

# TITLE 9

## MORTGAGES AND LIENS

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### Chapter 86

2011 EDITION

#### Mortgages; Trust Deeds

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## MORTGAGES AND LIENS

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**REAL PROPERTY MORTGAGES****86.010 Nature of mortgagee's interest.**

A mortgage of real property is not a conveyance so as to enable the owner of the mortgage to recover possession of the property without a foreclosure and sale. This section is not intended as a limitation upon the right of the owner of real property to mortgage or pledge the rents and profits thereof, nor as prohibiting the mortgagee or pledgee of such rents and profits, or any trustee under a mortgage or trust deed from entering into possession of any real property, other than farmlands or the homestead of the mortgagor or successor in interest, for the purpose of operating the same and collecting the rents and profits thereof for application in accordance with the provisions of the mortgage or trust deed or other instrument creating the lien, nor as any limitation upon the power of a court of equity to appoint a receiver to take charge of the property and collect the rents and profits thereof.

**86.020 Covenant to pay money not implied.** No mortgage shall be construed as implying a covenant for the payment of the sum thereby secured. When there is no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

**86.030 Absolute deed as a mortgage.** When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by a deed of defeasance or other instrument, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance, or the heirs or devisees of the maker, or persons having actual notice thereof, unless the instrument of defeasance is recorded with the recording officer of the county where the lands lie.

**86.040 Improvements on mortgaged lands.** No person shall sell, dispose of, remove or damage any building or other improvements upon mortgaged lands. All such improvements are deemed a part of the mortgaged property and are subject to the mortgage lien. When any improvements are removed from the mortgaged premises in violation of this section, the mortgagee may follow and regain possession of such improvements wherever found or may recover the reasonable value thereof from the person removing them.

**86.050 Payment of taxes and other charges by mortgagee.** Whenever a mortgagor fails to pay when due any taxes, assessments, interest on prior mortgages, in-

surance premiums or other charges necessary to be paid for the protection of the lien of a mortgagee, the mortgagee may pay the same, and such payments shall be added to the mortgage debt and secured by the mortgage held by the mortgagee, and shall bear interest at the same rate as specified in the mortgage. This section applies only to mortgages executed after June 3, 1929, and does not affect the right of parties to specifically contract otherwise than as provided in this section.

**86.060 Assignment of mortgage.** Mortgages may be assigned by an instrument in writing, executed and acknowledged with the same formality as required in deeds and mortgages of real property, and recorded in the records of mortgages of the county where the land is situated.

**86.070** [Repealed by 1965 c.252 §1]

**86.080 Record of assignment not notice to mortgagor.** The recording of the assignment of a mortgage is not of itself notice of such assignment to the mortgagor, or the heirs or personal representatives of the mortgagor, so as to invalidate a payment made by any of them to the mortgagee.

**86.090** [Repealed by 1965 c.252 §1]

**86.095 Acts not affecting priority of lien of credit instrument.** (1) Actions that do not affect the priority granted to the lien of a credit instrument at the time it is first received for recordation shall include but shall not be limited to:

(a) Renegotiation or adjustment of the initial interest rate provided in the note or the credit instrument, upward or downward, which may increase or decrease the amount of periodic payments or may extend or shorten the term of the credit instrument, or both;

(b) An increase in the underlying obligation secured by the credit instrument during any part of the term of the credit instrument as a result of deferment of all or a portion of the interest payments and the addition of such payments to the outstanding balance of the obligation;

(c) Execution of new notes at designated intervals during the term of the credit instrument that reflect changes made pursuant to paragraph (a) or (b) of this subsection;

(d) Extension of the term of the credit instrument;

(e) Substitution of a note if there is no increase in the principal amount to be paid under the note;

(f) Modification of periodic payments required under the note if there is no increase in the principal amount due under the note; or

(g) Advances made under ORS 86.155.

(2) As used in this section, the addition of accrued interest to the principal amount of the underlying obligation is not an increase in the principal amount.

(3) As used in this section, "credit instrument" includes a mortgage, a line of credit instrument, a deed of trust and a contract for sale of real property. [1981 c.304 §2; 1987 c.716 §2; 1991 c.246 §1; 2001 c.20 §1]

**86.100 Discharge of mortgage.** Any mortgage shall be discharged of record whenever there is presented to the recording officer a certificate executed by the mortgagee, or the personal representatives or assigns of the mortgagee, acknowledged or proved and certified as prescribed by law to entitle conveyances to be recorded, specifying that such mortgage has been paid or otherwise discharged. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length. [Amended by 1965 c.252 §2]

**86.110 Discharge of record by owner and holder of mortgage note who is not the mortgagee of record.** (1) Whenever a promissory note secured by mortgage on real property is transferred by indorsement without a formal assignment of the mortgage, and the mortgage is recorded, the mortgage, upon payment of the promissory note, may be discharged of record by the owner and holder of the promissory note making and filing with the appropriate recording officer a certificate, verified by oath, proving the satisfaction of mortgage and declaring, in substance, that the owner and holder is the owner and holder of the note secured by the mortgage by indorsement of the mortgagee and that the note has been fully paid and proving that fact to the satisfaction of the recording officer.

(2) Upon receiving the certificate, the recording officer shall record the document and index the document as a satisfaction of mortgage. The record shall have the same effect as a deed of release of the mortgagee duly acknowledged and recorded. [Amended by 1965 c.252 §3; 2001 c.577 §1]

**86.120 Discharge of mortgage on real property; effect of discharge.** No mortgage upon real property shall be discharged except as provided in ORS 86.110 or by the person appearing upon the records of the county where the mortgage is recorded to be the owner thereof. A discharge of the mortgage by such person shall operate to free the land described in the mortgage from the lien of the mortgage as against all subsequent purchasers and incumbrances for value and without notice.

**86.130 Discharge by foreign executors, administrators, conservators and guardians.** Foreign executors, administrators, conservators and guardians may discharge mortgages upon the records of any county upon recording with the recording officer of the county in which the mortgage is recorded a certified copy of their letters testamentary, or of administration, or of guardianship or of conservatorship. The certificate shall include a statement that the letters are in effect, and the certificate shall be recorded in the mortgage records. [Amended by 1973 c.506 §§2,44]

**86.140 Liability of mortgagee for failure to discharge mortgage.** If any mortgagee or the personal representative or assignee of the mortgagee, after full performance of the condition of the mortgage before or after a breach thereof, shall, within 30 days after being thereto requested, and after tender of reasonable charges, fail to discharge the same, or to execute and acknowledge a certificate of discharge or release thereof, that person shall be liable to the mortgagor, or the heirs or assigns of the mortgagor, in the sum of \$500 damages and also for all actual damages occasioned by such failure, to be recovered in an action at law. The owner and holder of the promissory note referred to in ORS 86.110 is deemed the personal representative of the mortgagee for the purposes of this section. [Amended by 1955 c.29 §1; 1955 c.512 §1; 1993 c.648 §1]

**86.150 Loan agreements and promissory notes to state maximum prepayment privilege penalty.** (1) Any person making a loan having a loan period of more than three years secured by a mortgage or by a trust deed on real property located in this state shall, with respect to such loan, expressly and clearly state on the loan agreement and promissory note any maximum prepayment privilege penalty. The statement shall include the maximum prepayment penalty applicable for prepayment during the first year of the loan period and for each year thereafter.

(2) Violation of subsection (1) of this section with respect to a loan agreement or promissory note shall render any prepayment privilege penalty provision in the agreement void.

(3) "Loan agreement" as used in this section means a written document issued in connection with a particular loan which sets forth the terms upon which the loan will be made. "Loan agreement" does not include a mortgage or trust deed which secures a promissory note. Nothing in this section shall be deemed to require a lender to issue a loan agreement.

(4) This section does not apply to any loan agreement executed on or before September 13, 1967, or any loan not primarily for personal, family or household use. [1967 c.336 §§1,2; 1987 c.716 §3]

**86.155 Priority of line of credit instrument as to certain advances; procedure to limit indebtedness in residential line of credit instrument.** (1) As used in this section:

(a) "Credit agreement" means any promissory note, loan agreement or other agreement that provides for advances subsequent to the date of recording of the line of credit instrument that secures the note or agreement.

(b) "Line of credit instrument" means a mortgage or trust deed that secures a consumer or commercial credit agreement and creates a lien on specified real property up to a stated amount, provided that the front page of the mortgage or trust deed, or a memorandum thereof:

(A) Contains the legend "line of credit mortgage," "line of credit trust deed" or "line of credit instrument" either in capital letters or underscored above the body of the mortgage or trust deed;

(B) States the maximum principal amount to be advanced pursuant to the credit agreement; and

(C) States the term or maturity date, if any, of the credit agreement exclusive of any option to renew or extend the term or maturity date.

(c) "Residential line of credit instrument" means any line of credit instrument creating a lien on real property upon which are situated or will be constructed four or fewer residential units, one of which, at the time the credit agreement is entered into, is the borrower's residence or is intended, following construction, to be a residence of the borrower.

(2) A line of credit instrument shall have priority, regardless of the knowledge of the lienholder of any intervening lien, as of its date of recording as to the following advances whether the advances are optional or obligatory advances:

(a) Principal advances made any time pursuant to the credit agreement, to the extent the total outstanding advances do not exceed the maximum principal amount stated in the line of credit instrument under subsection (1)(b)(B) of this section;

(b) Interest, lawful charges and advances made any time pursuant to the credit agreement for the reasonable protection of the real property including, but not limited to, advances to pay real property taxes, hazard

insurance premiums, maintenance charges imposed under a declaration or restrictive covenant and reasonable attorney fees, whether or not the interest, lawful charges or advances exceed the maximum principal amount stated in the line of credit instrument under subsection (1)(b)(B) of this section; and

(c) Advances made any time after the date of recording and pursuant to a credit agreement that is not secured by a residential line of credit instrument to complete construction of previously agreed-upon improvements on the real property, whether or not the advances exceed the maximum principal amount stated in the line of credit instrument under subsection (1)(b)(B) of this section provided, however, that the front page of the instrument states that the maximum principal amount to be advanced pursuant to the credit agreement may be exceeded by advances to complete construction pursuant to this subsection.

(3) Actions that do not affect the priority granted to the advances set forth in subsection (2) of this section shall include, but not be limited to, those actions set forth in ORS 86.095 (1). If any modification to a credit agreement increases the maximum principal amount to be advanced pursuant to the credit agreement, then principal advances that are made that exceed the original maximum principal amount stated in the line of credit instrument shall have priority as of the date of recording an amendment to the line of credit instrument that states the increased maximum principal amount.

(4) In the case of a residential line of credit instrument, the debtor may limit the indebtedness secured by that line of credit instrument to the amount of the credit outstanding by delivering a notice by personal service upon the lienholder or trust deed beneficiary or by mailing a notice by certified mail, return receipt requested, to the lienholder or trust deed beneficiary at the address given for payment or, if none, to the address of the lienholder or trust deed beneficiary indicated in the line of credit instrument or deed of trust. To be sufficient to limit indebtedness under this subsection, the notice must:

(a) State that it is made under this section;

(b) Contain the legal description in the line of credit instrument or the street address of the real property;

(c) Provide the information necessary to locate the line of credit instrument in the public record;

(d) State the debtor's intention to limit the amount of credit secured by the line of

credit instrument to the amount owed at the time the notice is received;

(e) State the date sent; and

(f) Be signed and acknowledged by all debtors obligated under the line of credit instrument.

(5) Not later than the 20th day after receipt of the notice described in subsection (4) of this section, the lienholder or trust deed beneficiary shall:

(a) Indorse on the notice, or on an addendum to the notice, the principal amount of the indebtedness secured by the line of credit instrument on the date the lienholder or trust deed beneficiary received notice;

(b) Sign and acknowledge the notice or the addendum, if applicable; and

(c) Record the notice and addendum in the public record where the line of credit instrument was originally recorded.

