

Requested by Representative BONHAM (at the request of the Oregon Bankers Association)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2009**

1 On page 1 of the printed bill, delete lines 6 through 30 and delete pages  
2 2 through 5.

3 On page 6, delete lines 1 through 5 and insert:

4 **“SECTION 1. (1) The Legislative Assembly finds and declares that:**

5 **“(a) The provisions of this section might affect the terms and con-**  
6 **ditions of certain contracts into which residents of this state have**  
7 **entered.**

8 **“(b) The effects of the provisions of this section are not substantial**  
9 **because the provisions have a limited scope and duration and are**  
10 **necessary to protect the public health, safety and welfare. For these**  
11 **reasons the provisions do not undermine a contractual bargain, inter-**  
12 **fere with a party’s reasonable expectations or prevent a party from**  
13 **safeguarding or reinstating the party’s rights.**

14 **“(c) Even if a provision of this section has the effect of undermining**  
15 **a contractual bargain, interfering with a party’s reasonable expecta-**  
16 **tions or preventing a party from safeguarding or reinstating the**  
17 **party’s rights, the provision is appropriate and reasonable as a means**  
18 **by which to implement the significant and legitimate public purpose**  
19 **of responding to the COVID-19 pandemic emergency that began on**  
20 **March 8, 2020, and has continued to date.**

21 **“(2) As used in this section:**

1       “(a) ‘Emergency period’ means a period that extends from the ef-  
2       fective date of this 2021 Act to June 30, 2021.

3       “(b) ‘Forfeiture remedy’ has the meaning given that term in ORS  
4       93.905.

5       “(c) ‘Lender’ means a beneficiary, as defined in ORS 86.705, a  
6       mortgagee, as defined in ORS 87.005, a seller in a land sale contract  
7       or a licensee, as defined in ORS 86A.303.

8       “(d) ‘Subject property’ means real property upon which is situated  
9       four or fewer dwelling units, as defined in ORS 90.100, used primarily  
10      and designed solely for residential use.”.

11      “(e) ‘Trust deed’ has the meaning given that term in ORS 86.705.

12      “(f) ‘Trustee’ has the meaning given that term in ORS 86.705.

13      “(3) Notwithstanding ORS 18.860 to 18.993, 86.752, 88.010 and 93.905  
14      to 93.940, and except as provided in subsection (7) of this section, with  
15      respect to subject property, a lender or trustee may not at any time  
16      during the emergency period:

17      “(a) Foreclose a trust deed by advertisement and sale;

18      “(b) Bring an action or suit to foreclose a mortgage or trust deed;

19      **or**

20      “(c) Enforce a forfeiture remedy.

21      “(4)(a) Notwithstanding ORS 18.920, 18.924, 86.764 and 93.915 and ex-  
22      cept as provided in subsection (7) of this section, if a lender or trustee  
23      recorded a notice of default and served a notice of sale for a foreclo-  
24      sure by advertisement and sale, commenced a suit under ORS 88.010  
25      or otherwise initiated a foreclosure with respect to subject property  
26      on or after June 30, 2020, the foreclosure is stayed during the emer-  
27      gency period. After the emergency period expires, a trustee’s sale may  
28      occur if the lender or trustee complies with the provisions of ORS  
29      86.782 (12), a lender may obtain a forfeiture remedy if the lender com-  
30      plies with the provisions of ORS 93.918 and, for other types of foreclo-

1 sure proceedings, a foreclosure may continue if the lender complies  
2 with the requirements of applicable law.

3 “(b) Notwithstanding the 180-day limit specified for postponing a  
4 trustee’s sale set forth in ORS 86.782 (2)(a), a trustee, an attorney for  
5 the trustee or an agent that the trustee or attorney designates shall,  
6 for the duration of the emergency period, postpone all trustee’s sales  
7 of subject property with respect to which the trustee, attorney or  
8 agent acts in the capacity of a trustee on behalf of a lender.

9 “(5) Notwithstanding ORS 18.860 to 18.993 and 88.010 and except as  
10 provided in subsection (7) of this section, during the emergency period  
11 a court may not enter a judgment of foreclosure and sale or issue a  
12 writ of execution with respect to subject property that secures an ob-  
13 ligation on which a mortgagor, a grantor or a purchaser in a land-sale  
14 contract has failed to make a periodic installment payment or other  
15 payment.

16 “(6)(a) Notwithstanding ORS 86.782 and except as provided in sub-  
17 section (7) of this section, a trustee’s sale of subject property may not  
18 occur during the emergency period. Any purported trustee’s sale of  
19 subject property during the emergency period is void and does not  
20 transfer or foreclose any rights to the subject property.

