

Enrolled
Senate Bill 1552

Sponsored by Senators BEYER, BATES, BOQUIST, Representatives GARRETT, HOLVEY, KOTEK, WHISNANT; Senators ATKINSON, COURTNEY, DEVLIN, DINGFELDER, EDWARDS, HASS, JOHNSON, MONNES ANDERSON, PROZANSKI, ROSENBAUM, SHIELDS, STEINER HAYWARD, TELFER, VERGER, Representatives BAILEY, BARKER, BARNHART, BEYER, BOONE, BUCKLEY, CLEM, COWAN, DEMBROW, DOHERTY, FREDERICK, GELSER, GREENLICK, HARKER, HUNT, KENY-GUYER, KOMP, MATTHEWS, NATHANSON, PARRISH, READ, ROBLAN, SHEEHAN, J SMITH, TOMEI, WAND, WITT (Presession filed.)

CHAPTER

AN ACT

Relating to foreclosures of residential trust deeds; creating new provisions; amending ORS 86.705, 86.735, 86.740, 86.742 and 86.755; appropriating money; and declaring an emergency.

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

SECTION 1. Sections 2, 2a, 3, 4 and 4a of this 2012 Act are added to and made a part of ORS 86.705 to 86.795.

SECTION 2. (1) As used in this section and sections 3 and 4a of this 2012 Act, “foreclosure avoidance measure” means an agreement between a beneficiary and a grantor that uses one or more of the following methods to modify an obligation that is secured by a trust deed:

- (a) The beneficiary defers or forbears from collecting one or more payments due on the obligation.
- (b) The beneficiary modifies, temporarily or permanently, the payment terms or other terms of the obligation.
- (c) The beneficiary accepts a deed in lieu of foreclosure from the grantor.
- (d) The grantor conducts a short sale.
- (e) The beneficiary provides the grantor with other assistance that enables the grantor to avoid a foreclosure.

(2)(a) Except as provided in paragraph (d) of this subsection, a beneficiary that seeks to foreclose a residential trust deed under ORS 86.735 shall enter into mediation with the grantor for the purpose of negotiating a foreclosure avoidance measure in accordance with the provisions of this section.

(b) The Attorney General shall:

(A) Appoint a mediation service provider to coordinate a mediation program and shall enter into an agreement to pay the mediation service provider for the mediation service provider’s services from the Foreclosure Avoidance Mediation Fund established in section 4 of this 2012 Act. The appointment and the agreement are not subject to ORS chapter 279A or 279B.

(B) Prescribe qualifications, training and experience requirements for mediators by rule.

(C) Set the schedule of fees for the mediation by rule.

(c) The beneficiary and the grantor shall share the cost of the mediation, except that the grantor's portion of the cost may not exceed \$200. The mediator may waive the grantor's portion of the fee in accordance with rules that the Attorney General adopts to describe circumstances that permit a waiver.

(d) The requirement to enter into mediation with a grantor does not apply:

(A) To an individual, a financial institution, as defined in ORS 706.008, a mortgage banker, as defined in ORS 86A.100, or a licensee, as defined in ORS 725.010, if the individual, financial institution, mortgage banker or licensee provides to the Attorney General a sworn affidavit that states that during the preceding calendar year the individual, financial institution, mortgage banker or licensee did not commence or cause an affiliate or agent of the individual, financial institution, mortgage banker or licensee to commence more than a total of 250 actions to foreclose a residential trust deed by advertisement and sale under ORS 86.735 or a residential mortgage by suit under ORS 88.010. An individual, financial institution, mortgage banker or licensee that intends to claim an exemption under this subparagraph shall file the affidavit either:

(i) Within 30 days after the operative date specified in section 11 of this 2012 Act to claim the exemption for calendar year 2012 and not later than January 31 in any subsequent calendar year in which the individual, financial institution, mortgage banker or licensee intends to claim the exemption; or

(ii) At the time the individual, financial institution, mortgage banker or licensee files a notice of default under ORS 86.735.

(B) If the grantor fails to confirm that the grantor will enter into mediation by the date specified under subsection (3)(c) of this section.

(3) Within 30 days after the date on which the beneficiary caused a notice of mediation to be served or mailed as provided in ORS 86.740, the mediation service provider shall send a notice to the grantor and the beneficiary that:

(a) Schedules a date, time and location for the mediation. The date must be not earlier than 45 days and not later than 90 days after the date on which the notice of mediation was served or mailed as provided in ORS 86.740.

(b) Identifies and provides contact information for the mediation service provider.

(c) Specifies a date at least 30 days before the scheduled date of the mediation by which the grantor must contact the mediation service provider to confirm that the grantor will enter into mediation. The notice must state that the mediation service provider will deem the grantor to have declined to enter into mediation if the grantor fails to confirm by the specified date.

