must be in the county or one of the counties in which the property is situated.** The trustee may sell the property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the trustee's sale. The attorney for the trustee, or an agent that the trustee or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

(2) The trustee or the attorney for the trustee, or an agent that the trustee or the attorney conducting the sale designates, may postpone the sale for one or more periods totaling not more than 180 days from the original sale date, giving notice of each adjournment by public proclamation made at the time and place set for sale. The trustee, the attorney or an agent that the trustee or the attorney designates may make the proclamation.

(3) The purchaser shall pay at the time of sale the price bid, and, within 10 days following payment, the trustee shall execute and deliver the trustee's deed to the purchaser.

(4) The trustee's deed shall convey to the purchaser the interest in the property that the grantor had, or had the power to convey, at the time the grantor executed the trust deed, together with any interest the grantor or the grantor's successors in interest acquire after the execution of the trust deed.

(5) If property purchased at the trustee's sale includes one or more dwelling units that

1 are subject to ORS chapter 90, the purchaser must provide written notice of change in
 2 ownership addressed clearly to any individual who occupies the property and who is or might
 3 be a residential tenant. Notice must be provided as set out in ORS 86.750 within 30 days of
 4 the date of sale. The notice required by this subsection must:

- 5 (a) Include the date the foreclosure sale took place;
- 6 (b) Include the name, contact address and contact telephone number of the new owner
 7 or a representative of the new owner;
- 8 (c) Provide information about the rights of a bona fide tenant after foreclosure; and
- 9 (d) Be in substantially the following form:

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12 **NOTICE TO RESIDENTIAL TENANTS OF CHANGE IN OWNERSHIP**

13 The property in which you are living has gone through foreclosure and, as of
 14 _____(date), has a new owner. The contact information for the owner or the owner's offi-
 15 cial representative is _____(name, address, phone number).

16 **IF YOU ARE A BONA FIDE TENANT, YOU HAVE THE RIGHT TO CONTINUE LIVING**
 17 **IN THIS PROPERTY AFTER THE FORECLOSURE SALE FOR THE LONGER OF:**

- 18 • The remainder of your fixed-term lease, if you have a fixed-term lease; or
- 19 • At least 90 days from the date the new owner gives you written notice to move.

20 If the new owner of the property wants to move in and use this property as a primary
 21 residence, the new owner can give you written notice and require you to move out after 90
 22 days, even if you have a fixed-term lease with more than 90 days left.

23 A bona fide tenant is a residential tenant who is not the mortgagor or the child, spouse
 24 or parent of the mortgagor of the home, whose rental agreement:

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

30 **IMPORTANT:** Please contact the new owner or the owner's representative at the address
 31 listed above as soon as possible to let the new owner know if you are a bona fide tenant. If
 32 possible, provide some sort of written evidence of your rental agreement (a copy of your
 33 lease or rental agreement, or other proof such as receipts for rent you paid). If you do not
 34 provide this evidence to the new owner, you will not lose any legal rights, but the new owner
 35 may not know you are entitled to protection and may take eviction action against you.

36 **ABOUT YOUR TENANCY**

37 **BETWEEN NOW AND THE MOVE OUT DATE:**

38 The new owner may be willing to allow you to stay as a tenant instead of requiring you
 39 to move out after 90 days or at the end of your fixed-term lease. Contact the new owner to
 40 discuss that possibility if you would like to stay. If the new owner accepts rent from you,
 41 enters a new residential rental agreement with you or does not notify you in writing within
 42 30 days after the date of the foreclosure sale that you must move out, the new owner be-
 43 comes your new landlord and must maintain the property. Otherwise, the new owner is not
 44 your landlord and is not responsible for maintaining the property and you must move out
 45 by the date the new owner specifies in a notice to you.

