

Senate Bill 368

Sponsored by Senator BATES (Pre-session 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**.

Requires trustee, mortgagee or agent of trustee or mortgagee to record all assignments of beneficial interest in real property that is secured, in whole or in part, by trust deed or mortgage. Specifies certain requirements for recordation.

Provides that trustee's or mortgagee's ability to foreclose on trust deed or mortgage is contingent on proper recordation of assignments of beneficial interest.

Provides that requirement to record assignment becomes operative 91 days after effective date of Act and is retroactive to January 1, 2007.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to requirements to record assignments of beneficial interests in real property; creating new
3 provisions; amending ORS 86.735; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 93.600 to 93.800.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Beneficial interest" means any right or entitlement to receive income, profit, a**
8 **payment, a distribution or any other monetary benefit under the terms of a note or other**
9 **instrument that is evidence of an obligation for which a trust deed or mortgage is security.**

10 (b) **"Residential trust deed" means a trust deed on property upon which are situated four**
11 **or fewer residential units, one of which the grantor of the trust deed, the grantor's spouse**
12 **or the grantor's minor or dependent child occupies as a principal residence.**

13 (2) **The trustee named in a residential trust deed, the mortgagee named in a mortgage**
14 **instrument or an authorized agent of the trustee or mortgagee shall record, in accordance**
15 **with subsections (3) and (4) of this section, every assignment of any beneficial interest in real**
16 **property that is secured, in whole or in part, by a residential trust deed or a mortgage, if**
17 **the mortgagor uses the real property as the mortgagor's primary residence.**

18 (3) **The trustee or mortgagee, or the authorized agent of the trustee or mortgagee, shall**
19 **record each assignment of a beneficial interest in accordance with the provisions set forth**
20 **in ORS 93.804 for recording an instrument that conveys an interest in real property.**

21 (4) **The trustee or mortgagee, or the authorized agent of the trustee or mortgagee, shall**
22 **record each assignment of a beneficial interest in the mortgage records of the county or**
23 **counties within which the real property is situated.**

24 **SECTION 3. Section 4 of this 2013 Act is added to and made a part of ORS chapter 88.**

25 **SECTION 4. An action to foreclose a mortgage given to secure real property that the**
26 **mortgagor uses as the mortgagor's primary residence may not be brought unless the**
27 **mortgagee or other person that seeks to foreclose the mortgage, or the mortgagee's or**
28 **person's agent, has complied with the requirements of section 2 of this 2013 Act.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **SECTION 5.** ORS 86.735, as amended by section 6, chapter 112, Oregon Laws 2012, is amended
2 to read:

3 86.735. A trustee may foreclose a trust deed by advertisement and sale in the manner provided
4 in ORS 86.740 to 86.755 **only** if:

5 (1) [*The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any*
6 *appointment of a successor trustee are recorded in the mortgage records in the counties in which the*
7 *property described in the deed is situated;*] **The following documents are recorded in the mort-**
8 **gage records of the county or counties in which the property described in the deed is situ-**
9 **ated:**

10 (a) **The trust deed;**

11 (b) **Any assignments that a trustee or beneficiary makes of the trust deed and any ben-**
12 **eficial interest, as defined in section 2 of this 2013 Act, in any note secured by the trust deed,**
13 **all of which must be recorded in accordance with section 2 of this 2013 Act; and**

14 (c) **Any appointment of a successor trustee;**

15 (2) There is a default by the grantor or other person that owes an obligation, the performance
16 of which is secured by the trust deed, or by the grantor's or other person's successors in interest
17 with respect to a provision in the deed that authorizes sale in the event of default of the provision;

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

22 (4) The beneficiary or the beneficiary's agent has filed for recording in the official records of
23 the county or counties in which the property that is subject to the residential trust deed is located
24 the certificate of compliance the beneficiary received under section 2, chapter 112, Oregon Laws
25 2012, if the beneficiary must enter into mediation with the grantor under section 2 (2)(a), chapter
26 112, Oregon Laws 2012;

27 (5)(a) The beneficiary or the beneficiary's agent has complied with the provisions of section 4a,
28 chapter 112, Oregon Laws 2012; and

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

31 (6) An action has not been commenced to recover the debt or any part of the debt then re-
32 maining secured by the trust deed, or, if an action has been commenced, the action has been dis-
33 missed, except that:

34 (a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action may
35 be commenced to appoint a receiver or to obtain a temporary restraining order during foreclosure
36 of a trust deed by advertisement and sale, except that a receiver may not be appointed with respect
37 to a single-family residence that the grantor, the grantor's spouse or the grantor's minor or de-
38 pendent child occupies as a principal residence.

39 (b) An action may be commenced to foreclose, judicially or nonjudicially, the same trust deed
40 as to any other property covered by the trust deed, or any other trust deeds, mortgages, security
41 agreements or other consensual or nonconsensual security interests or liens that secure repayment
42 of the debt.

43 **SECTION 6. Sections 2 and 4 of this 2013 Act and the amendments to ORS 86.735 by**
44 **section 5 of this 2013 Act apply to all assignments of a beneficial interest in real property**
45 **that occurred on or after January 1, 2007, to the extent that the assignments are subject to**

1 section 2 of this 2013 Act.

2 SECTION 7. Sections 2 and 4 of this 2013 Act and the amendments to ORS 86.735 by
3 section 5 of this 2013 Act become operative 91 days after the effective date of this 2013 Act.

4 SECTION 8. This 2013 Act being necessary for the immediate preservation of the public
5 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
6 on its passage.

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