

House Bill 3212

Sponsored by Representative HOLVEY

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**.

Lowers number of actions to foreclose trust deed by advertisement and sale or by suit that beneficiary may commence during preceding calendar year and still claim exemption from requirement to participate in resolution conference with borrower that has failed to pay amount due on obligation secured by residential real property.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to qualifications for an exemption from the requirement to participate in a resolution con-
3 ference; creating new provisions; amending ORS 86.726; and declaring an emergency.

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] **24** actions to foreclose a residential trust deed by advertisement and
15 sale under ORS 86.752 or by suit under ORS 88.010. A beneficiary that is a trustee shall include as
16 part of the total number of foreclosure actions that the beneficiary commenced in the previous cal-
17 endar 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 exemption
28 under this subsection is not exempt from the requirements set forth in ORS 86.748.

29 (2) The beneficiary shall request a resolution conference through the service provider. The
30 beneficiary shall submit the request to the service provider electronically, by facsimile or by mail

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

7 (a) The beneficiary;

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

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

12 (d) The grantor.

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

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

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

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

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

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

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

36 (5) The requirement to request or participate in a resolution conference with a grantor in ac-
 37 cordance with subsection (2) or (3) of this section does not apply to the Department of Veterans’
 38 Affairs in its capacity as a beneficiary of loans made under ORS 407.125.

39 **SECTION 2. Section 3 of this 2021 Act is added to and made a part of ORS 86.705 to 86.815.**

40 **SECTION 3. A beneficiary may not, during calendar year 2021, submit an affidavit to the**
 41 **Attorney General and does not qualify for an exemption from the requirement to participate**
 42 **in a resolution conference if the beneficiary, or the beneficiary’s affiliate, subsidiary or**
 43 **agent, during calendar year 2019 or 2020, commenced more than 24 actions to foreclose a**
 44 **residential trust deed by advertisement and sale under ORS 86.752 or by suit under ORS**
 45 **88.010, notwithstanding the qualification established for the exemption in ORS 86.726**

1 (1)(b)(A), as in effect before the effective date of this 2021 Act. Any affidavit that a benefi-
2 ciary submitted on or after January 1, 2021, and before the effective date of this 2021 Act
3 that, under this subsection, does not qualify the beneficiary for an exemption is without ef-
4 fect and the beneficiary is subject to the requirements of ORS 86.726, 86.729, 86.732, 86.736
5 and 86.748 during calendar year 2021.

6 SECTION 4. Section 3 of this 2021 Act is repealed on January 2, 2023.

7 SECTION 5. This 2021 Act being necessary for the immediate preservation of the public
8 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
9 on its passage.

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