(d) Lists the costs of the mediation and specifies the portion of the costs for which the grantor is responsible.

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

(4)(a) If the grantor confirms by the date specified under subsection (3)(c) of this section that the grantor will enter into mediation, the beneficiary or the beneficiary's agent shall appear at the time and the location identified in the mediation service provider's notice under subsection (3) of this section with the documentation described in paragraph (b) of this subsection.

(b) The beneficiary or the beneficiary's agent must appear in person at the location of the mediation unless the mediator permits the beneficiary or the beneficiary's agent to appear in another manner for good cause shown. The fact that a beneficiary or beneficiary's agent is located outside this state does not alone constitute good cause for the purposes of this paragraph. The beneficiary or the beneficiary's agent must appear at the mediation with:

(A) The grantor's complete payment history for the obligation that is secured by the residential trust deed that the beneficiary seeks to foreclose;

(B) Evidence that the beneficiary is the real party in interest with respect to the obligation, including but not limited to:

(i) A true copy of the original debt instrument that is the basis for the right the beneficiary claims to foreclose the trust deed; and

(ii) Documents that show the chain of title for the property that is subject to the residential trust deed from the date of the original loan for which the beneficiary seeks foreclosure to the date of the notices given under ORS 86.740, including conveyances, endorsements and assignments of the residential trust deed, the note and the security instrument, whether recorded or unrecorded;

(C) A copy of the authorization from the beneficiary to the beneficiary's agent, if the beneficiary's agent appears at the mediation;

(D) A copy of any of the following documents that apply to the note or obligation that is secured by the trust deed:

(i) A servicing agreement the beneficiary entered into with another person; or

(ii) An agreement by means of which the beneficiary pledged as collateral for a security the beneficiary issued or sold all or a portion of the ownership interest in the note or other obligation; and

(E) Other documentation the Attorney General specifies by rule.

(c) The beneficiary or the beneficiary's agent that enters into mediation with the grantor must have or be able to obtain, before the initial mediation session concludes, authority to accept or reject a proposal for a foreclosure avoidance measure and authority to enter with the grantor into an agreement for a foreclosure avoidance measure.

(5)(a) The beneficiary or the beneficiary's agent must enter into mediation in accordance with mediation guidelines the Attorney General establishes by rule.

(b) If the beneficiary or the beneficiary's agent agrees with the grantor on a foreclosure avoidance measure, the beneficiary or beneficiary's agent and the grantor shall set forth the terms of the foreclosure avoidance measure in a written agreement, a copy of which the beneficiary or beneficiary's agent shall provide to the Attorney General. The beneficiary may elect to pay the grantor's portion of the cost of the mediation or the grantor and the beneficiary may agree to include the cost of the mediation as part of and in accordance with any payment plan that is part of the foreclosure avoidance measure.

(c) If the beneficiary or the beneficiary's agent and the grantor do not agree on a foreclosure avoidance measure, the mediation service provider shall notify the Attorney General that the mediation did not result in an agreement.

(6)(a) At the conclusion of the mediation, if the beneficiary has complied with the requirements of subsections (4) and (5) of this section, the mediation service provider shall provide the beneficiary or the beneficiary's agent with a certificate of compliance in a form and with contents that the Attorney General specifies by rule. The certificate must state that the beneficiary has complied with the requirements of this section.

(b) If the grantor does not confirm by the date specified under subsection (3)(c) of this section that the grantor will enter into mediation, the mediation service provider shall provide the beneficiary or the beneficiary's agent with a certificate of compliance in a form and with contents that the Attorney General specifies by rule. The certificate must state that the grantor declined to enter into mediation with the beneficiary.

(c) The mediation service provider shall provide a copy of the certificate the mediation service provider issues under paragraph (a) or (b) of this subsection to the grantor and to the Attorney General.

(7)(a) A grantor that is at risk of default before the beneficiary or the trustee has filed a notice of default for recording under ORS 86.735 may notify the beneficiary or trustee in the trust deed or the beneficiary's or trustee's agent that the grantor wants to enter into mediation. Within 15 days after receiving the request, the beneficiary or trustee or the beneficiary's or trustee's agent shall respond to the grantor's request and shall notify the

Attorney General and the mediation service provider identified in subsection (2)(b) of this section. The response to the grantor must include contact information for the Attorney General and the mediation service provider.

(b) A grantor that requests mediation under paragraph (a) of this subsection may also notify the Attorney General and the mediation service provider of the request. The Attorney General shall post on the Department of Justice website contact information for the mediation service provider and an address or method by which the grantor may notify the Attorney General.