(6) If the lienholder or trust deed beneficiary fails to record the notice and addendum, if applicable, within the time period specified in subsection (5) of this section, the debtor may record the notice in the public record where the line of credit instrument was originally recorded, together with proof of receipt by, or personal delivery to, the lienholder or trust deed beneficiary.

(7) Notwithstanding subsection (4) of this section, the line of credit instrument shall continue to have priority as of its date of recording as to:

(a) Principal advances, including any advance the creditor is required to honor, that were made before a notice under subsection (4) of this section is received;

(b) Interest, lawful charges and advances described in subsection (2)(b) and (c) of this section; and

(c) All advances made after a notice under subsection (4) of this section is received that are within the amount owed at the time the notice under subsection (4) of this section is given. [1987 c.716 §4; 1989 c.198 §1; 1991 c.313 §1; 1991 c.438 §1; 1997 c.152 §1; 2001 c.20 §2; 2007 c.71 §18]

**86.157 Action for residual debt after short sale of residential property.** (1) As used in this section:

(a) "Borrower" means an individual who, directly or indirectly and individually or together with another person, is obligated on a real estate loan agreement, including but not limited to a mortgagor or a grantor, as defined in ORS 86.705.

(b) "Lender" means a person that makes, extends or holds a real estate loan agreement, including but not limited to a

mortgagee or a beneficiary, as defined in ORS 86.705.

(c) "Real estate loan agreement" means an arrangement between a lender and a borrower, including but not limited to a mortgage or a trust deed, by means of which the lender agrees to extend a loan and the borrower agrees to secure the loan in whole or in part with residential property, or an interest in residential property, that is located in this state.

(d) "Residential property" means real property upon which is situated four or fewer improvements designed for residential use, one of which a borrower occupies as the borrower's residence.

(e) "Residual debt" means an amount due on a loan, evidence of which exists in a real estate loan agreement, note, bond, contract or similar written agreement, that a borrower is unable to pay out of the proceeds from a sale of the residential property that secures the loan.

(f) "Short sale" means a sale of residential property that is subject to foreclosure under ORS 86.705 to 86.795 or ORS chapter 88 for an amount that is less than the remaining amount due on the loan that the residential property secures.

(2) If a lender reports to the Internal Revenue Service that as a consequence of or in conjunction with a short sale of residential property the lender has canceled all or a portion of a borrower's debt under a real estate loan agreement and the lender provides to the borrower written evidence of the lender's report to the Internal Revenue Service, the lender or an assignee of the lender may not bring an action or otherwise seek payment for the residual debt following the short sale. [2011 c.480 §1]

**Note:** 86.157 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 86 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## LATE CHARGES

**86.160 Definitions for ORS 86.160 to 86.185.** As used in ORS 86.160 to 86.185:

(1) "Late charge" means a sum payable by a mortgagor to the holder of a mortgage pursuant to a note or mortgage to compensate the holder for servicing and other costs attributable to the receipt of mortgage payments from the mortgagor after the date upon which payment is due.

(2) "Mortgagor" includes the grantor under a deed of trust.

(3) "Mortgage" includes a deed of trust.

(4) “Residential real property” means a single-family, owner-occupied dwelling and appurtenances. [1977 c.427 §1]

**86.165 Late charge.** No lender may impose a late charge:

(1) With respect to any periodic installment payment received by it within 15 days after the due date. However, if the 15-day period ends on a Saturday, Sunday or legal holiday the 15-day period is extended to the next business day.

(2) In a dollar amount which exceeds five percent of the sum of principal and interest of the delinquent periodic installment payment or the amount provided in the note or mortgage held by the lender, whichever is the lesser.

(3) Unless the note or mortgage held by the lender provides for payment of a late charge on delinquent periodic installments and a monthly billing, coupon or notice is provided by the lender disclosing the date on which periodic installments are due and that a late charge may be imposed if payment is not received by lender within 15 days thereafter. However, if the lender and the borrower have provided in the note or other written loan agreement that the payments on the loan shall be made by the means of automatic deductions from a deposit account maintained by the borrower, the lender shall not be required to provide the borrower with a monthly billing, coupon or notice under this subsection with respect to any occasion on which there are insufficient funds in the borrower’s account to cover the amount of a loan payment on the date the loan payment becomes due and within the period described in subsection (1) of this section.

(4) More than once on any single installment. [1977 c.427 §2; 1979 c.101 §1; 1993 c.280 §1]

**86.170 Prohibited mortgage provisions.** Any provision in a mortgage for a late charge except as authorized by ORS 86.160 to 86.185 shall be invalid. [1977 c.427 §3; 1997 c.631 §384]

**86.175 Scope.** ORS 86.160 to 86.185 shall be applicable only to late charges on loans secured by residential real property. [1977 c.427 §4]

**86.180 ORS 86.160 to 86.185 not applicable to certain mortgagees; notice to borrowers.** Nothing in ORS 86.160 to 86.185 shall pertain to a mortgage banking company or mortgage servicing company except that if the terms of the mortgage do not conform to the requirements of ORS 86.165, the borrower shall be notified prior to the execution of the mortgage. [1977 c.427 §5]

**86.185 ORS 86.160 to 86.185 not applicable to certain loans.** Nothing in ORS 86.160 to 86.185 shall apply to loans insured, guaranteed or purchased by an instrumentality of the federal government, whose regulations establish late charge limitations. [1977 c.427 §6]

## REAL ESTATE LOANS; SECURITY PROTECTION

**86.205 Definitions for ORS 86.205 to 86.275.** As used in ORS 86.205 to 86.275:

(1) “Borrower” means any person who becomes obligated on a real estate loan agreement, either directly or indirectly, and includes, but is not limited to, mortgagors, grantors under trust deeds, vendees under conditional land sales contracts, and persons who purchase real property securing a real estate loan agreement, whether the persons assume the loan or purchase the property subject to the loan.

(2) “Direct reduction provision” or “capitalization provision” means any provision which is part of a real estate loan agreement, whether incorporated into the agreement or as part of a separately executed document, whereby the borrower makes periodic prepayment of property taxes, insurance premiums and similar charges to the lender or the designee of the lender, who applies such prepayments first to accrued interest and then to the principal amount of the loan, and upon payment of such charges, adds the amount of such payment to the principal amount of the loan.

(3) “Escrow account” means any account which is a part of a real estate loan agreement, whether incorporated into the agreement or as part of a separately executed document, whereby the borrower makes periodic prepayment to the lender or the designee of the lender of taxes, insurance premiums, and similar charges, and the lender or the designee of the lender pays the charges out of the account at the due dates.

(4) “Lender” means any person who makes, extends, or holds a real estate loan agreement and includes, but is not limited to, mortgagees, beneficiaries under trust deeds, and vendors under conditional land sales contracts.

(5) “Lender’s security protection provision” means any provision which is a part of a real estate loan agreement, whether incorporated into the agreement or as part of a separately executed document, whereby the borrower prepays, pledges or otherwise commits cash or other assets owned by the borrower in advance of due dates for payments of property taxes, insurance premiums and similar charges relating to the property se-

curing the loan in order to assure timely payment of the charges and protect the lender's security interest in the property, and includes, but is not limited to, escrow accounts, direct reduction provisions, capitalization provisions, and pledges of savings accounts.

(6) "Person" means individuals, corporations, associations and partnerships, and includes, but is not limited to, financial institutions as defined in ORS 706.008, investment companies, insurance companies, pension funds, and mortgage companies.

(7) "Real estate loan agreement" or "real estate loan" means any agreement providing for a loan on residential property, including multifamily, occupied by the borrower in the amount of \$100,000 or less, secured in whole or in part by real property, or any interest therein, located in this state, and includes, but is not limited to, mortgages, trust deeds and conditional land sales contracts. [1975 c.337 §1; 1997 c.631 §385; 2009 c.294 §11]

**86.210 Types of lender security protection provisions allowed.** A lender may require a lender's security protection provision under ORS 86.205 to 86.275 either as a direct reduction provision, an escrow account, or a pledge of an interest-bearing savings account in an amount not to exceed the maximum amount which a lender may require a borrower to deposit in a lender's security protection provision under ORS 86.240 and bearing interest at a rate not less than the rate required on lender's security protection provisions by ORS 86.245. [1975 c.337 §2; 1987 c.577 §1]

**86.214 Application of ORS 86.210 and 86.245 to real estate loan agreements.** To the extent not inconsistent with provisions of existing real estate loan agreements and provided such agreements are not silent with regard to a lender's security protection provision, the provisions of ORS 86.210, 86.245 and this section shall apply to real estate loan agreements entered into prior to, on and after October 1, 1987. To the extent that the provisions of existing real estate loan agreements are inconsistent with the provisions of ORS 86.210, 86.245 and this section, the existing real estate loan agreements are silent as to a lender's security protection provision, or any part of ORS 86.210, 86.245 and this section is declared unconstitutional as to existing real estate loan agreements, the provisions of ORS 86.205 to 86.275 (1985 Replacement Part) shall govern and be in full force and effect. [1987 c.577 §4]

**86.215** [1975 c.337 §§3,4,5; 1985 c.613 §2; repealed by 1987 c.577 §5]

**86.220** [1975 c.337 §6; repealed by 1987 c.577 §5]

**86.225** [1975 c.337 §6a; repealed by 1987 c.577 §5]

**86.230** [1975 c.337 §6b; repealed by 1987 c.577 §5]

**86.235** [1975 c.337 §7; repealed by 1987 c.577 §5]

**86.240 Limit on amount required in security protection escrow account; compliance with federal laws for certain loans as compliance with state laws.** (1) No lender, in connection with a real estate loan agreement, shall require a borrower or prospective borrower:

(a) To deposit in any escrow account which may be established in connection with the agreement, prior to or upon the date of settlement, a sum in excess of the estimated total amount of property taxes, insurance premiums, and similar charges which actually will be due and payable on the date of settlement, and the pro rata portion thereof which has accrued, plus one-sixth of the estimated total amount of the charges which will become due and payable during the 12-month period beginning on the date of settlement; or

(b) To deposit in any escrow account, which may be established in connection with the agreement, in any month beginning after the date of settlement a sum in excess of one-sixth of the total amount of estimated property taxes, insurance premiums or similar charges which will become due and payable during the 12-month period beginning on the first day of the month, except that in the event the lender determines there will be a deficiency on the due date, the lender shall not be prohibited from requiring additional monthly deposits in the escrow account of pro rata portions of the deficiency corresponding to the number of months from the date of the lender's determination of the deficiency to the date upon which the charges become due and payable.

(2) For real estate loan agreements subject to the federal Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) and to Regulation X of the federal Department of Housing and Urban Development (24 C.F.R. 3500.1 et seq.), compliance with the Real Estate Settlement Procedures Act and with Regulation X shall be considered to be compliance with this section. [1975 c.337 §13; 1995 c.182 §1]

**86.245 Interest on security protection deposits; exception.** (1) As used in this section, "discount rate" means the auction average rate on 91-day United States Treasury bills, as established by the most recent auction of such Treasury bills, as published by the United States Department of the Treasury, Bureau of the Public Debt, less 100 basis points.

(2) Except as provided in subsections (5) and (7) of this section, any lender who requires a lender's security protection provision in connection with a real estate loan agreement shall pay interest to the borrower

on funds deposited in the account at a rate not less than the discount rate. The discount rate shall be determined with reference to the most recent auction date before May 15 and November 15 each year.

(3) The rate of interest payable on the account shall be adjusted semiannually to reflect changes in the discount rate. These adjustments shall be calculated on May 15 and November 15 each year. Adjustments calculated on May 15 shall take effect on the following July 1, and adjustments calculated on November 15 shall take effect on the following January 1.

(4) Interest shall be computed on the average monthly balance in the account and shall be paid not less than quarterly to the borrower by crediting to the escrow account the amount of the interest due.

(5) Except as provided in subsection (6) of this section, this section does not apply to real estate loan agreements entered into prior to September 1, 1975, or on which the payment of interest on a lender's security protection provision violates any state or federal law or regulation.

