

Enrolled House Bill 2569

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Debtor-Creditor Section)

CHAPTER

AN ACT

Relating to conditions for certain trustee’s signatures on trust deed documents; amending ORS 86.705 and 86.790.

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

SECTION 1. ORS 86.705, as amended by section 5, chapter 112, Oregon Laws 2012, 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) “Law practice” means a professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that is engaged in the practice of law in this state.

[(5)] **(6)** “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 default that results in an action to foreclose the obligation secured by the trust deed first occurs.

[(6)] **(7)** “Residential unit” means an improvement designed for residential use.

[(7)] **(8)** “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)] **(9)** “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 2. ORS 86.790 is amended to read:

86.790. (1) The trustee of a trust deed under ORS 86.705 to 86.795 [*shall not be*] **is not** required to comply with the provisions of ORS chapters 707 and 709 and [*shall*] **must** be:

- (a) [*Any*] **An attorney who is an active member of the Oregon State Bar or a law practice that includes an attorney who is an active member of the Oregon State Bar;**

(b) A financial institution or trust company, as defined in ORS 706.008, that is authorized to do business under the laws of Oregon or the United States;

(c) A title insurance company authorized to insure title to real property in this state[*its*] **and the subsidiaries, affiliates, insurance producers or branches of the title insurance company;**

(d) The United States or any agency [*thereof*] **of the United States;** or

(e) [*Escrow agents*] **An escrow agent that is** licensed under ORS 696.505 to 696.590.

(2) **A law practice that, or** an attorney who, is a trustee under subsection (1)(a) of this section may represent the beneficiary in addition to performing the duties of trustee.

(3) At any time after [*the*] a trust deed is executed, the beneficiary may appoint in writing another qualified trustee. If the appointment of the successor trustee is recorded in the mortgage records of the county or counties in which the trust deed is recorded, the successor trustee [*shall be*] **is** vested with all the powers of the original trustee.

(4) A trustee or successor trustee is a necessary and proper party to any proceeding to determine the validity of **a trust deed,** or **to** enjoin any private or judicial proceeding to foreclose a trust deed, but a trustee or successor trustee is [*neither*] **not** a necessary [*nor a*] **or** proper party to any proceeding to determine title to the property subject to the trust deed, or to any proceeding to impose, enforce or foreclose any other lien on the subject property.

(5) Nothing in ORS 86.705 to 86.795 imposes a duty on the trustee or successor trustee to notify any person of any proceeding with respect to [*such*] **the** person, except a proceeding [*initiated by*] **that** the trustee or successor trustee **initiates.**

(6) A trustee or the attorney for the trustee or any agent [*designated by*] the trustee or the attorney **designates** may announce and accept a bid from the beneficiary whether or not the beneficiary is present at the sale.

(7) The trustee or successor trustee [*shall have*] **has** no fiduciary duty or fiduciary obligation to the grantor or other persons [*having*] **that have** an interest in the property subject to the trust deed. The trustee or successor trustee [*shall*] **may** not be relieved of the duty to reconvey the property **that is** subject to the trust deed to the grantor upon **the beneficiary's** request for reconveyance [*by the beneficiary*].

(8) **If a law practice is the trustee under subsection (1)(a) of this section, an attorney who is an active member of the Oregon State Bar and is a shareholder, partner, member or employee of the law practice shall sign on the trustee's behalf any document that is permitted or required to be signed under ORS 86.705 to 86.795. The attorney who signs the document shall make evident in the document the attorney's name and Oregon State Bar number and shall state in the document that the trustee has authorized the attorney to sign the document on the trustee's behalf.**

(9) **If an attorney is the trustee under subsection (1)(a) of this section, another attorney who is an active member of the Oregon State Bar and is a shareholder, partner, member or employee of the law practice in which the attorney practices law may sign on the trustee's behalf any document that is permitted or required to be signed under ORS 86.705 to 86.795. The attorney who signs the document shall make evident in the document the attorney's name and Oregon State Bar number and shall state in the document that the trustee has authorized the attorney to sign the document on the trustee's behalf.**

Passed by House March 20, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 9, 2013

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State