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

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 11 [(5)(a)] **(6)(a)** The purchaser at the trustee's sale is entitled to possession of the property on the
 12 10th day after the sale. A person that remains in possession after the 10th day under any interest,
 13 except an interest **created** prior to the trust deed or an interest the grantor or a successor of the
 14 grantor created voluntarily is a tenant at sufferance. The purchaser may obtain possession of the
 15 property from a tenant at sufferance by following the procedures set forth in ORS 105.105 to 105.168
 16 [*or other applicable judicial procedure*].

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

23 (c) If the property purchased at the trustee's sale [*is*] **includes** a dwelling unit[, *as defined in*
 24 *ORS 90.100 (9), that the person holds under a tenancy that the grantor or a successor of the grantor*
 25 *created voluntarily and in good faith*] **that is subject to ORS chapter 90 and an individual holds**
 26 **the unit under a bona fide tenancy**, the purchaser may [*follow*] **obtain possession by following**
 27 the procedures set forth in ORS 105.105 to 105.168: [*or other applicable judicial procedure to obtain*
 28 *possession if after the sale the purchaser terminates the tenancy in a written notice given to the*
 29 *person.*]

30 (A) *At least 60 days before the termination date specified in the notice, if the tenancy is a fixed*
 31 *term tenancy, as defined in ORS 90.100, and at least 30 days before the date first set for the trustee's*
 32 *sale the person provided the trustee with a copy of the rental agreement that established the fixed term*
 33 *tenancy. The provisions of this subparagraph do not apply to a purchaser that does not intend to ter-*
 34 *minate a fixed term tenancy before the date on which the fixed term tenancy ends.*]

35 (B) *At least 30 days before the termination date specified in the notice, if:*

36 (i) *The tenancy is a month-to-month tenancy or week-to-week tenancy, as those terms are defined*
 37 *in ORS 90.100, and at least 30 days before the date first set for the trustee's sale the person provided*
 38 *the trustee with a copy of the rental agreement that established the tenancy or with other written evi-*
 39 *dence of the existence of a rental agreement, if the person cannot provide the rental agreement; or]*

40 (ii) *The tenancy is a fixed term tenancy for which the person has provided notice to the trustee*
 41 *as provided in subparagraph (A) of this paragraph and the purchaser intends to occupy the property*
 42 *that is subject to the fixed term tenancy as the purchaser's primary residence.]*

43 **(A) Upon expiration of the fixed term of the tenancy, if the bona fide tenancy is a fixed**
 44 **term tenancy as defined in ORS 90.100; or**

45 **(B) At least 90 days after service of a written termination notice if the bona fide tenancy**

1 is:

2 (i) **A fixed term tenancy and the purchaser intends to occupy the dwelling unit that is**
 3 **subject to the fixed term tenancy as the purchaser's primary residence; or**

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

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

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

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

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

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

18 (e) **A purchaser seeking to obtain possession pursuant to ORS 105.105 to 105.168 must**
 19 **attach proof of service of a written termination notice required by paragraph (c) of this**
 20 **subsection to the pleadings.**

21 (f) **In an action to obtain possession, a violation of the procedures required by paragraph**
 22 **(c) of this subsection is a defense for a bona fide tenant seeking to retain possession.**

23 [(e)] (g) For the purposes of this subsection[:]

24 [(A)] *A month-to-month tenancy or a week-to-week tenancy that a grantor or a successor of the*
 25 *grantor first created after a notice of sale was served under ORS 86.750 is presumed not to be a*
 26 *tenancy created in good faith.]*

27 [(B)] *A fixed term tenancy that a grantor or a successor of the grantor created after a notice of sale*
 28 *was served under ORS 86.750 is not a tenancy created in good faith.], **"bona fide tenancy" means***
 29 **a tenancy of a dwelling unit subject to ORS chapter 90 that results from an arm's-length**
 30 **transaction in which:**

31 (A) **The mortgagor or the child, spouse or parent of the mortgagor under the contract**
 32 **is not the tenant; and**

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

35 [(6)] (7) A purchaser shall serve a notice under subsection [(5)] (6) of this section by first class
 36 mail and not by certified or registered mail or a form of mail that may delay or hinder actual de-
 37 livery of mail to the addressee. The notice is effective three days after the notice is mailed.