(c) Within 10 days after receiving notice of the request under paragraph (a) of this subsection, the mediation service provider shall send a notice to the grantor and the beneficiary that, except with respect to the date by which the mediation service provider must send the notice, is otherwise in accordance with the provisions of subsection (3) of this section.

(d) A beneficiary or beneficiary's agent that receives a request under paragraph (a) of this subsection is subject to the same duties as are described in subsections (2), (4) and (5) of this section.

SECTION 2a. (1)(a) Except as provided in subsection (3) of this section, a grantor that confirms under section 2 (3)(c) of this 2012 Act that the grantor will enter into mediation shall consult a housing counselor approved by the United States Department of Housing and Urban Development before the scheduled date of the mediation.

(b) If, after consulting with the housing counselor, the grantor decides not to enter into mediation, the grantor shall notify the mediation service provider that sent the notice under section 2 (3) of this 2012 Act that the grantor no longer intends to enter into mediation. The housing counselor shall inform the grantor of the requirement under this paragraph to notify the mediation service provider. The mediation service provider shall notify the beneficiary or the beneficiary's agent of the grantor's decision.

(2) The notice of mediation described in section 3 of this 2012 Act must include a statement that informs the grantor that the grantor must consult a housing counselor in accordance with subsection (1) of this section. The statement must also notify the grantor that the requirement to consult a housing counselor is subject to the provisions of subsection (3) of this section.

(3) The requirement under subsection (1) of this section to consult a housing counselor does not apply to a grantor that could not obtain an appointment to consult a housing counselor within 30 days after receiving the notice described in subsection (2) of this section. A grantor that intends to claim the exemption provided under this subsection shall obtain from the mediation service provider and sign an affidavit that attests that the grantor could not obtain an appointment to consult a housing counselor within the 30-day period. The Attorney General by rule shall prescribe the form and contents of the affidavit.

SECTION 3. The notice of mediation required under ORS 86.740 (1)(b) must be in a form and with the contents the Attorney General specifies by rule and must:

(1) List the name, address, telephone number and other contact information for the grantor or other person named in the residential trust deed.

(2) Specify the account number or other means by which the beneficiary or trustee or an agent of the beneficiary or trustee identifies the obligation that is secured by the residential trust deed.

(3) Provide the address, telephone number and other contact information for:

(a) The beneficiary or an agent of the beneficiary that the beneficiary authorizes to negotiate on the beneficiary's behalf;

(b) The Oregon State Bar's Lawyer Referral Service;

(c) Service agencies or other providers that offer free or low-cost legal services from a list of agencies or providers that the Attorney General adopts by rule; and

(d) A list of not-for-profit housing counselors approved by the United States Department of Housing and Urban Development or an agency of this state.

(4) State that section 2 of this 2012 Act requires the beneficiary to enter into mediation with the grantor for the purpose of negotiating a foreclosure avoidance measure.

(5) List the documents the grantor must bring to the mediation. The Attorney General by rule shall specify the documents the grantor must bring.

(6) State that the grantor may choose to have an attorney or a housing counselor approved by the United States Department of Housing and Urban Development represent the grantor at the mediation.

(7) State the costs of the mediation and specify the maximum cost for which the grantor will be responsible.

(8) State that the mediation and mediation communications, as defined in ORS 36.110, are confidential in accordance with and to the extent provided in ORS 36.220 to 36.238.

(9) State that within 30 days after the date of the notice a mediation service provider will send another notice to the grantor with a date, time and location for the mediation and with the other information specified in section 2 (3) of this 2012 Act.

SECTION 4. (1) The Foreclosure Avoidance Mediation Fund is established in the State Treasury, separate and distinct from the General Fund. The fund consists of moneys the Attorney General collects or receives for the purpose of paying the expenses of coordinating a mediation program under section 2 of this 2012 Act and related expenses. The moneys in the fund are continuously appropriated to the Attorney General for the purposes of paying the expenses of coordinating the mediation program and related expenses.

(2) The Attorney General may receive moneys for the purposes set forth in subsection (1) of this section from any public or private source.

(3)(a) Except as provided in paragraph (b) of this subsection, a trustee or beneficiary that files a notice of default under ORS 86.735 shall pay to the county clerk that records the notice \$100 in addition to and not in lieu of any fee that the county clerk charges for recording the notice of default. The county clerk at the end of each month shall forward the proceeds of the \$100 charge to the Attorney General for deposit into the fund described in subsection (1) of this section.