(6) If federal law or regulation does not prohibit the payment of interest on a lender's security protection provision by federally chartered or organized lenders, this section applies to the federally chartered or organized lenders and the state chartered or organized lenders that are similar to the federally chartered or organized lenders with respect to a lender's security protection provision executed in connection with real estate loan agreement entered into prior to and in existence on September 1, 1975.

(7) This section does not apply to real estate loan agreements made by, held for sale to or sold to the State of Oregon. [1975 c.337 §8; 1979 c.327 §29; 1983 c.492 §1; 1987 c.577 §2; 1995 c.182 §2; 1997 c.68 §1; 2005 c.3 §1]

**86.250 Service charge prohibited where interest required.** No lender requiring a lender's security protection provision with respect to which interest is required to be paid by the lender under ORS 86.245 shall impose a service charge in connection with such provision. [1975 c.337 §9]

**86.255 Arrangements where security protection provisions not required; information to borrower.** In any real estate loan agreement with respect to which a lender does not require a lender's security protection provision, the parties may mutually agree to any arrangement whereby the borrower prepays, pledges or otherwise commits assets in advance of due dates for payment of property taxes, insurance premiums and similar charges relating to the real property

in order to assist the borrower in making timely payments of the charges. Prior to entering any such arrangement, the lender shall furnish the borrower a statement in writing, which may be set forth in the loan application:

(1) That the arrangement is not a condition to the real estate loan agreement;

(2) If it is an escrow account, whether or not the lender will pay interest and if interest is to be paid, the rate of interest; and

(3) Whether or not the borrower must pay the lender a charge for the service. If a charge is agreed to, the charge shall not exceed the amount of interest income earned under subsection (2) of this section. [1975 c.337 §10]

**86.260 Payment of taxes where security protection provision required; credit of discount where taxes not paid; cause of action by borrower.** (1) If a lender has a requirement that the borrower pay funds into a lender's security protection provision for the payment of property taxes on property that is the security for the real estate loan agreement, insurance premiums, and similar charges, and there are funds in the account, the lender shall pay the taxes or the amount in the account if less than the taxes due, in time to take advantage of any discount authorized by ORS 311.505, and all other charges on or before the due dates for payments.

(2)(a) If the lender fails to pay the taxes in accordance with subsection (1) of this section resulting in a loss of discount to the borrower, the lender shall credit the lender's security protection provision in an amount equal to the amount of discount denied on account of such failure, together with any interest that has accrued on the unpaid property taxes to the date the property taxes are finally paid.

(b) If the failure of the lender to comply with subsection (1) of this section is willful and results in the loss to the borrower of the discount, or if the failure to comply was not willful but upon discovery of the failure to comply and the loss of discount, the lender fails to credit the lender's security protection provision required by paragraph (a) of this subsection, the borrower shall have a cause of action against the lender to recover an amount equal to 15 times the amount of discount the borrower would have received, together with any interest that accrued on the unpaid property taxes to the date of recovery. The court may award reasonable attorney fees to the prevailing party in an action under this section. [1975 c.337 §11; 1979 c.703 §15; 1981 c.897 §18; 1995 c.618 §48]

**86.265 Effect of lender violation of ORS 86.205 to 86.275.** A violation of ORS 86.205 to 86.275 by a lender shall render the lender's security protection provision voidable at the option of the borrower, and the lender shall be liable to the borrower in an amount equal to:

(1) The borrower's actual damages or \$100, whichever is greater, and

(2) In the case of any successful action to enforce the foregoing liability, the court costs of the action together with reasonable attorney fees at trial and on appeal as determined by the court if the court finds that written demand for the payment of the borrower's claim was made on the lender not less than 10 days before the commencement of the action. No attorney fees shall be allowed to the borrower if the court finds that the lender tendered to the borrower, prior to the commencement of the action, an amount not less than the damages awarded to the borrower. [1975 c.337 §14; 1981 c.897 §19]

**86.270 ORS 86.205 to 86.275 inapplicable to certain loan agreements; notice to borrower.** ORS 86.205 to 86.275 shall not apply to a real estate loan agreement which is serviced or held for sale within one year by a mortgage servicing company neither affiliated with nor owned in whole or in part by the purchaser and which is made, extended or held by a purchaser whose principal place of business is outside this state; provided that if the purchaser requires a lender's security protection provision, prior to entering into such agreement, the mortgage servicing company shall furnish the borrower a statement in writing, which may be set forth in the loan application, that the mortgage servicing company is not required by the laws of this state to pay interest on the lender's security protection provision, and specifically informing the borrower why the borrower is not entitled to interest on the account. [1975 c.337 §15]

**86.275 Severability.** If any section of ORS 86.205 to 86.275, or the application of any section to any real estate loan agreement shall be held invalid, the remainder of ORS 86.205 to 86.275, and the application of ORS 86.205 to 86.275 to any real estate loan agreement other than the one or those to which it is held invalid, shall not be affected thereby. [1975 c.337 §12]

**86.310** [Amended by 1955 c.21 §1; repealed by 1961 c.726 §427]

**86.315** [1953 c.700 §2; repealed by 1961 c.726 §427]

**86.320** [Repealed by 1961 c.726 §427]

**86.330** [Repealed by 1961 c.726 §427]

**86.340** [Repealed by 1961 c.726 §427]

**86.350** [Amended by 1955 c.182 §1; repealed by 1961 c.726 §427]

**86.360** [Repealed by 1961 c.726 §427]

**86.370** [Amended by 1957 c.404 §1; repealed by 1961 c.726 §427]

**86.380** [Repealed by 1961 c.726 §427]

**86.390** [Repealed by 1961 c.726 §427]

**86.400** [Repealed by 1961 c.726 §427]

## CHATTEL MORTGAGES

**86.405 Secretary of State to furnish statement of mortgages filed before September 1, 1963; fee.** Upon the payment of a fee of 50 cents for each name to be searched for chattel mortgages filed under former ORS 86.370 or 86.390, prior to September 1, 1963, the Secretary of State shall furnish to any person applying therefor a statement of any mortgages noted on the indexes created under former ORS 86.380, or if no mortgages are noted, a statement to that effect. All such fees received by the Secretary of State shall be promptly paid to the State Treasurer and placed in the General Fund. [1961 c.726 §409]

**86.410** [Repealed by 1961 c.726 §427]

**86.420** [Repealed by 1961 c.726 §427]

**86.430** [Repealed by 1961 c.726 §427]

**86.440 Discharge of mortgage recorded with county recording officer.** Whenever any mortgage recorded under the provisions of ORS 86.350 (1959 Replacement Part) is paid or otherwise satisfied, it shall be discharged by the recording with the recording officer of a certificate of such owner, executed and acknowledged with the same formalities as are prerequisite to the recording of any such mortgage, showing the date of execution, date of recording, and recording number of the record thereof, and that such mortgage has been fully discharged. [Amended by 1999 c.654 §4]

**86.450** [Repealed by 1961 c.726 §427]

**86.460 Discharge of mortgage filed with Secretary of State; fee.** In the event of the satisfaction or release of any chattel mortgage, a certified copy of which has been filed with the Secretary of State prior to September 1, 1963; the person so satisfying or releasing the mortgage shall send a duly executed discharge or certified copy thereof, with a fee of 25 cents, to the Secretary of State, who shall note such discharge in an appropriate column of the index kept by the Secretary of State. All such fees received by the Secretary of State shall be promptly paid to the State Treasurer and placed in the General Fund. [Amended by 1961 c.726 §407]

**86.470 Discharge, assignment and foreclosure of mortgages on chattels registered and licensed by Department of Transportation.** The recording officer of counties having less than 50,000 population on the last day of each calendar month, and

the recording officer of counties having more than 50,000 population on the last day of each calendar week, shall notify the Department of Transportation, upon forms to be provided by the department, of the partial or full satisfaction, assignment or foreclosure during such period of all mortgages theretofore certified to the department prior to September 1, 1963, as formerly provided in ORS 86.390. The notice shall completely identify the mortgage so satisfied, assigned or foreclosed; and the department thereupon shall note on each index margin such satisfaction, assignment or foreclosure. [Amended by 1961 c.726 §408]

**86.480** [Repealed by 1961 c.726 §427]

**86.490** [Repealed by 1961 c.726 §427]

**86.500** [Amended by 1955 c.30 §1; repealed by 1961 c.726 §427]

**86.510** [Repealed by 1961 c.726 §427]

**86.520** [Repealed by 1961 c.726 §427]

### INVESTMENTS; FEDERAL HOUSING ADMINISTRATOR

**86.610 Power of financial institutions, fiduciaries and others to make loans secured by property insured by Federal Housing Administrator.** Financial institutions as defined in ORS 706.008, trustees, guardians, conservators, executors, administrators, other fiduciaries and all other persons, associations and corporations, subject to the laws of this state, may make such loans, secured by real property or leasehold, as the Federal Housing Administrator insures or makes a commitment to insure, and may obtain such insurance. [Amended by 1967 c.359 §678; 1973 c.823 §93; 1997 c.631 §386]

**86.620 Investment of funds of financial institutions, fiduciaries and others in bonds and mortgages accepted by Federal Housing Administrator, debentures issued thereby, and obligations of national mortgage associations.** Financial institutions as defined in ORS 706.008, trustees, guardians, conservators, executors, administrators, other fiduciaries and all other persons, associations and corporations, subject to the laws of this state, may invest their funds, and the money in their custody or possession, eligible for investment, in bonds and mortgages on real property insured by the Federal Housing Administrator, in debentures issued by the Federal Housing Administrator, and in obligations of national mortgage associations. [Amended by 1967 c.359 §679; 1973 c.823 §94; 1997 c.631 §387]

**86.630 Eligibility of securities described in ORS 86.620 as security for deposits, investment or reserve of securities.** Whenever, by statute, collateral is required as security for the deposit of

public or other funds, or deposits are required to be made with any public official or department, or an investment of capital or surplus, or a reserve or other fund is required to be maintained consisting of designated securities, the securities described in ORS 86.620 shall be eligible for such purposes.

**86.640 Applicability of other laws requiring security or regulating loans and investments.** No law of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount or form of such security, or prescribing or limiting the period for which loans or investments may be made, shall apply to loans or investments made pursuant to ORS 86.610 and 86.620.

### TRUST DEEDS

**86.705 Definitions for ORS 86.705 to 86.795.** As used in ORS 86.705 to 86.795:

(1) "Affordable housing covenant" has the meaning given that term in ORS 456.270.

(2) "Beneficiary" means a person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or the person's successor in interest, and who is not the trustee unless the beneficiary is qualified to be a trustee under ORS 86.790 (1)(d).

(3) "Eligible covenant holder" has the meaning given that term in ORS 456.270.

(4) "Grantor" means the person that conveys an interest in real property by a trust deed as security for the performance of an obligation.

(5) "Residential trust deed" means a trust deed on property upon which are situated four or fewer residential units, one of which the grantor, the grantor's spouse or the grantor's minor or dependent child occupies as a principal residence at the time a trust deed foreclosure is commenced.

(6) "Residential unit" means an improvement designed for residential use.

(7) "Trust deed" means a deed executed in conformity with ORS 86.705 to 86.795 that conveys an interest in real property to a trustee in trust to secure the performance of an obligation the grantor or other person named in the deed owes to a beneficiary.