38 [(7)(a)] (8)(a) Notwithstanding the provisions of subsection [(5)(c)] (6)(c) of this section and ex-
 39 cept as provided in paragraph (b) of this subsection, the purchaser is not a landlord subject to the
 40 provisions of ORS chapter 90 unless the purchaser:

41 (A) Accepts rent from the [person] **individual** who possesses the property under a tenancy de-
 42 scribed in subsection [(5)(c)] (6)(c) of this section;

43 (B) Enters into a new rental agreement with the [person] **individual** who possesses the property
 44 under a tenancy described in subsection [(5)(c)] (6)(c) of this section; or

45 (C) Fails to terminate the tenancy as provided in subsection [(5)(c)] (6)(c) of this section within

1 30 days after the date of the sale.

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

4 [(8)(a)] **(9)(a)** Except as provided in paragraph (b) of this subsection, the purchaser is not liable
5 to the [person] **individual** who possesses the property under a tenancy described in subsection
6 [(5)(c)] **(6)(c)** of this section for:

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

8 (B) Returning a security deposit.

9 (b) A purchaser that is a landlord under the provisions of subsection [(7)(a)] **(8)(a)** of this section
10 is liable to the [person] **individual** who possesses the property under a tenancy described in sub-
11 section [(5)(c)] **(6)(c)** of this section for:

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

14 (B) Returning a security deposit the [person] **individual** pays after the date of the trustee's sale.

15 **(10) A purchaser or foreclosing entity that violates ORS 86.745 (9) or subsection (5) or**
16 **(6)(c) of this section is liable to a bona fide tenant in the amount of \$2,000 per violation or**
17 **in the amount of actual damages, whichever is greater.**

18 **(11) The provisions of ORS 90.255 apply to all proceedings initiated under subsections**
19 **(6)(c) and (10) of this section.**

20 [(9)(a)] **(12)(a)** Notwithstanding subsection (2) of this section, except when a beneficiary has
21 participated in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by
22 proceedings in bankruptcy or for any other lawful reason shall, after release from the stay, continue
23 as if uninterrupted, if within 30 days after release the trustee sends amended notice of sale by reg-
24 istered or certified mail to the last-known address of the persons listed in ORS 86.740 and 86.750 (1).

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

27 (A) By registered or certified mail to:

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

30 (ii) The address provided by each member of the Oregon State Bar who by registered or certified
31 mail requests the amended notice of sale and includes with the request the notice of default or an
32 identification number for the trustee's sale that would assist the trustee in identifying the property
33 subject to the trustee's sale and a self-addressed, stamped envelope measuring at least 8.5 by 11
34 inches in size; or

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

37 [(10)] **(13)** The amended notice of sale must:

38 (a) Be given at least 20 days prior to the amended date of sale;

39 (b) Set an amended date of sale that may be the same as the original sale date, or date to which
40 the sale was postponed, provided the requirements of this subsection and ORS 86.740 and 86.750 are
41 satisfied;

42 (c) Specify the time and place for sale;

43 (d) Conform to the requirements of ORS 86.745; and

44 (e) State that the original sale proceedings were stayed and the date the stay terminated.

45 [(11)] **(14)** If the publication of the notice of sale was not completed before the date the fore-

1 closure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any
 2 other lawful reason, after release from the stay, in addition to complying with the provisions of
 3 subsections [(9) and (10)] **(12) and (13)** of this section, the trustee shall complete the publication by
 4 publishing an amended notice of sale that states that the notice has been amended following release
 5 from the stay and that contains the amended date of sale. The amended notice must be published in
 6 a newspaper of general circulation in each of the counties in which the property is situated once
 7 a week for four successive weeks, except that the required number of publications must be reduced
 8 by the number of publications that were completed before the effective date of the stay. The last
 9 publication must be made more than 20 days before the date the trustee conducts the sale.