(b) An individual, a financial institution, as defined in ORS 706.008, a mortgage banker, as defined in ORS 86A.100, or a licensee, as defined in ORS 725.010, is not subject to the \$100 charge described in paragraph (a) of this subsection if the individual, financial institution, mortgage banker or licensee provides to the county clerk a sworn affidavit that states that during the preceding calendar year the individual, financial institution, mortgage banker or licensee did not commence or cause an affiliate or agent of the individual, financial institution, mortgage banker or licensee to commence more than a total of 250 actions to foreclose a residential trust deed by advertisement and sale under ORS 86.735 or a residential mortgage by suit under ORS 88.010. An individual, financial institution, mortgage banker or licensee that intends to claim an exemption under this paragraph shall provide the affidavit either:

(A) Within 30 days after the operative date specified in section 11 of this 2012 Act to claim the exemption for calendar year 2012 and not later than January 31 in any subsequent calendar year in which the individual, financial institution, mortgage banker or licensee intends to claim the exemption; or

(B) At the time the individual, financial institution, mortgage banker or licensee files a notice of default under ORS 86.735.

SECTION 4a. (1)(a) If a beneficiary determines that a grantor is not eligible for any foreclosure avoidance measure or that the grantor has not complied with the terms of a foreclosure avoidance measure to which the grantor has agreed, the beneficiary or the beneficiary's agent, at least 30 days before the date specified for the trustee's sale in a notice served under ORS 86.740 or 86.755 (2)(b), shall notify the grantor in writing of the beneficiary's determination and shall cause the notice to be served as provided in ORS 86.740 (1).

(b) The notice must in plain language explain the basis for the beneficiary's determination.

(2) The beneficiary or the beneficiary's agent shall mail a copy of the notice of the termination described in subsection (1) of this section to the Department of Justice on the same date on which the notice is served.

(3)(a) At least 20 days before the date specified for the trustee's sale in a notice served under ORS 86.740 or 86.755 (2)(b), the beneficiary or the beneficiary's agent shall:

(A) Record in the mortgage records for the property that is subject to the trustee's sale, in the county or in one of the counties in which the property is located, an affidavit that states that the beneficiary has complied with the requirements set forth in subsections (1) and (2) of this section; and

(B) Mail a copy of the affidavit to the department.

(b) The affidavit described in paragraph (a) of this subsection must:

(A) Identify the property that is the subject of the trustee's sale;

(B) Identify the grantor and, as of the date of the affidavit, the trustee and the beneficiary;

(C) State that the beneficiary or beneficiary's agent has complied with the requirements set forth in subsections (1) and (2) of this section; and

(D) Include proof of service on the grantor for the notice described in subsection (1) of this section.

(4) The Attorney General by rule shall specify a form for and the contents of the notice of the determination described in subsection (1) of this section and shall identify an address to which the beneficiary or beneficiary's agent must mail the copy of the notice under subsection (2) of this section and the affidavit under subsection (3) of this section.

(5)(a) A beneficiary or an agent of the beneficiary that fails to comply with the provisions of this section is liable to the grantor in the amount of \$500 plus the amount of the grantor's actual damages for each failure to comply with a provision of this section.

(b) A grantor may bring an action against a beneficiary or an agent of the beneficiary in a circuit court of this state to recover the amounts described in paragraph (a) of this subsection. The grantor shall commence the action within two years after the date on which the beneficiary or the beneficiary's agent should have complied, but did not comply, with the provisions of this section.

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

SECTION 5. ORS 86.705 is amended to read:

86.705. As used in ORS 86.705 to 86.795:

(1) "Affordable housing covenant" has the meaning given that term in ORS 456.270.

(2) "Beneficiary" means a person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or the person's successor in interest, and who is not the trustee unless the beneficiary is qualified to be a trustee under ORS 86.790 (1)(d).

(3) "Eligible covenant holder" has the meaning given that term in ORS 456.270.

(4) "Grantor" means the person that conveys an interest in real property by a trust deed as security for the performance of an obligation.

(5) "Residential trust deed" means a trust deed on property upon which are situated four or fewer residential units, one of which the grantor, the grantor's spouse or the grantor's minor or dependent child occupies as a principal residence at the time a [*trust deed foreclosure is commenced*] **default that results in an action to foreclose the obligation secured by the trust deed first occurs.**

(6) "Residential unit" means an improvement designed for residential use.

(7) "Trust deed" means a deed executed in conformity with ORS 86.705 to 86.795 that conveys an interest in real property to a trustee in trust to secure the performance of an obligation the grantor or other person named in the deed owes to a beneficiary.

(8) "Trustee" means a person, other than the beneficiary, to whom a trust deed conveys an interest in real property, or the person's successor in interest, or an employee of the beneficiary, if the employee is qualified to be a trustee under ORS 86.790.