(8) "Trustee" means a person, other than the beneficiary, to whom a trust deed conveys an interest in real property, or the person's successor in interest, or an employee of the beneficiary, if the employee is qualified to be a trustee under ORS 86.790. [1959 c.625 §1; 1961 c.616 §1; 1975 c.618 §1; 1983 c.719 §1; 1985 c.817 §1; 1989 c.190 §1; 2011 c.712 §1]

**86.710 Trust deeds authorized to secure performance of an obligation; methods of foreclosure after breach.** Transfers in trust of an interest in real property may be made to secure the performance of an obligation of a grantor, or any other person named in the deed, to a beneficiary. Where any transfer in trust of an interest in real property is made pursuant to the provisions of ORS 86.705 to 86.795 to secure the performance of an obligation, a power of sale is conferred upon the trustee. The power of sale may be exercised after a breach of the obligation for which the transfer is security; and a trust deed, executed in conformity with ORS 86.705 to 86.795, may be foreclosed by advertisement and sale in the manner provided in ORS 86.705 to 86.795, or, at the option of the beneficiary, may be foreclosed by the beneficiary as provided by law for the foreclosure of mortgages on real property. [1959 c.625 §2; 1961 c.616 §2; 1965 c.457 §1; 1975 c.618 §2; 1979 c.879 §1; 1983 c.719 §2; 1987 c.480 §1]

**86.715 Trust deed deemed to be mortgage on real property; applicability of mortgage laws.** A trust deed is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of ORS 86.705 to 86.795, in which event the provisions of ORS 86.705 to 86.795 shall control. For the purpose of applying the mortgage laws, the grantor in a trust deed is deemed the mortgagor and the beneficiary is deemed the mortgagee. [1959 c.625 §21]

**86.720 Reconveyance upon performance; liability for failure to reconvey; release of trust deed.** (1) Within 30 days after performance of the obligation secured by the trust deed, the beneficiary shall deliver a written request to the trustee to reconvey the estate of real property described in the trust deed to the grantor. Within 30 days after the beneficiary delivers the written request to reconvey to the trustee, the trustee shall reconvey the estate of real property described in the trust deed to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by ORS 86.140 in the case of refusal to execute a discharge or satisfaction of a mortgage on real property. The trustee may charge a reasonable fee for all services involved in the preparation, execution and recordation of any reconveyance executed pursuant to this section.

(2) If a full reconveyance of a trust deed has not been executed and recorded pursuant

to the provisions of subsection (1) of this section within 60 calendar days of the date the obligation secured by the trust deed was fully satisfied, then:

(a) If the obligation was satisfied by a title insurance company or insurance producer or by payment through an escrow transacted by a title insurance company or insurance producer, upon the written request of the grantor or the grantor's successor in interest, the tender of reasonable charges and the compliance with the notice requirements of subsection (3) of this section, the title insurance company or insurance producer shall prepare, execute and record a release of trust deed.

(b) Upon compliance with the notice requirements of subsection (3) of this section, any title insurance company or insurance producer may prepare, execute and record a release of trust deed.

(3) Prior to the issuance and recording of a release pursuant to this section, the title insurance company or insurance producer shall give notice of the intention to record a release of trust deed to the beneficiary of record and, if different, the party to whom the full satisfaction payment was made. The notice shall:

(a) Provide that the parties to whom the notice is sent shall have a period of 30 days from the date of mailing to send to the title insurance company or insurance producer their written objections to the execution and recording of the release of trust deed;

(b) Be sent by first class mail with postage prepaid, addressed to the named interested parties at their last-known addresses; and

(c) Identify the trust deed by the name of the original grantor and any successor in interest on whose behalf payment was made and by the recording reference.

(4) The release of trust deed shall recite on the first page that it has been executed and recorded pursuant to the provisions of this section. The release shall be properly acknowledged and shall set forth:

(a) The name of the beneficiary to whom the payment was made;

(b) The name of the original grantor of the trust deed and any successor in interest on whose behalf payment was made;

(c) The recording reference to the trust deed that is to be released;

(d) A recital that the obligation secured by the trust deed has been paid in full;

(e) The date and amount of payment;

(f) The date of mailing of notice required by this section; and

(g) A recital that no written objections were received by the title insurance company or insurance producer.

(5) The release of trust deed executed pursuant to this section shall be entitled to recordation and, when recorded, shall be deemed to be the equivalent of a reconveyance of a trust deed.

(6) The title insurance company or insurance producer shall not record or cause to be recorded a release of trust deed when any of the following circumstances exist:

(a) The 30-day period following notice given under this section has not expired; or

(b) Written objection to such recordation has been received by the title insurance company or insurance producer from any of the parties to whom notice was sent.

(7) The trustee, title insurance company or insurance producer may charge a reasonable fee for all services involved in the preparation, execution, recordation and compliance with this section, to effect the release of trust deed.

(8) Subsection (2) of this section does not excuse the beneficiary or trustee from compliance with subsection (1) of this section.

(9) In addition to any other remedy provided by law, a title insurance company or insurance producer preparing, executing or recording a release of trust deed shall be liable to any party for damages that the party sustains by reason of the negligence or willful misconduct of the title insurance company or insurance producer in connection with the issuance, execution or recording of the release pursuant to this section. Except as provided in subsection (10) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(10) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (9) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(11) As used in this section, "insurance producer" means an authorized issuer of title insurance policies of a title insurance company who is licensed as an insurance pro-

ducer for that purpose pursuant to ORS chapter 744.

(12) Subsections (2) to (11) of this section shall be applicable only to full reconveyances of the property described in the trust deed and not to reconveyances of parts or portions of the property.

(13) Subsections (1) to (12) of this section are applicable to all trust deeds, whether executed before, on or after November 4, 1993.

(14) A title insurance company or agent is not required to prepare, execute and record a release of trust deed under subsections (2) to (12) of this section if the obligation secured by the trust deed was satisfied prior to November 4, 1993. [1959 c.625 §18; 1993 c.648 §2; 1995 c.696 §15; 2001 c.254 §1; 2003 c.364 §49]

**86.722 Correction of error concerning status or effect of trust deed; rights of bona fide purchaser.** (1) To correct an error concerning the status or effect of a recorded trust deed, a person may present an instrument to the county clerk for recording in the deed and mortgage records of the county, and the county clerk shall record the instrument if it otherwise meets the requirements for an instrument to be recorded under ORS chapter 205 and is in substantially the following form:

CORRECTION OF ERROR(S)  
IN THE DEED AND MORTGAGE  
RECORDS RELATING TO  
A TRUST DEED  
(ORS 86.705 to 86.795)

This instrument is recorded to provide notice of an error relating to:

Original Deed of Trust

- County clerk instrument record #:
- Grantor (name):
- Trustee (name):
- Beneficiary (name):
- Assignee(s), if any (name(s)):

The error to be corrected is (check one):

- Erroneous reconveyance of trust deed  
Date of recording:  
County clerk instrument record #:
- Erroneous recording of Trustee's Deed  
Date of recording:  
County clerk instrument record #:

The result of this error correction is (check one):

- The original trust deed is hereby reinstated; or

[ ] The Trustee's Deed is hereby set aside as though the erroneous instrument had not been recorded.

Date \_\_\_\_\_

Name (printed) \_\_\_\_\_

Signature \_\_\_\_\_

(Beneficiary of original deed of trust)

STATE OF OREGON )
County of \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by \_\_\_\_\_.

Notary Public for Oregon
My commission expires: \_\_\_\_\_

STATE OF OREGON )
County of \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by \_\_\_\_\_ and by \_\_\_\_\_ of \_\_\_\_\_, a corporation on behalf of the corporation.

Notary Public for Oregon
My commission expires: \_\_\_\_\_

(2) Reinstatement of a trust deed based on the correction of an error under this section does not affect the rights of a bona fide purchaser for value or of a bona fide purchaser for value holding a security interest in the real property if the purchaser acquired an interest after the erroneous trust deed reconveyance or trustee's deed was recorded and before the error was corrected. [2009 c.628 §3]

86.725 Time within which foreclosure must be commenced. The foreclosure of a trust deed by advertisement and sale or the foreclosure of a trust deed by judicial procedure shall be commenced within the time, including extensions, provided by ORS 88.110 and 88.120 for the foreclosure of a mortgage on real property. [1959 c.625 §20]

86.730 [1959 c.625 §§17,22; repealed by 1961 c.616 §8]

86.735 Foreclosure by advertisement and sale. The trustee may foreclose a trust deed by advertisement and sale in the manner provided in ORS 86.740 to 86.755 if:

(1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any appointment of a successor trustee are recorded in the mortgage records in the counties in which the property described in the deed is situated; and

(2) There is a default by the grantor or other person owing an obligation, the performance of which is secured by the trust deed, or by their successors in interest with respect to any provision in the deed which authorizes sale in the event of default of such provision; and

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

(4) No action has been instituted to recover the debt or any part of it then remaining secured by the trust deed, or, if such action has been instituted, the action has been dismissed, except that:

(a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action may be instituted to appoint a receiver or to obtain a temporary restraining order during foreclosure of a trust deed by advertisement and sale, except that a receiver shall not be appointed with respect to a single-family residence which is occupied as the principal residence of the grantor, the grantor's spouse or the grantor's minor or dependent child.

(b) An action may be commenced for the judicial or nonjudicial foreclosure of the same trust deed as to any other property covered thereby, or any other trust deeds, mortgages, security agreements or other consensual or nonconsensual security interests or liens securing repayment of the debt. [1959 c.625 §§4,5; 1965 c.457 §2; 1983 c.719 §3; 1985 c.817 §2; 1989 c.190 §2]

86.737 Notice to grantor; requirements; additional forms; rules. (1) If a notice of default is recorded for property that is subject to a residential trust deed, the sender of a notice of sale under ORS 86.740 shall, on or before the date the notice of sale is served or mailed, give notice under this section to the grantor by both first class and certified mail with return receipt requested. Subject to any rules adopted under subsection (2) of this section, the notice must be in substantially the following form and printed in at least 14-point type:

NOTICE:
YOU ARE IN DANGER OF LOSING
YOUR PROPERTY IF YOU DO NOT
TAKE ACTION IMMEDIATELY

This notice is about your mortgage loan on
your property at \_\_\_\_\_ (address).

Your lender has decided to sell this property
because the money due on your mortgage
loan has not been paid on time or because
you have failed to fulfill some other obligation
to your lender. This is sometimes
called "foreclosure."

The amount you would have had to pay as
of \_\_\_\_\_ (date) to bring your mortgage loan
current was \$\_\_\_\_\_. The amount you must
now pay to bring your loan current may have
increased since that date.

By law, your lender has to provide you with
details about the amount you owe, if you ask.
You may call \_\_\_\_\_ (telephone
number) to find out the exact amount you
must pay to bring your mortgage loan current
and to get other details about the
amount you owe. You may also get these
details by sending a request by certified mail
to: \_\_\_\_\_.

THIS IS WHEN AND WHERE
YOUR PROPERTY WILL BE SOLD
IF YOU DO NOT TAKE ACTION:

Date and time: \_\_\_\_\_, 2\_\_\_\_\_ at
\_\_\_\_\_

Place: \_\_\_\_\_

THIS IS WHAT YOU CAN DO
TO STOP THE SALE:

- 1. You can pay the amount past due or correct
any other default, up to five days before
the sale.
2. You can refinance or otherwise pay off the
loan in full anytime before the sale.
3. You can call \_\_\_\_\_ (name) at
\_\_\_\_\_ (telephone number) to find
out if your lender is willing to give you more
time or change the terms of your loan.
4. You can sell your home, provided the sale
price is enough to pay what you owe.

There are government agencies and nonprofit
organizations that can give you information
about foreclosure and help you decide what
to do. For the name and telephone number
of an organization near you, please call the
statewide telephone contact number at
\_\_\_\_\_. You may also wish to talk
to a lawyer. If you need help finding a lawyer,
you may call the Oregon State Bar's

Lawyer Referral Service at \_\_\_\_\_
or toll-free in Oregon at \_\_\_\_\_ or
you may visit its website at: \_\_\_\_\_.
Legal assistance may be available if you have
a low income and meet federal poverty
guidelines. For more information and a directory
of legal aid programs, go to
\_\_\_\_\_.

WARNING: You may get offers from people
who tell you they can help you keep your
property. You should be careful about those
offers. Make sure you understand any papers
you are asked to sign. If you have any
questions, talk to a lawyer or one of the organizations
mentioned above before signing.

DATED: \_\_\_\_\_, 2\_\_\_\_\_

Trustee name: \_\_\_\_\_ (print)

Trustee signature: \_\_\_\_\_

Trustee telephone number: \_\_\_\_\_

(2) The Department of Consumer and
Business Services may adopt rules prescribing
the format, font size and other physical
characteristics of the notice form set forth in
subsection (1) of this section. The department
shall adopt rules specifying the resource
telephone contact numbers and website addresses
the sender is to insert in completing the
notice.