10 **SECTION 3.** ORS 90.300, as amended by section 5, chapter 28, Oregon Laws 2010, is amended
 11 to read:

12 90.300. (1) As used in this section, "security deposit" includes any last month's rent deposit.

13 (2)(a) Except as otherwise provided in this section, a landlord may require a tenant to pay a
 14 security deposit. The landlord shall provide the tenant with a receipt for any security deposit the
 15 tenant pays. The landlord shall hold a security deposit or prepaid rent for the tenant who is a party
 16 to the rental agreement. A tenant's claim to the security deposit or prepaid rent is prior to the claim
 17 of a creditor of the landlord, including a trustee in bankruptcy.

18 (b) Except as provided in ORS 86.755 [(8)] **(9)**, the holder of the landlord's interest in the prem-
 19 ises at the time the tenancy terminates is responsible to the tenant for any security deposit or
 20 prepaid rent and is bound by this section.

21 (3) A landlord may not charge a tenant a pet security deposit for keeping a service animal or
 22 companion animal that a tenant with a disability requires as a reasonable accommodation under fair
 23 housing laws.

24 (4)(a) Except as otherwise provided in this subsection, a landlord may not change the rental
 25 agreement to require the tenant to pay a new or increased security deposit during the first year
 26 after the tenancy has begun. Subject to subsection (3) of this section, the landlord may require an
 27 additional deposit if the landlord and tenant agree to modify the terms and conditions of the rental
 28 agreement to permit a pet or for other cause and the additional deposit relates to the modification.
 29 This paragraph does not prevent a landlord from collecting a security deposit that an initial rental
 30 agreement provided for but that remained unpaid at the time the tenancy began.

31 (b) If a landlord requires a new or increased security deposit after the first year of the tenancy,
 32 the landlord shall allow the tenant at least three months to pay the new or increased deposit.

33 (5) The landlord may claim all or part of the security deposit only if the landlord required the
 34 security deposit for any or all of the purposes specified in subsection (6) of this section.

35 (6)(a) The landlord may claim from the security deposit only the amount reasonably necessary:

36 (A) To remedy the tenant's defaults in the performance of the rental agreement including, but
 37 not limited to, unpaid rent; and

38 (B) To repair damages to the premises caused by the tenant, not including ordinary wear and
 39 tear.

40 (b) A landlord is not required to repair damage caused by the tenant in order for the landlord
 41 to claim against the deposit for the cost to make the repair. Any labor costs the landlord assesses
 42 under this subsection for cleaning or repairs must be based on a reasonable hourly rate. The land-
 43 lord may charge a reasonable hourly rate for the landlord's own performance of cleaning or repair
 44 work.

45 (c) Defaults and damages for which a landlord may recover under this subsection include, but

1 are not limited to:

2 (A) Carpet cleaning, other than the use of a common vacuum cleaner, if:

3 (i) The cleaning is performed by use of a machine specifically designed for cleaning or
4 shampooing carpets;

5 (ii) The carpet was cleaned immediately before the tenant took possession; and

6 (iii) The written rental agreement provides that the landlord may deduct the cost of carpet
7 cleaning regardless of whether the tenant cleans the carpet before the tenant delivers possession
8 as described in ORS 90.147.

9 (B) Loss of use of the dwelling unit during the performance of necessary cleaning or repairs, if
10 the cleaning or repairs are performed in a timely manner.

11 (7) A landlord may not require a tenant to pay or to forfeit a security deposit or prepaid rent
12 to the landlord for the tenant's failure to maintain a tenancy for a minimum number of months in
13 a month-to-month tenancy.

14 (8) The landlord must apply any last month's rent deposit to the rent due for the last month of
15 the tenancy:

16 (a) When either the landlord or the tenant gives to the other a notice of termination, pursuant
17 to this chapter, other than a notice of termination under ORS 90.394;

18 (b) When the landlord and tenant agree to terminate the tenancy; or

19 (c) When the tenancy terminates in accordance with the provisions of a written rental agree-
20 ment for a term tenancy.