SECTION 6. ORS 86.735 is amended to read:

86.735. *[The]* A trustee may foreclose a trust deed by advertisement and sale in the manner provided in ORS 86.740 to 86.755 if:

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

(2) There is a default by the grantor or other person *[owing]* **that owes** an obligation, the performance of which is secured by the trust deed, or by *[their]* **the grantor's or other person's** successors in interest with respect to *[any]* a provision in the deed *[which]* **that** authorizes sale in the event of default of *[such]* **the** provision; *[and]*

(3) The trustee or beneficiary has filed for record in the county clerk's office in each county where the trust property, or some part of *[it]* **the trust property**, is situated, a notice of default containing the information required by ORS 86.745 and containing the trustee's or beneficiary's election to sell the property to satisfy the obligation; *[and]*

(4) **The beneficiary or the beneficiary's agent has filed for recording in the official records of the county or counties in which the property that is subject to the residential trust deed is located the certificate of compliance the beneficiary received under section 2 of this 2012 Act, if the beneficiary must enter into mediation with the grantor under section 2 (2)(a) of this 2012 Act;**

(5)(a) **The beneficiary or the beneficiary's agent has complied with the provisions of section 4a of this 2012 Act; and**

(b) **The grantor is not in compliance with the terms of a foreclosure avoidance measure upon which the beneficiary and the grantor have agreed; and**

[(4)] (6) *[No]* An action has **not** been *[instituted]* **commenced** to recover the debt or any part of *[it]* **the debt** then remaining secured by the trust deed, or, if *[such]* an action has been *[instituted]* **commenced**, the action has been dismissed, except that:

(a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action may be *[instituted]* **commenced** to appoint a receiver or to obtain a temporary restraining order during foreclosure of a trust deed by advertisement and sale, except that a receiver *[shall]* **may** not be appointed with respect to a single-family residence *[which is occupied as the principal residence of]* **that** the grantor, the grantor's spouse or the grantor's minor or dependent child **occupies as a principal residence.**

(b) An action may be commenced *[for the judicial or nonjudicial foreclosure of]* **to foreclose, judicially or nonjudicially,** the same trust deed as to any other property covered *[thereby]* **by the trust deed,** or any other trust deeds, mortgages, security agreements or other consensual or nonconsensual security interests or liens *[securing]* **that secure** repayment of the debt.

SECTION 7. ORS 86.740 is amended to read:

86.740. (1)(a) Subsequent to recording notice of default as provided in ORS 86.735 and at least 120 days before the day the trustee conducts the sale, notice of the sale *[shall]* **with the contents described in ORS 86.745 must** be served pursuant to ORCP 7 D(2) and 7 D(3) or mailed by both first class and certified mail with return receipt requested[.].

(b) **If the sale is for the purpose of foreclosing a residential trust deed and the beneficiary in the trust deed must enter into mediation with the grantor under section 2 (2)(a) of this 2012 Act, a separate notice of mediation, in the form and with the contents described in section 3 of this 2012 Act, must be served or mailed in the manner provided in paragraph (a)**

of this subsection at least 60 days before the notice of sale described in paragraph (a) of this subsection is served or mailed.

(2) The notices described in subsection (1) of this section must be served or mailed to the last-known address of the following persons or [their] the legal representatives of the persons, if any:

(a) The grantor in the trust deed.

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

(c) Any person, including the Department of Revenue or [any other] **another** state agency, [having] **that has** a lien or interest subsequent to the trust deed if the lien or interest appears of record or the beneficiary has actual notice of the lien or interest.

(d) [Any] **A person [requesting] that requests** notice as provided in ORS 86.785.

(e) The mediation service provider that the Attorney General appoints under section 2 (2)(b) of this 2012 Act, if the notices are served or mailed under subsection (1)(b) of this section.

[(2)] **(3)** A notice served by mail under subsection (1) of this section is effective when the notice is mailed.

[(3)(a)] **(4)(a)** The disability, insanity or death of [any] **a person to whom [notice of sale] the notices required under this section** must be given [under this section] does not delay or impair in any way the trustee's right under a trust deed to foreclose under the deed. If the disability, insanity or death occurs [prior to the recording of] **before the notice of default is recorded**, the [notice shall] **notices required under this section must** be given instead to the guardian, the conservator of the estate of the person or the administrator or personal representative of the person[, as the case may be,] in the manner and by the time set forth in this section.

(b) If the disability, insanity or death of [any] **a person to whom [notice of sale] the notices required under this section** must be given [under this section] occurs on or after the [recording of] notice of default **is recorded**, the trustee shall, if and when the trustee has knowledge of the disability, insanity or death, promptly give the guardian, **the** conservator of the estate or the administrator or personal representative[, as the case may be, the notice provided in ORS 86.745. This notice shall be given] **required notices by sending the notices** by first class and certified mail with return receipt requested[,] to the last-known address of the guardian, conservator or administrator or personal representative.