21 “(b) Notwithstanding ORS 18.860 to 18.993 and except as provided in  
22 subsection (7) of this section, an execution sale of subject property  
23 that secures an obligation on which a mortgagor, grantor or purchaser  
24 in a land sale contract has defaulted may not occur during the emer-  
25 gency period. Any purported execution sale of subject property during  
26 the emergency period is void and does not transfer or foreclose any  
27 rights to the subject property.

28 “(7) This section does not:

29 “(a) Apply to judgments of foreclosure and sale, writs of execution  
30 or notices of a trustee’s sale:

1       “(A) Under which a trustee’s sale or execution sale concluded before  
2       June 30, 2020;

3       “(B) That occur in connection with a tax foreclosure proceeding  
4       under ORS 312.010 to 312.120 or 312.130 to 312.240;

5       “(C) That dispose of vacant or abandoned property; or

6       “(D) That result from waste, destruction or illegal use of subject  
7       property or a failure to prevent waste, destruction or illegal use of  
8       subject property; or

9       “(b) Relieve a borrower of the duty to repay the full amount of any  
10       obligation that is subject to a waiver, deferral, modification or  
11       forbearance under the provisions of this section.”.

12       On page 8, after line 9, insert:

13       “**SECTION 5.** ORS 86.726, as amended by section 4 of this 2021 Act, is  
14       amended to read:

15       “86.726. (1)(a) Except as provided in paragraph (b) of this subsection and  
16       subsection (5) of this section, a beneficiary that intends to foreclose a resi-  
17       dential trust deed shall first request a resolution conference with the grantor  
18       before the beneficiary or the trustee files a notice of default under ORS  
19       86.752 or before the beneficiary brings suit under ORS 88.010.

20       “(b)(A) The requirement to request or participate in a resolution confer-  
21       ence with a grantor in accordance with subsection (2) or (3) of this section  
22       does not apply to a beneficiary if the beneficiary submits to the Attorney  
23       General a sworn affidavit that states that during the preceding calendar year  
24       the beneficiary did not commence or cause an affiliate, subsidiary or agent  
25       of the beneficiary to commence more than [30] **175** actions to foreclose a  
26       residential trust deed by advertisement and sale under ORS 86.752 or by suit  
27       under ORS 88.010. A beneficiary that is a trustee shall include as part of the  
28       total number of foreclosure actions that the beneficiary commenced in the  
29       previous calendar year all foreclosure actions that the beneficiary com-  
30       menced under ORS 86.752 or 88.010 in the beneficiary’s capacity as a trustee.

1 A beneficiary that intends to claim an exemption under this subparagraph  
2 shall submit the affidavit in a form and with the contents the Attorney  
3 General specifies by rule either:

4 “(i) Not later than January 31 in any calendar year in which the benefi-  
5 ciary intends to claim the exemption for the remainder of the calendar year;  
6 or

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

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

11 “(c) Except as provided in subsection (5) of this section, a beneficiary that  
12 claims an exemption under this subsection is not exempt from the require-  
13 ments set forth in ORS 86.748.

14 “(2) The beneficiary shall request a resolution conference through the  
15 service provider. The beneficiary shall submit the request to the service  
16 provider electronically, by facsimile or by mail and shall submit a processing  
17 fee in an amount and in a manner that the Attorney General specifies by  
18 rule. The service provider shall pay to the Attorney General, for deposit into  
19 the Foreclosure Avoidance Fund established under ORS 86.744, moneys the  
20 service provider receives from the beneficiary under this subsection. The  
21 beneficiary’s request under this subsection must identify the residential trust  
22 deed that the beneficiary intends to foreclose and list the name, title, ad-  
23 dress, telephone number and other available contact information for:

24 “(a) The beneficiary;

25 “(b) Any agent of the beneficiary that will attend the resolution confer-  
26 ence;

27 “(c) Any person other than a person identified in paragraph (a) or (b) of  
28 this subsection that will receive, on the beneficiary’s behalf, notices or other  
29 communications related to the resolution conference; and

30 “(d) The grantor.

1 “(3)(a) If a beneficiary does not request a resolution conference under  
2 subsection (1) of this section, a grantor may request a resolution conference  
3 with the beneficiary if:

4 “(A) The beneficiary or the trustee has not filed a notice of default under  
5 ORS 86.752 or the beneficiary has not commenced a suit under ORS 88.010;  
6 and

7 “(B) The grantor first obtains from a housing counselor a certification in  
8 writing that the grantor is more than 30 days in default on the obligation  
9 that the residential trust deed secures or, if the grantor is not in default,  
10 that the grantor has a financial hardship that the housing counselor believes  
11 may qualify the grantor for a foreclosure avoidance measure.