21 (9) A landlord shall account for and refund as provided in subsections (11) to (13) of this section
22 any portion of a last month's rent deposit the landlord does not apply as provided under subsection
23 (8) of this section. Unless the tenant and landlord agree otherwise, the tenant may not require the
24 landlord to apply a last month's rent deposit to rent due for any period other than the last month
25 of the tenancy. A last month's rent deposit does not limit the amount of rent charged unless a
26 written rental agreement provides otherwise.

27 (10) When the tenancy terminates, a landlord shall account for and refund to the tenant, in the
28 same manner this section requires for security deposits, the unused balance of any prepaid rent the
29 landlord has not previously refunded to the tenant under ORS 90.380 and 105.120 (5)(b) or any other
30 provision of this chapter. The landlord may claim from the remaining prepaid rent only the amount
31 reasonably necessary to pay the tenant's unpaid rent.

32 (11) In order to claim all or part of any prepaid rent or security deposit, within 31 days after
33 the tenancy terminates and the tenant delivers possession the landlord shall give to the tenant a
34 written accounting that states specifically the basis or bases of the claim. The landlord shall give
35 a separate accounting for security deposits and for prepaid rent.

36 (12) The landlord shall return to the tenant the security deposit or prepaid rent or the portion
37 of the security deposit or prepaid rent that the landlord does not claim in the manner provided by
38 subsections (10) and (11) of this section not later than 31 days after the tenancy terminates and the
39 tenant delivers possession to the landlord.

40 (13) The landlord shall give the written accounting required under subsection (11) of this section
41 or shall return the security deposit or prepaid rent as required by subsection (12) of this section by
42 personal delivery or by first class mail.

43 (14) If a security deposit or prepaid rent secures a tenancy for a space for a manufactured
44 dwelling or floating home the tenant owns and occupies, whether or not in a facility, and the
45 dwelling or home is abandoned as described in ORS 90.425 (2) or 90.675 (2), the 31-day period de-

1 scribed in subsections (11) and (12) of this section commences on the earliest of:

2 (a) Waiver of the abandoned property process under ORS 90.425 (26) or 90.675 (22);

3 (b) Removal of the manufactured dwelling or floating home from the rented space;

4 (c) Destruction or other disposition of the manufactured dwelling or floating home under ORS
5 90.425 (10)(b) or 90.675 (10)(b); or

6 (d) Sale of the manufactured dwelling or floating home pursuant to ORS 90.425 (10)(a) or 90.675
7 (10)(a).

8 (15) If the landlord fails to comply with subsection (12) of this section or if the landlord in bad
9 faith fails to return all or any portion of any prepaid rent or security deposit due to the tenant
10 under this chapter or the rental agreement, the tenant may recover the money due in an amount
11 equal to twice the amount:

12 (a) Withheld without a written accounting under subsection (11) of this section; or

13 (b) Withheld in bad faith.

14 (16)(a) A security deposit or prepaid rent in the possession of the landlord is not garnishable
15 property, as provided in ORS 18.618.

16 (b) If a landlord delivers a security deposit or prepaid rent to a garnishor in violation of ORS
17 18.618 (1)(b), the landlord that delivered the security deposit or prepaid rent to the garnishor shall
18 allow the tenant at least 30 days after a copy of the garnishee response required by ORS 18.680 is
19 delivered to the tenant under ORS 18.690 to restore the security deposit or prepaid rent. If the
20 tenant fails to restore a security deposit or prepaid rent under the provisions of this paragraph be-
21 fore the tenancy terminates, and the landlord retains no security deposit or prepaid rent from the
22 tenant after the garnishment, the landlord is not required to refund or account for the security de-
23 posit or prepaid rent under subsection (10) of this section.

24 (17) This section does not preclude the landlord or tenant from recovering other damages under
25 this chapter.

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