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

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

SECTION 8. ORS 86.742 is amended to read:

86.742. (1) If the trustee fails to give notice of the sale to [any] **a person entitled to notice under ORS 86.740 [(1)(c)] (2)(c)**, and [such] **the person** did not have actual notice of the sale at least 25 days [prior to] **before** the date **on which** the trustee conducted the sale, [such] **the** omitted person [shall have] **has** the same rights [possessed by] **that** the holder of a junior lien or interest who was omitted as a party defendant in a judicial foreclosure proceeding **possesses**, and the purchaser at the trustee's sale or the purchaser's heirs, assigns or transferees, [shall have] **have** the same rights [possessed by] **that** a purchaser at a sheriff's sale following a judicial foreclosure **possesses**.

(2) The omitted person may also commence an action against the trustee in the circuit court in the county where the real property is located. In an action against the trustee, the omitted person [shall be] **is** entitled to damages [upon proof] **if the omitted person proves** that:

(a) The trustee did not give notice of the sale to the omitted person in the manner required by ORS 86.740 [(1)(c)] **(2)(c)** and 86.750;

(b) A search of the record under the name of the grantor as [it] **the grantor's name** appears on the trust deed, or **as** the name of the grantor's successor in interest **appears**, would have revealed the omitted person's interest;

(c) The omitted person could and would have cured the default under ORS 86.753; and

(d) The omitted person sustained actual damages as a result of [such] **the** person's loss of the opportunity to cure the default under ORS 86.753 (1).

(3) In an action against the trustee under subsection (2) of this section, [any] **a** defendant or third party defendant may move for dismissal on the ground that the omitted person would not or could not have cured the default and reinstated the trust deed if the omitted person had received the notice required by ORS 86.740 [(1)(c)] **(2)(c)**. The court shall hold a hearing on [such] **the** motion [prior to any] **before a** hearing on [any] **a** motion for summary judgment, and [prior to trial of] **before trying** the action. The court shall deny the motion only if the omitted person produces affidavits or other evidence sufficient for a reasonable jury to find, applying a standard of clear and convincing evidence, that the omitted person had the financial ability to cure the default under ORS 86.753 [prior to] **before** the date of the trustee's sale, and that the omitted person would have done so had the omitted person received the notice required by ORS 86.740 [(1)(c)] **(2)(c)**. If the court grants the motion to dismiss [it], **the court** shall award attorney fees [pursuant to] **under** subsection (5) of this section.

(4) In [any] **an** action against the trustee or [any other] **another** party under this section the omitted person shall plead that the omitted person did not have actual knowledge of the sale at least 25 days prior to the date the trustee conducted the sale, but thereafter the defendant [shall have] **has** the burden of proving that the omitted person did have [such] notice.

(5) In [all suits] **an action** brought under this section, the applicable court may, upon entering judgment, allow to the prevailing party as a part of the costs a reasonable amount for attorney fees at trial and on appeal.

(6) The remedies described in subsections (1) to (5) of this section [shall be] **are** the sole remedies available to a person entitled to notice of foreclosure by advertisement and sale under ORS 86.740 [(1)(c)] **(2)(c)**, who failed to receive [such] notice. [Such a] **The** person's failure to redeem or to commence an action against the trustee within five years of the date of a trustee's sale under ORS 86.755 [shall bar] **bars** any action under this section or any other applicable law.

SECTION 9. ORS 86.755 is amended to read:

86.755. (1)(a) A trustee shall hold a trustee's sale on the date and at the time and place designated in the notice of sale given under ORS 86.740. 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. Except as provided in paragraph (b) of this subsection, 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. An 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.

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

(A) The sum of the amounts payable under ORS 86.765 (1) and (2); or

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

(c)(A) Except as provided in subparagraph (B) of this paragraph, if an eligible covenant holder purchases the property in accordance with paragraph (b) of this subsection, the sale forecloses and terminates all other interests in the property as provided in ORS 86.770 (1).

(B) If an interest in the property exists that is prior to the eligible covenant holder's interest, other than the interest set forth in the trust deed that was the subject of the foreclosure proceeding

under ORS 86.735, notwithstanding the provisions of ORS 86.770 (1) the sale does not foreclose and terminate the prior interest and the eligible covenant holder's title to the property is subject to the prior interest.

(2)(a) 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 that total not more than 180 days from the original sale date, giving notice of each *[adjournment]* **postponement** 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.