12 “(b) A grantor shall request a resolution conference through the service  
13 provider. The grantor shall submit the request to the service provider elec-  
14 tronically, by facsimile or by mail and shall enclose with the request the  
15 written certification the housing counselor provides under paragraph (a)(B)  
16 of this subsection. The Attorney General by rule shall specify the informa-  
17 tion that the request must include.

18 “(c) A beneficiary that receives a notice from a service provider after the  
19 service provider receives a request from a grantor under paragraph (b) of this  
20 subsection is subject to the requirements set forth in this section and ORS  
21 86.729, 86.732, 86.736 and 86.748.

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

24 “(4) A beneficiary that submitted an affidavit in accordance with sub-  
25 section (1)(b) of this section may, without waiving the exemption the bene-  
26 ficiary claimed in the affidavit, request a resolution conference with a  
27 grantor. The beneficiary shall submit a request under this subsection in ac-  
28 cordance with the requirements set forth in subsection (2) of this section,  
29 except that submitting the request does not require a processing fee.

30 “(5) The requirement to request or participate in a resolution conference

1 with a grantor in accordance with subsection (2) or (3) of this section does  
2 not apply to the Department of Veterans' Affairs in its capacity as a bene-  
3 ficiary of loans made under ORS 407.125.”.

4 In line 10, delete “5” and insert “6” and delete “6” and insert “7”.

5 In line 11, delete “6” and insert “7”.

6 In line 16, after “2021” insert “or 2022”.

7 In line 19, delete “or 2020”.

8 In line 27, delete “7” and insert “8” and delete “6” and insert “7” and  
9 delete “2024” and insert “2023”.

10 In line 28, delete “8” and insert “9”.

11 On page 9, line 22, delete “9” and insert “10”.

12 On page 11, line 31, delete “10” and insert “11”.

13 On page 12, delete lines 11 through 20 and insert:

14 **“SECTION 12. The Housing and Community Services Department**  
15 **shall:**

16 **“(1) Apply at the earliest possible date to the United States Secre-**  
17 **tary of the Treasury for the maximum amount available to the state**  
18 **from the Homeowner Assistance Fund established under section 3206**  
19 **of the American Rescue Plan Act of 2021, P.L. 117-2;**

20 **“(2) Consult with housing counseling agencies, financial institutions**  
21 **and other mortgage lenders concerning the development and imple-**  
22 **mentation, in the shortest feasible time, of methods for:**

23 **“(a) Informing eligible borrowers of the existence of funds for**  
24 **mortgage payment assistance and other financial assistance to allow**  
25 **the borrower to reinstate a mortgage or to pay other eligible housing**  
26 **related costs; and**

27 **“(b) Disbursing funds to or for the benefit of eligible borrowers; and**

28 **“(3) Report to a committee of the Legislative Assembly within 30**  
29 **days after the effective date of this 2021 Act and at the end of every**  
30 **successive 45-day period until December 31, 2021, concerning the**

1 department's progress in implementing the provisions of this section.

2 **“SECTION 13.** Section 1 of this 2021 Act does not apply to or affect:

3 **“(1)** Any mortgage loan that an agency or instrumentality of the  
4 United States, a government-sponsored enterprise or a Federal Home  
5 Loan Bank made, purchased, insured or securitized;

6 **“(2)** The rights and obligations of a lender, issuer, servicer or trustee  
7 of a mortgage loan, including a servicer of the Government National  
8 Mortgage Association; or

9 **“(3)** A mortgage loan that a lender made or serviced in accordance  
10 with the forbearance programs that the Federal Housing Finance  
11 Agency follows for the administration's mortgage loans, including a  
12 mortgage loan that was not made, purchased, insured or securitized  
13 by any agency or instrumentality of the United States.

14 **“SECTION 14.** Section 1 of this 2021 Act applies to a lender's or  
15 trustee's action during the emergency period, as defined in section 1  
16 of this 2021 Act, to foreclose a mortgage or trust deed by advertise-  
17 ment and sale or by suit or to enforce a forfeiture remedy with respect  
18 to a land sale contract.

19 **“SECTION 15.** The amendments to ORS 86.726 by section 5 of this  
20 2021 Act become operative on January 2, 2023.

21 **“SECTION 16.** (1) Section 1 of this 2021 Act is repealed 90 days after  
22 the expiration of the emergency period as defined in section 1 of this  
23 2021 Act.

24 (2) Section 12 of this 2021 Act is repealed on January 2, 2023.

25 **“SECTION 17.** This 2021 Act being necessary for the immediate  
26 preservation of the public peace, health and safety, an emergency is  
27 declared to exist, and this 2021 Act takes effect on its passage.”.

28