(3) When filling blanks in the notice form
set forth in subsection (1) of this section, the
sender of the notice shall include, stated in
plain language:

(a) The amount of payment that was
needed to bring the mortgage loan current
as of the date stated in the notice; and

(b) One or more telephone numbers consisting
of:

(A) A telephone number that will allow
the grantor access during regular business
hours to details regarding the grantor's loan
delinquency and repayment information; and

(B) A telephone number that will allow
the grantor access during regular business
hours to person-to-person consultation with
an individual authorized by the beneficiary
to discuss the grantor's payment and loan
term negotiation and modification options.

(4) Telephone numbers described in subsection
(3) of this section must be toll-free
numbers unless the beneficiary:

(a) Made the loan with the beneficiary's
own money;

(b) Made the loan for the beneficiary's
own investment; and

(c) Is not in the business of making loans
secured by an interest in real estate.

(5) If the sender giving notice under subsection (1) of this section has actual knowledge that the grantor is not the occupant of the residential real property, the sender shall also give notice to the occupant of the property by both first class and certified mail with return receipt requested. [2008 c.19 §20; 2009 c.864 §§1,4]

**86.739 Failure to give notice to grantor; remedy.** (1) A grantor shall have the same rights possessed by the holder of a junior lien or interest who was omitted as a party defendant in a judicial foreclosure proceeding if:

(a) The notice required by ORS 86.737 is not sent to the grantor;

(b) The grantor does not actually receive a copy of the notice at least 25 days before the date on which the trustee conducts the sale; and

(c) The grantor informs the trustee, the purchaser, the beneficiary or any loan servicer in writing not later than 60 days after the purchaser takes possession of the property upon which a trust deed was foreclosed that the grantor did not receive the notice and did not have actual notice of the sale.

(2) The purchaser at the trustee's sale, or the purchaser's heirs, assigns or transferees, shall have the same rights possessed by a purchaser at a sheriff's sale following a judicial foreclosure. [2008 c.19 §21; 2009 c.229 §3]

**86.740 Notice of sale to be given to certain persons.** (1) Subsequent to recording notice of default as provided in ORS 86.735 and at least 120 days before the day the trustee conducts the sale, notice of the sale shall be served pursuant to ORCP 7 D(2) and 7 D(3) or mailed by both first class and certified mail with return receipt requested, to the last-known address of the following persons or their legal representatives, if any:

(a) The grantor in the trust deed.

(b) Any successor in interest to the grantor whose interest appears of record, or of whose interest the trustee or the beneficiary has actual notice.

(c) Any person, including the Department of Revenue or any other state agency, having a lien or interest subsequent to the trust deed if the lien or interest appears of record or the beneficiary has actual notice of the lien or interest.

(d) Any person requesting notice as provided in ORS 86.785.

(2) A notice served by mail under subsection (1) of this section is effective when the notice is mailed.

(3)(a) The disability, insanity or death of any person to whom notice of sale must be

given under this section does not delay or impair in any way the trustee's right under a trust deed to foreclose under the deed. If the disability, insanity or death occurs prior to the recording of notice of default, the notice shall be given instead to the guardian, the conservator of the estate of the person or the administrator or personal representative of the person, as the case may be, in the manner and by the time set forth in this section.

(b) If the disability, insanity or death of any person to whom notice of sale must be given under this section occurs on or after the recording of notice of default, the trustee shall, if and when the trustee has knowledge of the disability, insanity or death, promptly give the guardian, conservator of the estate or the administrator or personal representative, as the case may be, the notice provided in ORS 86.745. This notice shall be given by first class and certified mail with return receipt requested, to the last-known address of the guardian, conservator or administrator or personal representative.

(c) In the event there is no administrator or personal representative of the estate of the person to whom notice of sale must be given under this section, the notice may be given instead to the heirs at law or devisees of the deceased person in the manner and by the time set forth in this section.

(4) If the owner of real property subject to foreclosure dies and the real property is also subject to a transfer on death deed, as provided by ORS 93.948 to 93.979, notice of sale must be given under this section to the beneficiary designated under the transfer on death deed. [1959 c.625 §6; 1961 c.616 §3; 1965 c.457 §3; 1973 c.823 §95; 1979 c.879 §2; 1983 c.719 §4; 1989 c.190 §3; 2005 c.129 §1; 2011 c.212 §22]

**86.742 Failure to give notice of sale; action by omitted person; defense; pleading and proving knowledge of sale; attorney fees; exclusive remedy.** (1) If the trustee fails to give notice of the sale to any person entitled to notice under ORS 86.740 (1)(c), and such person did not have actual notice of the sale at least 25 days prior to the date the trustee conducted the sale, such omitted person shall have the same rights possessed by the holder of a junior lien or interest who was omitted as a party defendant in a judicial foreclosure proceeding, and the purchaser at the trustee's sale or the purchaser's heirs, assigns or transferees, shall have the same rights possessed by a purchaser at a sheriff's sale following a judicial foreclosure.

(2) The omitted person may also commence an action against the trustee in the circuit court in the county where the real property is located. In an action against the

trustee, the omitted person shall be entitled to damages upon proof that:

(a) The trustee did not give notice of the sale to the omitted person in the manner required by ORS 86.740 (1)(c) and 86.750;

(b) A search of the record under the name of the grantor as it appears on the trust deed, or the name of the grantor's successor in interest, would have revealed the omitted person's interest;

(c) The omitted person could and would have cured the default under ORS 86.753; and

(d) The omitted person sustained actual damages as a result of such person's loss of the opportunity to cure the default under ORS 86.753 (1).

(3) In an action against the trustee under subsection (2) of this section, any defendant or third party defendant may move for dismissal on the ground that the omitted person would not or could not have cured the default and reinstated the trust deed if the omitted person had received the notice required by ORS 86.740 (1)(c). The court shall hold a hearing on such motion prior to any hearing on any motion for summary judgment, and prior to trial of the action. The court shall deny the motion only if the omitted person produces affidavits or other evidence sufficient for a reasonable jury to find, applying a standard of clear and convincing evidence, that the omitted person had the financial ability to cure the default under ORS 86.753 prior to the date of the trustee's sale, and that the omitted person would have done so had the omitted person received the notice required by ORS 86.740 (1)(c). If the court grants the motion to dismiss it shall award attorney fees pursuant to subsection (5) of this section.

(4) In any action against the trustee or any other party under this section the omitted person shall plead that the omitted person did not have actual knowledge of the sale at least 25 days prior to the date the trustee conducted the sale, but thereafter the defendant shall have the burden of proving that the omitted person did have such notice.

(5) In all suits brought under this section, the applicable court may, upon entering judgment, allow to the prevailing party as a part of the costs a reasonable amount for attorney fees at trial and on appeal.

(6) The remedies described in subsections (1) to (5) of this section shall be the sole remedies available to a person entitled to notice of foreclosure by advertisement and sale under ORS 86.740 (1)(c), who failed to receive such notice. Such a person's failure to redeem or to commence an action against the trustee within five years of the date of a

trustee's sale under ORS 86.755 shall bar any action under this section or any other applicable law. [1985 c.817 §9; 1995 c.618 §51]

**86.745 Contents of notice of sale; additional notices; contents and requirements.** The notice of sale shall:

(1) List the names of the grantor, trustee and beneficiary in the trust deed, and the mailing address of the trustee.

(2) Describe the property the trust deed covers.

(3) Identify the book and page of the mortgage records that record the trust deed.

(4) State the default for which the foreclosure is made.

(5) State the sum owing on the obligation that the trust deed secures.

(6) State that the property will be sold to satisfy the obligation.

(7) Set forth the date, time and place of the sale.

(8) State that the right exists under ORS 86.753 to have the proceeding dismissed and the trust deed reinstated by paying the entire amount then due, together with costs, trustee's fees and attorney fees, and by curing any other default complained of in the notice of default, at any time that is not later than five days before the date last set for the sale.

(9) If the property includes one or more dwelling units that are subject to ORS chapter 90, include a notice addressed clearly to any individual who occupies the property and who is or might be a residential tenant. The notice required under this subsection must:

(a) Include contact information for the Oregon State Bar and a person or organization that provides legal help to individuals at no charge to the individual;

(b) Include information concerning the right the individual has to notice under ORS 86.755 (6)(c);

(c) Be set apart from other text in the notice of sale; and

(d) Be in substantially the following form:

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#### NOTICE TO RESIDENTIAL TENANTS

The property in which you are living is in foreclosure. A foreclosure sale is scheduled for \_\_\_\_\_ (date). The date of this sale may be postponed. Unless the lender that is foreclosing on this property is paid before the sale date, the foreclosure will go through and someone new will own this property. After the sale, the new owner is required to provide you with contact information and notice that the sale took place.

The following information applies to you only if you are a bona fide tenant occupying and renting this property as a residential dwelling under a legitimate rental agreement. The information does not apply to you if you own this property or if you are not a bona fide residential tenant.

If the foreclosure sale goes through, the new owner will have the right to require you to move out. Before the new owner can require you to move, the new owner must provide you with written notice that specifies the date by which you must move out. If you do not leave before the move-out date, the new owner can have the sheriff remove you from the property after a court hearing. You will receive notice of the court hearing.

#### PROTECTION FROM EVICTION

**IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING THIS PROPERTY AS A RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE FORECLOSURE SALE FOR:**

- THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED TERM LEASE; OR
- AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE.

If the new owner wants to move in and use this property as a primary residence, the new owner can give you written notice and require you to move out after 90 days, even though you have a fixed term lease with more than 90 days left.

You must be provided with at least 90 days' written notice after the foreclosure sale before you can be required to move.

A bona fide tenant is a residential tenant who is not the borrower (property owner) or a child, spouse or parent of the borrower, and whose rental agreement:

- Is the result of an arm's-length transaction;
- Requires the payment of rent that is not substantially less than fair market rent for the property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
- Was entered into prior to the date of the foreclosure sale.

#### ABOUT YOUR TENANCY BETWEEN NOW AND THE FORECLOSURE SALE: RENT

**YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY IS SOLD OR UNTIL A COURT TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED.**

**BE SURE TO KEEP PROOF OF ANY PAYMENTS YOU MAKE.**

#### SECURITY DEPOSIT

You may apply your security deposit and any rent you paid in advance against the current rent you owe your landlord as provided in ORS 90.367. To do this, you must notify your landlord in writing that you want to subtract the amount of your security deposit or prepaid rent from your rent payment. You may do this only for the rent you owe your current landlord. If you do this, you must do so before the foreclosure sale. The business or individual who buys this property at the foreclosure sale is not responsible to you for any deposit or prepaid rent you paid to your landlord.

#### ABOUT YOUR TENANCY

##### AFTER THE FORECLOSURE SALE

The new owner that buys this property at the foreclosure sale may be willing to allow you to stay as a tenant instead of requiring you to move out after 90 days or at the end of your fixed term lease. After the sale, you should receive a written notice informing you that the sale took place and giving you the new owner's name and contact information. You should contact the new owner if you would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement with you or does not notify you in writing within 30 days after the date of the foreclosure sale that you must move out, the new owner becomes your new landlord and must maintain the property. Otherwise:

- You do not owe rent;
- The new owner is not your landlord and is not responsible for maintaining the property on your behalf; and
- You must move out by the date the new owner specifies in a notice to you.

The new owner may offer to pay your moving expenses and any other costs or amounts you and the new owner agree on in exchange for your agreement to leave the premises in less than 90 days or before your fixed term lease expires. You should speak with a lawyer to fully understand your rights before making any decisions regarding your tenancy.

**IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT A LAWYER.** If you believe you need legal assistance, contact the Oregon State Bar and ask for the lawyer referral service. Contact

information for the Oregon State Bar is included with this notice. If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to receive legal assistance for free. Information about whom to contact for free legal assistance is included with this notice.