(b) If a person postpones the sale date as provided in paragraph (a) of this subsection, the trustee, in the manner provided for service of the notice of sale under ORS 86.740 (1), shall cause written notice of the new time, date and place for the sale to be served on the grantor and on any person to whom notice of the sale was given under ORS 86.745. The notice must be given at least 15 days before the new sale date. The person may postpone the sale once, for not more than two calendar days, without giving notice as provided in this paragraph. The person may not postpone the sale for more than two calendar days or more than once without giving notice as provided in this paragraph.

(3) The purchaser shall pay at the time of sale the price bid or the price determined in accordance with subsection (1)(b) of this section, 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)(a) If property purchased at the trustee's sale includes one or more dwelling units that are subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the occupants of each unit within 30 days after the date of sale and before or concurrently with service of a written termination notice authorized by subsection (6)(c)(B) of this section.

(b) The notice required by this subsection must:

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

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

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

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

(E) 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.

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

(A) Personal delivery to the tenant.

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

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

(D) If the names of the tenants are not known to the purchaser, the notice may be addressed to "occupants."

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

NOTICE TO RESIDENTIAL TENANTS OF
CHANGE IN OWNERSHIP

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

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

- THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED TERM LEASE; OR
- AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE.

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

You must be provided with at least 90 days' written notice after the foreclosure sale before you can be required to move.

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

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

IMPORTANT:

YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S REPRESENTATIVE AT THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 90 DAYS LEFT. Written evidence of your rental agreement can be a copy of your lease or rental agreement, or other documentation of the existence of your rental agreement. Keep your original documents and a record of any information you give to the new owner.

**YOUR TENANCY
BETWEEN NOW
AND THE MOVE-OUT DATE**

The new owner may be willing to allow you to stay as a tenant instead of requiring you to move out after 90 days or at the end of your fixed term lease. You should contact the new owner 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:

- You do not owe rent;
- 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.

The new owner may offer to pay your moving expenses and any other costs or amounts you and the new owner agree on in exchange for your agreement to leave the premises in less than 90 days or before your fixed term lease expires. You should speak with a lawyer to fully understand your rights before making any decisions regarding your tenancy.

IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD 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.

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

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

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

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

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

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

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

(d) If a purchaser gives a 90-day written termination notice pursuant to paragraph (c) of this subsection, the purchaser may include in the notice a request that a tenant with a fixed term tenancy provide written evidence of the existence of the tenancy to the purchaser at an address described in the notice. Written evidence includes a copy of the rental agreement or another document that shows the existence of the fixed term tenancy. Failure of the tenant to provide the requested written evidence before the purchaser files an action for possession based on a 90-day notice:

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

(B) Prevents the tenant from recovering prevailing party attorney fees or costs and disbursements pursuant to subsection (11)(b) of this section. The 90-day notice must describe the provisions of this paragraph.

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

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

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

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

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

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

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

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

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

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

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

(a) Personal delivery to the tenant.

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

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

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

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

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

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

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

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

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

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

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

(B) Returning a security deposit.

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

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

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

(11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or

(9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the prevailing party together with costs and disbursements.

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

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

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

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

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

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

(A) By registered or certified mail to:

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

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

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

(13) The amended notice of sale must:

(a) Be given at least 20 days before the amended date of sale;

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

(c) Specify the time and place for sale;

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

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

(14) If the publication of the notice of sale was not completed before the date the foreclosure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other lawful reason, after release from the stay, in addition to complying with the provisions of subsections (12) and (13) of this section, the trustee shall complete the publication by publishing an amended notice of sale that states that the notice has been amended following release from the stay and that contains the amended date of sale. The amended notice must be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks, except that the required number of publications must be reduced by the number of publications that were completed before the effective date of the stay. The last publication must be made more than 20 days before the date the trustee conducts the sale.

SECTION 10. ORS 86.755, as amended by section 7, chapter 510, Oregon Laws 2011, is amended to read:

86.755. (1)(a) A trustee shall hold a trustee's sale on the date and at the time and place designated in the notice of sale given under ORS 86.740. 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. Except as provided in paragraph (b) of this subsection, 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. An 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.

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

(A) The sum of the amounts payable under ORS 86.765 (1) and (2); or

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

(c)(A) Except as provided in subparagraph (B) of this paragraph, if an eligible covenant holder purchases the property in accordance with paragraph (b) of this subsection, the sale forecloses and terminates all other interests in the property as provided in ORS 86.770 (1).

(B) If an interest in the property exists that is prior to the eligible covenant holder's interest, other than the interest set forth in the trust deed that was the subject of the foreclosure proceeding under ORS 86.735, notwithstanding the provisions of ORS 86.770 (1) the sale does not foreclose and terminate the prior interest and the eligible covenant holder's title to the property is subject to the prior interest.

(2)(a) 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 that total not more than 180 days from the original sale date, giving notice of each *adjournment* **postponement** 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.

