

Requested by Representative CLEM

**PROPOSED MINORITY REPORT 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 **ferre 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, except that the Governor
3 may by executive order not later than June 14, 2021, extend the emer-
4 gency period to 11:59 p.m. on September 30, 2021.

5 “(b) ‘Forfeiture remedy’ has the meaning given that term in ORS
6 93.905.

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

10 “(d) ‘Subject property’ means:

11 “(A) Real property upon which is situated four or fewer dwelling
12 units, as defined in ORS 90.100, used primarily and designed solely for
13 residential use; and

14 “(B) Real property upon which a person operates a restaurant or
15 bed and breakfast facility, both as defined in ORS 624.010, or transient
16 lodging, as defined in ORS 320.300.

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

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

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

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

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

26 “(c) Enforce a forfeiture remedy.

27 “(4)(a) Notwithstanding ORS 18.920, 18.924, 86.764 and 93.915 and ex-
28 cept as provided in subsection (7) of this section, if a lender or trustee
29 recorded a notice of default and served a notice of sale for a foreclo-
30 sure by advertisement and sale, commenced a suit under ORS 88.010

1 or otherwise initiated a foreclosure with respect to subject property
2 on or after June 30, 2020, the foreclosure is stayed during the emer-
3 gency period. After the emergency period expires, a trustee's sale may
4 occur if the lender or trustee complies with the provisions of ORS
5 86.782 (12), a lender may obtain a forfeiture remedy if the lender com-
6 plies with the provisions of ORS 93.918 and, for other types of foreclo-
7 sure proceedings, a foreclosure may continue if the lender complies
8 with the requirements of applicable law.

9 “(b) Notwithstanding the 180-day limit specified for postponing a
10 trustee's sale set forth in ORS 86.782 (2)(a), a trustee, an attorney for
11 the trustee or an agent that the trustee or attorney designates shall,
12 for the duration of the emergency period, postpone all trustee's sales
13 of subject property with respect to which the trustee, attorney or
14 agent acts in the capacity of a trustee on behalf of a lender.

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

22 “(6)(a) Notwithstanding ORS 86.782 and except as provided in sub-
23 section (7) of this section, a trustee's sale of subject property may not
24 occur during the emergency period. Any purported trustee's sale of
25 subject property during the emergency period is void and does not
26 transfer or foreclose any rights to the subject property.

27 “(b) Notwithstanding ORS 18.860 to 18.993 and except as provided in
28 subsection (7) of this section, an execution sale of subject property
29 that secures an obligation on which a mortgagor, grantor or purchaser
30 in a land sale contract has defaulted may not occur during the emer-

1 **gency period. Any purported execution sale of subject property during**
2 **the emergency period is void and does not transfer or foreclose any**
3 **rights to the subject property.**

4 **“(7) This section does not:**

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

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

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

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

12 **“(D) That result from waste, destruction or illegal use of subject**
13 **property or a failure to prevent waste, destruction or illegal use of**
14 **subject property; or**

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

18 On page 8, after line 9, insert:

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

21 **“86.726. (1)(a) Except as provided in paragraph (b) of this subsection and**
22 **subsection (5) of this section, a beneficiary that intends to foreclose a resi-**
23 **dential trust deed shall first request a resolution conference with the grantor**
24 **before the beneficiary or the trustee files a notice of default under ORS**
25 **86.752 or before the beneficiary brings suit under ORS 88.010.**

26 **“(b)(A) The requirement to request or participate in a resolution confer-**
27 **ence with a grantor in accordance with subsection (2) or (3) of this section**
28 **does not apply to a beneficiary if the beneficiary submits to the Attorney**
29 **General a sworn affidavit that states that during the preceding calendar year**
30 **the beneficiary did not commence or cause an affiliate, subsidiary or agent**

1 of the beneficiary to commence more than [30] **175** actions to foreclose a
2 residential trust deed by advertisement and sale under ORS 86.752 or by suit
3 under ORS 88.010. A beneficiary that is a trustee shall include as part of the
4 total number of foreclosure actions that the beneficiary commenced in the
5 previous calendar year all foreclosure actions that the beneficiary com-
6 menced under ORS 86.752 or 88.010 in the beneficiary's capacity as a trustee.
7 A beneficiary that intends to claim an exemption under this subparagraph
8 shall submit the affidavit in a form and with the contents the Attorney
9 General specifies by rule either:

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

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

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

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

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

30 “(a) The beneficiary;

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

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

6 “(d) The grantor.

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

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

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

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

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

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

30 “(4) A beneficiary that submitted an affidavit in accordance with sub-

1 section (1)(b) of this section may, without waiving the exemption the bene-
2 ficiary claimed in the affidavit, request a resolution conference with a
3 grantor. The beneficiary shall submit a request under this subsection in ac-
4 cordance with the requirements set forth in subsection (2) of this section,
5 except that submitting the request does not require a processing fee.

6 “(5) The requirement to request or participate in a resolution conference
7 with a grantor in accordance with subsection (2) or (3) of this section does
8 not apply to the Department of Veterans’ Affairs in its capacity as a bene-
9 ficiary of loans made under ORS 407.125.”.

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

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

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

13 In line 19, delete “or 2020”.

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

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

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

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

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

20 **“SECTION 12. The Housing and Community Services Department**
21 **shall:**

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

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

29 **“(a) Informing eligible borrowers of the existence of funds for**
30 **mortgage payment assistance and other financial assistance to allow**

1 the borrower to reinstate a mortgage or to pay other eligible housing
2 related costs; and

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

4 “(3) Report to a committee of the Legislative Assembly within 30
5 days after the effective date of this 2021 Act and at the end of every
6 successive 45-day period until December 31, 2021, concerning the
7 department’s progress in implementing the provisions of this section.

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

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

12 “(2) The rights and obligations of a lender, issuer, servicer or trust-
13 tee of a mortgage loan, including a servicer of the Government Na-
14 tional Mortgage Association; or

15 “(3) A mortgage loan that a lender made or serviced in accordance
16 with the forbearance programs that the Federal Housing Finance
17 Agency follows for the administration’s mortgage loans, including a
18 mortgage loan that was not made, purchased, insured or securitized
19 by any agency or instrumentality of the United States.

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

25 **“SECTION 15.** The amendments to ORS 86.726 by section 5 of this
26 2021 Act become operative on January 2, 2023.

27 **“SECTION 16.** (1) Section 1 of this 2021 Act is repealed 90 days after
28 the expiration of the emergency period as defined in section 1 of this
29 2021 Act.

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

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

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