

Senate Bill 252

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber, M.D., for Department of Veterans' Affairs)

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**.

Exempts Department of Veterans' Affairs from requirement to request or participate in resolution conference in connection with foreclosure of residential trust deed when department is acting in capacity as beneficiary of loan made by department pursuant to statute.

Exempts department from requirement to give notice of ineligibility for foreclosure avoidance measure or of failure to comply with terms of foreclosure avoidance measure when department is acting in capacity as beneficiary of loan made by department pursuant to statute.

A BILL FOR AN ACT

1
2 Relating to exemption of Department of Veterans' Affairs from certain foreclosure practices;
3 amending ORS 86.726 and 86.748.

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

5 **SECTION 1.** ORS 86.726 is amended to read:

6 86.726. (1)(a) Except as provided in paragraph (b) of this subsection **and subsection (5) of this**
7 **section**, a beneficiary that intends to foreclose a residential trust deed shall first request a resolu-
8 tion conference with the grantor before the beneficiary or the trustee files a notice of default under
9 ORS 86.752 or before the beneficiary brings suit under ORS 88.010.

10 (b)(A) The requirement to request or participate in a resolution conference with a grantor in
11 accordance with subsection (2) or (3) of this section does not apply to a beneficiary if the beneficiary
12 submits to the Attorney General a sworn affidavit that states that during the preceding calendar
13 year the beneficiary did not commence or cause an affiliate, subsidiary or agent of the beneficiary
14 to commence more than 175 actions to foreclose a residential trust deed by advertisement and sale
15 under ORS 86.752 or by suit under ORS 88.010. A beneficiary that is a trustee shall include as part
16 of the total number of foreclosure actions that the beneficiary commenced in the previous calendar
17 year all foreclosure actions that the beneficiary commenced under ORS 86.752 or 88.010 in the
18 beneficiary's capacity as a trustee. A beneficiary that intends to claim an exemption under this
19 subparagraph shall submit the affidavit in a form and with the contents the Attorney General
20 specifies by rule either:

21 (i) Not later than January 31 in any calendar year in which the beneficiary intends to claim the
22 exemption for the remainder of the calendar year; or

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

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

27 (c) **Except as provided in subsection (5) of this section**, a beneficiary that claims an ex-
28 emption under this subsection is not exempt from the requirements set forth in ORS 86.748.

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 (2) The beneficiary shall request a resolution conference through the service provider. The
 2 beneficiary shall submit the request to the service provider electronically, by facsimile or by mail
 3 and shall submit a processing fee in an amount and in a manner that the Attorney General specifies
 4 by rule. The service provider shall pay to the Attorney General, for deposit into the Foreclosure
 5 Avoidance Fund established under ORS 86.744, moneys the service provider receives from the ben-
 6 eficiary under this subsection. The beneficiary's request under this subsection must identify the
 7 residential trust deed that the beneficiary intends to foreclose and list the name, title, address,
 8 telephone number and other available contact information for:

9 (a) The beneficiary;

10 (b) Any agent of the beneficiary that will attend the resolution conference;

11 (c) Any person other than a person identified in paragraph (a) or (b) of this subsection that will
 12 receive, on the beneficiary's behalf, notices or other communications related to the resolution con-
 13 ference; and

14 (d) The grantor.

15 (3)(a) If a beneficiary does not request a resolution conference under subsection (1) of this sec-
 16 tion, a grantor may request a resolution conference with the beneficiary if:

17 (A) The beneficiary or the trustee has not filed a notice of default under ORS 86.752 or the
 18 beneficiary has not commenced a suit under ORS 88.010; and

19 (B) The grantor first obtains from a housing counselor a certification in writing that the grantor
 20 is more than 30 days in default on the obligation that the residential trust deed secures or, if the
 21 grantor is not in default, that the grantor has a financial hardship that the housing counselor be-
 22 lieves may qualify the grantor for a foreclosure avoidance measure.

23 (b) A grantor shall request a resolution conference through the service provider. The grantor
 24 shall submit the request to the service provider electronically, by facsimile or by mail and shall
 25 enclose with the request the written certification the housing counselor provides under paragraph
 26 (a)(B) of this subsection. The Attorney General by rule shall specify the information that the request
 27 must include.

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

31 (d) This subsection does not apply to a beneficiary that has submitted an affidavit and is exempt
 32 under subsection (1)(b) of this section.

33 (4) A beneficiary that submitted an affidavit in accordance with subsection (1)(b) of this section
 34 may, without waiving the exemption the beneficiary claimed in the affidavit, request a resolution
 35 conference with a grantor. The beneficiary shall submit a request under this subsection in accord-
 36 ance with the requirements set forth in subsection (2) of this section, except that submitting the
 37 request does not require a processing fee.

38 **(5) The requirement to request or participate in a resolution conference with a grantor**
 39 **in accordance with subsection (2) or (3) of this section does not apply to the Department of**
 40 **Veterans' Affairs in its capacity as a beneficiary of loans made under ORS 407.125.**

41 **SECTION 2.** ORS 86.748 is amended to read:

42 86.748. (1)(a) Whether or not a beneficiary participates in a resolution conference under ORS
 43 86.726, if the beneficiary determines that a grantor of a residential trust deed is not eligible for a
 44 foreclosure avoidance measure or that the grantor has not complied with the terms of a foreclosure
 45 avoidance measure to which the grantor has agreed, the beneficiary shall mail a written notice to

1 the grantor within 10 days after making the determination. The beneficiary shall mail a copy of the
2 notice to the Department of Justice on the same date that the beneficiary mails the notice to the
3 grantor.

4 (b) The notice described in paragraph (a) of this subsection must in plain language explain the
5 basis for the beneficiary's determination. The notice and any information in the notice are not sub-
6 ject to disclosure under ORS 192.410 to 192.505.

7 (c) This subsection does not impose an affirmative duty on the beneficiary to determine if a
8 grantor is eligible for a foreclosure avoidance measure.

9 (2) At least five days before the trustee sells the property that is subject to foreclosure, the
10 beneficiary shall record in the mortgage records in the county or in one of the counties in which
11 the property is located an affidavit that states that the beneficiary has complied with the require-
12 ments set forth in subsection (1) of this section.

13 (3)(a) A beneficiary that fails to substantially comply with subsection (1)(b) of this section, or
14 otherwise fails to comply with subsection (1)(a) or (2) of this section, is liable to the grantor in the
15 amount of \$500 plus the amount of the grantor's actual damages for each failure.

16 (b) A grantor may bring an action against a beneficiary in a circuit court of this state to recover
17 the amounts described in paragraph (a) of this subsection. The grantor shall commence the action
18 within one year after the date on which the beneficiary should have complied, but did not comply,
19 with the provisions of this section.

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

22 **(4) This section does not apply to the Department of Veterans' Affairs in its capacity as**
23 **a beneficiary of loans made under ORS 407.125.**

24