(b) If a person postpones the sale date as provided in paragraph (a) of this subsection, the trustee, in the manner provided for service of the notice of sale under ORS 86.740 (1), shall cause written notice of the new time, date and place for the sale to be served on the grantor and on any person to whom notice of the sale was given under ORS 86.745. The notice must be given at least 15 days before the new sale date. The person may postpone the sale once, for not more than two calendar days, without giving notice as provided in this paragraph. The person may not postpone the sale for more than two calendar days or more than once without giving notice as provided in this paragraph.

(3) The purchaser shall pay at the time of sale the price bid or the price determined in accordance with subsection (1)(b) of this section, 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)(a) If property purchased at the trustee's sale includes one or more dwelling units that are subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the occupants of each unit within 30 days after the date of sale and before or concurrently with service of a written termination notice authorized by subsection (6)(c)(B) of this section.

(b) The notice required by this subsection must:

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

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

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

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

(E) 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.

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

- (A) Personal delivery to the tenant.
- (B) First class mail to the tenant at the dwelling unit.
- (C) First class mail to the tenant at the dwelling unit and attachment of a second notice copy. The second notice copy must be attached in a secure manner to the main entrance to the portion of the premises in the possession of the tenant.

(D) If the names of the tenants are not known to the purchaser, the notice may be addressed to "occupants."

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

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

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

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

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

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

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

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

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

IMPORTANT:

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

**YOUR TENANCY
BETWEEN NOW
AND THE MOVE-OUT DATE**

The new owner may be willing to allow you to stay as a tenant instead of requiring you to move out after 30 or 60 days. You should contact the new owner 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:

- You do not owe rent;
- 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.

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

IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD 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.

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

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

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

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

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

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

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

(d) If a purchaser gives a 30-day written termination notice pursuant to paragraph (c) of this subsection, the purchaser may include in the notice a request that a tenant with a fixed term tenancy provide written evidence of the existence of the tenancy to the purchaser at an address described in the notice. Written evidence includes a copy of the rental agreement or another document that shows the existence of the fixed term tenancy. Failure of the tenant to provide the requested written evidence before the purchaser files an action for possession based on a 30-day notice:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Personal delivery to the tenant.

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

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

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

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

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

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

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

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

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

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

- (A) Damage to the property or diminution in rental value; or
- (B) Returning a security deposit.

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

- (A) Damage to the property or diminution in rental value that occurs after the date of the trustee's sale; or
- (B) Returning a security deposit the individual pays after the date of the trustee's sale.

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

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

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

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

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

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

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

(A) By registered or certified mail to:

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

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

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

(13) The amended notice of sale must:

(a) Be given at least 20 days before the amended date of sale;

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

(c) Specify the time and place for sale;

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

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

(14) If the publication of the notice of sale was not completed before the date the foreclosure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other lawful reason, after release from the stay, in addition to complying with the provisions of subsections (12) and (13) of this section, the trustee shall complete the publication by publishing an amended notice

of sale that states that the notice has been amended following release from the stay and that contains the amended date of sale. The amended notice must be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks, except that the required number of publications must be reduced by the number of publications that were completed before the effective date of the stay. The last publication must be made more than 20 days before the date the trustee conducts the sale.

SECTION 11. (1) Sections 2, 2a, 3, 4 and 4a of this 2012 Act and the amendments to ORS 86.705, 86.735, 86.740, 86.742 and 86.755 by sections 5 to 9 of this 2012 Act become operative 91 days after the effective date of this 2012 Act.

(2) The Attorney General may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the Attorney General to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the Attorney General by sections 2, 2a, 3, 4 and 4a of this 2012 Act and the amendments to ORS 86.740 by section 7 of this 2012 Act.

SECTION 12. Sections 2, 2a, 3, 4 and 4a of this 2012 Act and the amendments to ORS 86.705, 86.735, 86.740, 86.742 and 86.755 by sections 5 to 10 of this 2012 Act apply to requests for mediation that a grantor sends and notices of sale and mediation that a trustee or beneficiary or an agent of the trustee or beneficiary sends on or after the operative date specified in section 11 of this 2012 Act.

SECTION 13. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.

Passed by Senate February 16, 2012

Received by Governor:

Repassed by Senate March 5, 2012

.....M,....., 2012

Approved:

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Robert Taylor, Secretary of Senate

.....M,....., 2012

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Peter Courtney, President of Senate

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John Kitzhaber, Governor

Passed by House March 5, 2012

Filed in Office of Secretary of State:

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Bruce Hanna, Speaker of House

.....M,....., 2012

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Arnie Roblan, Speaker of House

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Kate Brown, Secretary of State