[1959 c.625 §7; 1961 c.616 §4; 1965 c.457 §4; 1983 c.719 §5; 1985 c.817 §3; 2003 c.251 §4; 2009 c.510 §2; 2010 c.28 §§1,2; 2011 c.510 §1]

**Note:** The amendments to 86.745 by section 6, chapter 510, Oregon Laws 2011, become operative January 1, 2015. See section 9, chapter 510, Oregon Laws 2011. The text that is operative on and after January 1, 2015, is set forth for the user's convenience.

**86.745.** The notice of sale shall:

- (1) List the names of the grantor, trustee and beneficiary in the trust deed, and the mailing address of the trustee.
- (2) Describe the property the trust deed covers.
- (3) Identify the book and page of the mortgage records that record the trust deed.
- (4) State the default for which the foreclosure is made.
- (5) State the sum owing on the obligation that the trust deed secures.
- (6) State that the property will be sold to satisfy the obligation.
- (7) Set forth the date, time and place of the sale.
- (8) State that the right exists under ORS 86.753 to have the proceeding dismissed and the trust deed reinstated by paying the entire amount then due, together with costs, trustee's fees and attorney fees, and by curing any other default complained of in the notice of default, at any time that is not later than five days before the date last set for the sale.
- (9) If the property includes one or more dwelling units that are subject to ORS chapter 90, include a notice addressed clearly to any individual who occupies the property and who is or might be a residential tenant. The notice required under this subsection must:
  - (a) Include contact information for the Oregon State Bar and a person or organization that provides legal help to individuals at no charge to the individual;
  - (b) Include information concerning the right the individual has to notice under ORS 86.755 (6)(c);
  - (c) Be set apart from other text in the notice of sale; and
  - (d) Be in substantially the following form:

#### NOTICE TO RESIDENTIAL TENANTS

The property in which you are living is in foreclosure. A foreclosure sale is scheduled for \_\_\_\_\_ (date). The date of this sale may be postponed. Unless the lender that is foreclosing on this property is paid before the sale date, the foreclosure will go through and someone new will own this property. After the sale, the new owner is required to provide you with contact information and notice that the sale took place.

The following information applies to you only if you are a bona fide tenant occupying and renting this property as a residential dwelling under a legitimate rental agreement. The information does not apply to you if you own this property or if you are not a bona fide residential tenant.

If the foreclosure sale goes through, the new owner will have the right to require you to move out. Before the new owner can require you to move, the new owner must provide you with written notice that specifies the date by which you must move out. If you do not leave before the move-out date, the new owner can have the sheriff remove you from the property after a court hearing. You will receive notice of the court hearing.

#### PROTECTION FROM EVICTION

IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING THIS PROPERTY AS A RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE FORECLOSURE SALE FOR:

- 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF YOU HAVE A FIXED TERM LEASE; OR
- AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO-WEEK RENTAL AGREEMENT.

If the new owner wants to move in and use this property as a primary residence, the new owner can give you written notice and require you to move out after 30 days, even though you have a fixed term lease with more than 30 days left.

You must be provided with at least 30 days' written notice after the foreclosure sale before you can be required to move.

A bona fide tenant is a residential tenant who is not the borrower (property owner) or a child, spouse or parent of the borrower, and whose rental agreement:

- Is the result of an arm's-length transaction;
- Requires the payment of rent that is not substantially less than fair market rent for the property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
- Was entered into prior to the date of the foreclosure sale.

#### ABOUT YOUR TENANCY BETWEEN NOW AND THE FORECLOSURE SALE: RENT

YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY IS SOLD OR UNTIL A COURT TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED. BE SURE TO KEEP PROOF OF ANY PAYMENTS YOU MAKE.

#### SECURITY DEPOSIT

You may apply your security deposit and any rent you paid in advance against the current rent you owe your landlord as provided in ORS 90.367. To do this, you must notify your landlord in writing that you want to subtract the amount of your security deposit or prepaid rent from your rent payment. You may do this only for the rent you owe your current landlord. If you do this, you must do so before the foreclosure sale. The business or individual who buys this property at the foreclosure sale is not responsible to you for any deposit or prepaid rent you paid to your landlord.

#### ABOUT YOUR TENANCY AFTER THE FORECLOSURE SALE

The new owner that buys this property at the foreclosure sale may be willing to allow you to stay as a tenant instead of requiring you to move out after 30 or 60 days. After the sale, you should receive a written notice informing you that the sale took place and giving you the new owner's name and contact information. You should contact the new owner if you would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement with you or does not notify you in writing within 30 days after the date of

the foreclosure sale that you must move out, the new owner becomes your new landlord and must maintain the property. Otherwise:

- You do not owe rent;
- The new owner is not your landlord and is not responsible for maintaining the property on your behalf; and
- You must move out by the date the new owner specifies in a notice to you.

The new owner may offer to pay your moving expenses and any other costs or amounts you and the new owner agree on in exchange for your agreement to leave the premises in less than 30 or 60 days. You should speak with a lawyer to fully understand your rights before making any decisions regarding your tenancy.

IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT A LAWYER. If you believe you need legal assistance, contact the Oregon State Bar and ask for the lawyer referral service. Contact information for the Oregon State Bar is included with this notice. If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to receive legal assistance for free. Information about whom to contact for free legal assistance is included with this notice.

**86.750 Service and publication of notice; recording proof of compliance.** (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in ORS 86.745 must be served upon an occupant of the property described in the trust deed in the manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before the day the trustee conducts the sale.

(b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the first attempt, the person that attempts to effect service shall post a copy of the notice in a conspicuous place on the property on the date of the first attempt. The person that attempts to effect service shall make a second attempt to effect service on a day that is at least two days after the first attempt.

(B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the second attempt, the person that attempts to effect service shall post a copy of the notice in a conspicuous place on the property on the date of the second attempt. The person that attempts to effect service shall make a third attempt to effect service on a day that is at least two days after the second attempt.

(C) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the third attempt, the person that attempts to effect service shall send a copy of the notice, bearing the word "occupant" as the addressee, to the property address by first class mail with postage prepaid.

(c) Service on an occupant is effected on the earlier of the date that notice is served as provided in paragraph (a) of this subsection or the first date on which notice is posted as described in paragraph (b)(A) of this subsection.

(2)(a) Except as provided in paragraph (b) of this subsection, a copy of the notice of sale must be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks. The last publication must be made more than 20 days prior to the date the trustee conducts the sale.

(b) The copy of the notice of sale required to be published under paragraph (a) of this subsection does not need to include the notice to tenants required under ORS 86.745 (9).

(3) At or before the time the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property described in the deed is situated the following affidavits with respect to the notice of sale:

- (a) An affidavit of mailing, if any;
- (b) An affidavit of service, if any;
- (c) An affidavit of service attempts and posting, if any; and
- (d) An affidavit of publication.

(4) At or before the time the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property described in the deed is situated an affidavit of mailing with respect to the notice to the grantor required under ORS 86.737. [1959 c.625 §8; 1961 c.616 §5; 1965 c.457 §5; 1979 c.879 §3; 1983 c.719 §6; 1985 c.817 §4; 2007 c.165 §1; 2009 c.229 §1; 2009 c.864 §§5,6; 2010 c.28 §§3,4; 2010 c.40 §§2,3]

**86.753 Discontinuance of foreclosure proceedings after cure of default.** (1)

Where a trustee has commenced foreclosure of a trust deed by advertisement and sale, the grantor, the grantor's successor in interest to all or any part of the trust property, any beneficiary under a subordinate trust deed, or any person having a subordinate lien or encumbrance of record on the property, may cure the default or defaults at any time prior to five days before the date last set for the sale. If the default consists of a failure to pay, when due, sums secured by the trust deed, the default may be cured by paying the entire amount due at the time of cure under the terms of the obligation, other than such portion as would not then be due had no default occurred. Any other default of the trust deed obligation that is capable of being cured may be cured by tendering the performance required under the obligation or trust deed. In any case, and in addition to paying the

sums or tendering the performance necessary to cure the default, the person effecting the cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the obligation and trust deed, together with trustee's and attorney fees in the amount of:

(a) A total of \$1,000 for both trustee's fees and attorney fees, or the amount actually charged by the trustee and attorney, whichever is less, if the trust deed is a residential trust deed; or

(b) Reasonable attorney fees and trustee's fees actually charged by the trustee and attorney if the trust deed is not a residential trust deed. Any person entitled to cure the default may, either before or after reinstatement, request any court of competent jurisdiction to determine the reasonableness of the fee demanded or paid as a condition of reinstatement. The court may award attorney fees to the prevailing party. An action to determine reasonable attorney fees or trustee's fees under this section shall not forestall any sale or affect its validity.

(2) After cure of the default under subsection (1) of this section, all proceedings under ORS 86.740 to 86.755 shall be dismissed by the trustee, and the obligation and trust deed shall be reinstated and shall remain in force the same as if no acceleration had occurred. [1983 c.719 §11; 1985 c.817 §5; 1989 c.190 §4; 1999 c.561 §1]

**86.755 Sale of property; obtaining possession after sale; procedures; notices required.** (1)(a) A trustee shall hold a trustee's sale on the date and at the time and place designated in the notice of sale given under ORS 86.740. The designated time of the trustee's sale must be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the designated place of the trustee's sale must be in the county or one of the counties in which the property is situated. Except as provided in paragraph (b) of this subsection, the trustee may sell the property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the trustee's sale. An attorney for the trustee, or an agent that the trustee or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

(b) If the trustee sells property upon which a single residential unit that is subject to an affordable housing covenant is situated, the eligible covenant holder may purchase the property from the trustee at the trustee's sale for cash or cash equivalent in an amount that is the lesser of:

(A) The sum of the amounts payable under ORS 86.765 (1) and (2); or

(B) The highest bid received for the property other than a bid from the eligible covenant holder.

(c)(A) Except as provided in subparagraph (B) of this paragraph, if an eligible covenant holder purchases the property in accordance with paragraph (b) of this subsection, the sale forecloses and terminates all other interests in the property as provided in ORS 86.770 (1).

(B) If an interest in the property exists that is prior to the eligible covenant holder's interest, other than the interest set forth in the trust deed that was the subject of the foreclosure proceeding under ORS 86.735, notwithstanding the provisions of ORS 86.770 (1) the sale does not foreclose and terminate the prior interest and the eligible covenant holder's title to the property is subject to the prior interest.

(2) The trustee or the attorney for the trustee, or an agent that the trustee or the attorney conducting the sale designates, may postpone the sale for one or more periods that total not more than 180 days from the original sale date, giving notice of each adjournment by public proclamation made at the time and place set for sale. The trustee, the attorney or an agent that the trustee or the attorney designates may make the proclamation.

(3) The purchaser shall pay at the time of sale the price bid or the price determined in accordance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee shall execute and deliver the trustee's deed to the purchaser.

(4) The trustee's deed shall convey to the purchaser the interest in the property that the grantor had, or had the power to convey, at the time the grantor executed the trust deed, together with any interest the grantor or the grantor's successors in interest acquire after the execution of the trust deed.

(5)(a) If property purchased at the trustee's sale includes one or more dwelling units that are subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the occupants of each unit within 30 days after the date of sale and before or concurrently with service of a written termination notice authorized by subsection (6)(c)(B) of this section.

(b) The notice required by this subsection must:

(A) Explain that the dwelling unit has been sold at a foreclosure sale and that the purchaser at that sale is the new owner.

(B) Include the date on which the foreclosure sale took place.

(C) Include the name, contact address and contact telephone number of the purchaser or the purchaser's representative.

(D) Provide information about the rights of bona fide residential tenants as provided in subsections (6)(c) and (e) and (9)(a) of this section.

(E) Include contact information for the Oregon State Bar and a person or organization that provides legal help to individuals at no charge to the individual.

(c) The notice must be served by one or more of the following methods:

(A) Personal delivery to the tenant.

(B) First class mail to the tenant at the dwelling unit.

(C) First class mail to the tenant at the dwelling unit and attachment of a second notice copy. The second notice copy must be attached in a secure manner to the main entrance to the portion of the premises in the possession of the tenant.

(D) If the names of the tenants are not known to the purchaser, the notice may be addressed to "occupants."

(d) A notice that contains the information required under paragraph (b)(B) and (C) of this subsection meets the requirements of paragraph (b) of this subsection if the notice is in substantially the following form:

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**NOTICE TO RESIDENTIAL TENANTS OF  
CHANGE IN OWNERSHIP**

The property in which you are living has gone through foreclosure and was sold to a new owner on \_\_\_\_\_ (date). The contact information for the new owner or the owner's representative is \_\_\_\_\_ (name, address, telephone number).

**IF YOU ARE A BONA FIDE TENANT RENTING THIS PROPERTY AS A RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE FORECLOSURE SALE FOR:**

- THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED TERM LEASE; OR

- AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE.

If the new owner wants to move in and use this property as a primary residence, the new owner can give you written notice and require you to move out after 90 days, even though you have a fixed term lease with more than 90 days left.

You must be provided with at least 90 days' written notice after the foreclosure sale before you can be required to move.

A bona fide tenant is a residential tenant who is not the borrower (property owner), or a child, spouse or parent of the borrower, and whose rental agreement:

- Is the result of an arm's-length transaction;

- Requires the payment of rent that is not substantially less than fair market rent for the property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and

- Was entered into prior to the date of the foreclosure sale.

**IMPORTANT:**

**YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S REPRESENTATIVE AT THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU HAVE A FIXED TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 90 DAYS LEFT.** Written evidence of your rental agreement can be a copy of your lease or rental agreement, or other documentation of the existence of your rental agreement. Keep your original documents and a record of any information you give to the new owner.

**YOUR TENANCY  
BETWEEN NOW**

**AND THE MOVE-OUT DATE**

The new owner may be willing to allow you to stay as a tenant instead of requiring you to move out after 90 days or at the end of your fixed term lease. You should contact the new owner if you would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement with you or does not notify you in writing within 30 days after the date of the foreclosure sale that you must move out, the new owner becomes your new landlord and must maintain the property. Otherwise:

- You do not owe rent;

- The new owner is not your landlord and is not responsible for maintaining the property; and

- You must move out by the date the new owner specifies in a notice to you.

The new owner may offer to pay your moving expenses and any other costs or amounts you and the new owner agree on in exchange for your agreement to leave the premises in less than 90 days or before your

fixed term lease expires. You should speak with a lawyer to fully understand your rights before making any decisions regarding your tenancy.

**IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT A LAWYER.** If you believe you need legal assistance, contact the Oregon State Bar and ask for the lawyer referral service. Contact information for the Oregon State Bar is included with this notice. If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to receive legal assistance for free. Information about whom to contact for free legal assistance is included with this notice.

(6)(a) Except as provided in paragraph (b) or (c) of this subsection, the purchaser at the trustee's sale is entitled to possession of the property on the 10th day after the sale. A person that remains in possession after the 10th day under any interest, except an interest prior to the trust deed, or an interest the grantor or a successor of the grantor created voluntarily, is a tenant at sufferance. The purchaser may obtain possession of the property from a tenant at sufferance by following the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

(b) Except as provided in paragraph (c) of this subsection, at any time after the trustee's sale the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure to obtain possession of the property from a person that holds possession under an interest that the grantor or a successor of the grantor created voluntarily if, not earlier than 30 days before the date first set for the sale, the person was served with not less than 30 days' written notice of the requirement to surrender or deliver possession of the property.

(c) If the property purchased at the trustee's sale includes a dwelling unit that is subject to ORS chapter 90 and an individual occupies the unit under a bona fide tenancy, the purchaser may obtain possession by following the procedures set forth in ORS 105.105 to 105.168 and by using the complaint form provided in ORS 105.124 or 105.126:

(A) Upon expiration of the fixed term of the tenancy, if the bona fide tenancy is a fixed term tenancy as defined in ORS 90.100; or

(B) At least 90 days after service of a written termination notice if the bona fide tenancy is:

(i) A fixed term tenancy and the purchaser intends to occupy, as the purchaser's primary residence, the dwelling unit that is subject to the fixed term tenancy; or

(ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS 90.100.

(d) If a purchaser gives a 90-day written termination notice pursuant to paragraph (c) of this subsection, the purchaser may include in the notice a request that a tenant with a fixed term tenancy provide written evidence of the existence of the tenancy to the purchaser at an address described in the notice. Written evidence includes a copy of the rental agreement or another document that shows the existence of the fixed term tenancy. Failure of the tenant to provide the requested written evidence before the purchaser files an action for possession based on a 90-day notice:

(A) Does not prevent the tenant from asserting the existence of the fixed term tenancy as a defense to the action.

(B) Prevents the tenant from recovering prevailing party attorney fees or costs and disbursements pursuant to subsection (11)(b) of this section. The 90-day notice must describe the provisions of this paragraph.

(e) A purchaser may not commence a proceeding under ORS 105.105 to 105.168 that is authorized under this subsection before the later of:

(A) The 10th day after the trustee's sale;

(B) The date specified in a written notice of the requirement to surrender or deliver possession of the property if the notice is required by and is given to the person in accordance with paragraph (b) of this subsection;

(C) The date specified in a written notice of the purchaser's intent to terminate a tenancy if the notice is required by and is given to the person in accordance with paragraph (c) of this subsection; or

(D) The date on which the term of a fixed term tenancy ends, if the property is a dwelling unit and the purchaser has not terminated the tenancy in accordance with paragraph (c) of this subsection.

(f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to 105.168 must attach proof of service of a written termination notice required by paragraph (c) of this subsection to the pleadings.

(g) In an action to obtain possession, violation of the procedures required by subsection (5) of this section or paragraph (c) of

this subsection is a defense for a bona fide tenant seeking to retain possession.

(h) As used in this subsection, “bona fide tenancy” means tenancy of a dwelling unit that is subject to ORS chapter 90 that results from an arm’s-length transaction that occurred before the date of a foreclosure sale in which:

(A) The mortgagor or the child, spouse or parent of the mortgagor under the contract is not the tenant; and

(B) The rent required is not substantially less than fair market rent for the dwelling unit, unless the rent is reduced or subsidized due to a federal, state or local subsidy.

(7) A purchaser shall serve a notice under subsection (6) of this section by one or more of the following methods:

(a) Personal delivery to the tenant.

(b) First class mail to the tenant at the dwelling unit.

(c) First class mail to the tenant at the dwelling unit and attachment of a second notice copy. The second notice copy must be attached in a secure manner to the main entrance to the portion of the premises in the possession of the tenant.

(8) If the notice under subsection (6) of this section is served by mail pursuant to subsection (7)(b) of this section, the minimum period for compliance must be extended by three days and the notice must include the extension in the period stated in the notice.

(9)(a) Notwithstanding the provisions of subsection (6)(c) of this section and except as provided in paragraph (b) of this subsection, the purchaser is not a landlord subject to the provisions of ORS chapter 90 unless the purchaser:

(A) Accepts rent from the individual who possesses the property under a tenancy described in subsection (6)(c) of this section;

(B) Enters into a new rental agreement with the individual who possesses the property under a tenancy described in subsection (6)(c) of this section; or

(C) Fails to terminate the tenancy as provided in subsection (6)(c) of this section within 30 days after the date of the sale.

(b) The purchaser may act as a landlord for purposes of terminating a tenancy in accordance with the provisions of ORS 90.396.

(c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to this paragraph, “rent” refers to the amount paid by

the tenant to the landlord for the right to occupy the unit before the foreclosure.

(10)(a) Except as provided in paragraph (b) of this subsection, the purchaser is not liable to the individual who possesses the property under a tenancy described in subsection (6)(c) of this section for:

(A) Damage to the property or diminution in rental value; or

(B) Returning a security deposit.

(b) A purchaser that is a landlord under the provisions of subsection (9)(a) of this section is liable to the individual who possesses the property under a tenancy described in subsection (6)(c) of this section for:

(A) Damage to the property or diminution in rental value that occurs after the date of the trustee’s sale; or

(B) Returning a security deposit the individual pays after the date of the trustee’s sale.

(11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or (9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the prevailing party together with costs and disbursements.

(b) If a tenant asserts a successful defense to an action for possession pursuant to subsection (6)(c), (d), (f) or (g) of this section, the tenant is not entitled to prevailing party fees, attorney fees or costs and disbursements if the purchaser:

(A) Did not know, and did not have reasonable cause to know, of the existence of a fixed term tenancy when commencing the action for possession; and

(B) Promptly dismissed the action upon becoming aware of the existence of a fixed term tenancy.

(c) As used in this subsection, “prevailing party” means the party in whose favor final judgment is rendered.

(12)(a) Notwithstanding subsection (2) of this section, except when a beneficiary has participated in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by proceedings in bankruptcy or for any other lawful reason shall, after release from the stay, continue as if uninterrupted, if within 30 days after release the trustee sends amended notice of sale by registered or certified mail to the last-known address of the persons listed in ORS 86.740 and 86.750 (1).

(b) In addition to the notice required under paragraph (a) of this subsection, the trustee shall send amended notice of sale:

(A) By registered or certified mail to:

(i) The address provided by each person who was present at the time and place set for the sale that was stayed; and

(ii) The address provided by each member of the Oregon State Bar who by registered or certified mail requests the amended notice of sale and includes with the request the notice of default or an identification number for the trustee's sale that would assist the trustee in identifying the property subject to the trustee's sale and a self-addressed, stamped envelope measuring at least 8.5 by 11 inches in size; or

(B) By posting a true copy or a link to a true copy of the amended notice of sale on the trustee's Internet website.

(13) The amended notice of sale must:

(a) Be given at least 20 days before the amended date of sale;

(b) Set an amended date of sale that may be the same as the original sale date, or date to which the sale was postponed, provided the requirements of this subsection and ORS 86.740 and 86.750 are satisfied;

(c) Specify the time and place for sale;

(d) Conform to the requirements of ORS 86.745; and

(e) State that the original sale proceedings were stayed and the date the stay terminated.

(14) If the publication of the notice of sale was not completed before the date the foreclosure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other lawful reason, after release from the stay, in addition to complying with the provisions of subsections (12) and (13) of this section, the trustee shall complete the publication by publishing an amended notice of sale that states that the notice has been amended following release from the stay and that contains the amended date of sale. The amended notice must be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks, except that the required number of publications must be reduced by the number of publications that were completed before the effective date of the stay. The last publication must be made more than 20 days before the date the trustee conducts the sale. [1959 c.625 §9; 1965 c.457 §6; 1983 c.719 §7; 1985 c.817 §6; 1989 c.190 §5; 1989 c.506 §1; 2009 c.883 §§1,1a; 2011 c.42 §10; 2011 c.510 §2; 2011 c.712 §2]

**Note:** The amendments to 86.755 by section 7, chapter 510, Oregon Laws 2011, become operative January 1, 2015. See section 9, chapter 510, Oregon Laws 2011. The text that is operative on and after January 1, 2015, is set forth for the user's convenience.

**86.755.** (1)(a) A trustee shall hold a trustee's sale on the date and at the time and place designated in the

notice of sale given under ORS 86.740. The designated time of the trustee's sale must be after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110, and the designated place of the trustee's sale must be in the county or one of the counties in which the property is situated. Except as provided in paragraph (b) of this subsection, the trustee may sell the property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the trustee's sale. An attorney for the trustee, or an agent that the trustee or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

(b) If the trustee sells property upon which a single residential unit that is subject to an affordable housing covenant is situated, the eligible covenant holder may purchase the property from the trustee at the trustee's sale for cash or cash equivalent in an amount that is the lesser of:

(A) The sum of the amounts payable under ORS 86.765 (1) and (2); or

(B) The highest bid received for the property other than a bid from the eligible covenant holder.

(c)(A) Except as provided in subparagraph (B) of this paragraph, if an eligible covenant holder purchases the property in accordance with paragraph (b) of this subsection, the sale forecloses and terminates all other interests in the property as provided in ORS 86.770 (1).

(B) If an interest in the property exists that is prior to the eligible covenant holder's interest, other than the interest set forth in the trust deed that was the subject of the foreclosure proceeding under ORS 86.735, notwithstanding the provisions of ORS 86.770 (1) the sale does not foreclose and terminate the prior interest and the eligible covenant holder's title to the property is subject to the prior interest.

(2) The trustee or the attorney for the trustee, or an agent that the trustee or the attorney conducting the sale designates, may postpone the sale for one or more periods that total not more than 180 days from the original sale date, giving notice of each adjournment by public proclamation made at the time and place set for sale. The trustee, the attorney or an agent that the trustee or the attorney designates may make the proclamation.

(3) The purchaser shall pay at the time of sale the price bid or the price determined in accordance with subsection (1)(b) of this section, and, within 10 days following payment, the trustee shall execute and deliver the trustee's deed to the purchaser.

(4) The trustee's deed shall convey to the purchaser the interest in the property that the grantor had, or had the power to convey, at the time the grantor executed the trust deed, together with any interest the grantor or the grantor's successors in interest acquire after the execution of the trust deed.

(5)(a) If property purchased at the trustee's sale includes one or more dwelling units that are subject to ORS chapter 90, the purchaser must provide written notice of change in ownership to the occupants of each unit within 30 days after the date of sale and before or concurrently with service of a written termination notice authorized by subsection (6)(c)(B) of this section.

(b) The notice required by this subsection must:

(A) Explain that the dwelling unit has been sold at a foreclosure sale and that the purchaser at that sale is the new owner.

(B) Include the date on which the foreclosure sale took place.

(C) Include the name, contact address and contact telephone number of the purchaser or the purchaser's representative.

(D) Provide information about the rights of bona fide residential tenants as provided in subsections (6)(c) and (e) and (9)(a) of this section.

(E) Include contact information for the Oregon State Bar and a person or organization that provides legal help to individuals at no charge to the individual.

(c) The notice must be served by one or more of the following methods:

(A) Personal delivery to the tenant.

(B) First class mail to the tenant at the dwelling unit.

(C) First class mail to the tenant at the dwelling unit and attachment of a second notice copy. The second notice copy must be attached in a secure manner to the main entrance to the portion of the premises in the possession of the tenant.

(D) If the names of the tenants are not known to the purchaser, the notice may be addressed to "occupants."

(d) A notice that contains the information required under paragraph (b)(B) and (C) of this subsection meets the requirements of paragraph (b) of this subsection if the notice is in substantially the following form:

**NOTICE TO RESIDENTIAL TENANTS OF  
CHANGE IN OWNERSHIP**

The property in which you are living has gone through foreclosure and was sold to a new owner on \_\_\_\_\_ (date). The contact information for the new owner or the owner's representative is \_\_\_\_\_ (name, address, telephone number).

**IF YOU ARE A BONA FIDE TENANT RENTING THIS PROPERTY AS A RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE FORECLOSURE SALE FOR:**

- 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF YOU HAVE A FIXED TERM LEASE; OR
- AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO-WEEK RENTAL AGREEMENT.

If the new owner wants to move in and use this property as a primary residence, the new owner can give you written notice and require you to move out after 30 days, even though you have a fixed term lease with more than 30 days left.

You must be provided with at least 30 days' written notice after the foreclosure sale before you can be required to move.

A bona fide tenant is a residential tenant who is not the borrower (property owner), or a child, spouse or parent of the borrower, and whose rental agreement:

- Is the result of an arm's-length transaction;
- Requires the payment of rent that is not substantially less than fair market rent for the property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
- Was entered into prior to the date of the foreclosure sale.

**IMPORTANT:**

**YOU SHOULD CONTACT THE NEW OWNER OR THE OWNER'S REPRESENTATIVE AT THE ADDRESS LISTED ON THIS NOTICE AS SOON AS POSSIBLE TO LET THE NEW OWNER KNOW IF YOU ARE A BONA FIDE TENANT. YOU SHOULD PROVIDE WRITTEN EVIDENCE OF THE EXISTENCE OF YOUR RENTAL AGREEMENT, ESPECIALLY IF YOU**

**HAVE A FIXED TERM RENTAL AGREEMENT OR LEASE WITH MORE THAN 30 DAYS LEFT.** Written evidence of your rental agreement can be a copy of your lease or rental agreement, or other documentation of the existence of your rental agreement. Keep your original documents and a record of any information you give to the new owner.

**YOUR TENANCY  
BETWEEN NOW  
AND THE MOVE-OUT DATE**

The new owner may be willing to allow you to stay as a tenant instead of requiring you to move out after 30 or 60 days. You should contact the new owner if you would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement with you or does not notify you in writing within 30 days after the date of the foreclosure sale that you must move out, the new owner becomes your new landlord and must maintain the property. Otherwise:

- You do not owe rent;
- The new owner is not your landlord and is not responsible for maintaining the property; and
- You must move out by the date the new owner specifies in a notice to you.

The new owner may offer to pay your moving expenses and any other costs or amounts you and the new owner agree on in exchange for your agreement to leave the premises in less than 30 or 60 days. You should speak with a lawyer to fully understand your rights before making any decisions regarding your tenancy.

**IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT A LAWYER.** If you believe you need legal assistance, contact the Oregon State Bar and ask for the lawyer referral service. Contact information for the Oregon State Bar is included with this notice. If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to receive legal assistance for free. Information about whom to contact for free legal assistance is included with this notice.

(6)(a) Except as provided in paragraph (b) or (c) of this subsection, the purchaser at the trustee's sale is entitled to possession of the property on the 10th day after the sale. A person that remains in possession after the 10th day under any interest, except an interest prior to the trust deed, or an interest the grantor or a successor of the grantor created voluntarily, is a tenant at sufferance. The purchaser may obtain possession of the property from a tenant at sufferance by following the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

(b) Except as provided in paragraph (c) of this subsection, at any time after the trustee's sale the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure to obtain possession of the property from a person that holds possession under an interest that the grantor or a successor of the grantor created voluntarily if, not earlier than 30 days before the date first set for the sale, the person was served with not less than 30 days' written notice of the requirement to surrender or deliver possession of the property.

(c) If the property purchased at the trustee's sale includes a dwelling unit that is subject to ORS chapter 90 and an individual occupies the unit under a bona fide tenancy, the purchaser may obtain possession by following the procedures set forth in ORS 105.105 to 105.168 and by using the complaint form provided in ORS 105.124 or 105.126:

(A) At least 60 days after service of a written termination notice, if the bona fide tenancy is a fixed term tenancy as defined in ORS 90.100; or

(B) At least 30 days after service of a written termination notice if the bona fide tenancy is:

(i) A fixed term tenancy and the purchaser intends to occupy, as the purchaser's primary residence, the dwelling unit that is subject to the fixed term tenancy; or

(ii) A month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS 90.100.

(d) If a purchaser gives a 30-day written termination notice pursuant to paragraph (c) of this subsection, the purchaser may include in the notice a request that a tenant with a fixed term tenancy provide written evidence of the existence of the tenancy to the purchaser at an address described in the notice. Written evidence includes a copy of the rental agreement or another document that shows the existence of the fixed term tenancy. Failure of the tenant to provide the requested written evidence before the purchaser files an action for possession based on a 30-day notice:

(A) Does not prevent the tenant from asserting the existence of the fixed term tenancy as a defense to the action.

(B) Prevents the tenant from recovering prevailing party attorney fees or costs and disbursements pursuant to subsection (11)(b) of this section. The 30-day notice must describe the provisions of this paragraph.

(e) A purchaser may not commence a proceeding under ORS 105.105 to 105.168 that is authorized under this subsection before the later of:

(A) The 10th day after the trustee's sale;

(B) The date specified in a written notice of the requirement to surrender or deliver possession of the property if the notice is required by and is given to the person in accordance with paragraph (b) of this subsection;

(C) The date specified in a written notice of the purchaser's intent to terminate a tenancy if the notice is required by and is given to the person in accordance with paragraph (c) of this subsection; or

(D) The date on which the term of a fixed term tenancy ends, if the property is a dwelling unit and the purchaser has not terminated the tenancy in accordance with paragraph (c) of this subsection.

(f) A purchaser seeking to obtain possession pursuant to ORS 105.105 to 105.168 must attach proof of service of a written termination notice required by paragraph (c) of this subsection to the pleadings.

(g) In an action to obtain possession, violation of the procedures required by subsection (5) of this section or paragraph (c) of this subsection is a defense for a bona fide tenant seeking to retain possession.

(h) As used in this subsection, "bona fide tenancy" means tenancy of a dwelling unit that is subject to ORS chapter 90 that results from an arm's-length transaction that occurred before the date of a foreclosure sale in which:

(A) The mortgagor or the child, spouse or parent of the mortgagor under the contract is not the tenant; and

(B) The rent required is not substantially less than fair market rent for the dwelling unit, unless the rent is reduced or subsidized due to a federal, state or local subsidy.

(7) A purchaser shall serve a notice under subsection (6) of this section by one or more of the following methods:

(a) Personal delivery to the tenant.

(b) First class mail to the tenant at the dwelling unit.

(c) First class mail to the tenant at the dwelling unit and attachment of a second notice copy. The second notice copy must be attached in a secure manner to the main entrance to the portion of the premises in the possession of the tenant.

(8) If the notice under subsection (6) of this section is served by mail pursuant to subsection (7)(b) of this section, the minimum period for compliance must be extended by three days and the notice must include the extension in the period stated in the notice.

(9)(a) Notwithstanding the provisions of subsection (6)(c) of this section and except as provided in paragraph (b) of this subsection, the purchaser is not a landlord subject to the provisions of ORS chapter 90 unless the purchaser:

(A) Accepts rent from the individual who possesses the property under a tenancy described in subsection (6)(c) of this section;

(B) Enters into a new rental agreement with the individual who possesses the property under a tenancy described in subsection (6)(c) of this section; or

(C) Fails to terminate the tenancy as provided in subsection (6)(c) of this section within 30 days after the date of the sale.

(b) The purchaser may act as a landlord for purposes of terminating a tenancy in accordance with the provisions of ORS 90.396.

(c) The purchaser is subject to the provisions of ORS 90.322, 90.375, 105.165, 659A.421 and 659A.425. The application of ORS 90.375 to a purchaser that does not become a landlord does not impose an affirmative duty to pay for or provide services. For the purpose of damages pursuant to this paragraph, "rent" refers to the amount paid by the tenant to the landlord for the right to occupy the unit before the foreclosure.

(10)(a) Except as provided in paragraph (b) of this subsection, the purchaser is not liable to the individual who possesses the property under a tenancy described in subsection (6)(c) of this section for:

(A) Damage to the property or diminution in rental value; or

(B) Returning a security deposit.

(b) A purchaser that is a landlord under the provisions of subsection (9)(a) of this section is liable to the individual who possesses the property under a tenancy described in subsection (6)(c) of this section for:

(A) Damage to the property or diminution in rental value that occurs after the date of the trustee's sale; or

(B) Returning a security deposit the individual pays after the date of the trustee's sale.

(11)(a) Except as provided in paragraph (b) of this subsection and notwithstanding an agreement to the contrary, in an action or defense arising pursuant to subsection (6)(c), (d), (f) or (g), (7) or (9)(c) of this section, reasonable attorney fees at trial and on appeal may be awarded to the prevailing party together with costs and disbursements.

(b) If a tenant asserts a successful defense to an action for possession pursuant to subsection (6)(c), (d), (f) or (g) of this section, the tenant is not entitled to prevailing party fees, attorney fees or costs and disbursements if the purchaser:

(A) Did not know, and did not have reasonable cause to know, of the existence of a fixed term tenancy when commencing the action for possession; and

(B) Promptly dismissed the action upon becoming aware of the existence of a fixed term tenancy.

(c) As used in this subsection, "prevailing party" means the party in whose favor final judgment is rendered.

(12)(a) Notwithstanding subsection (2) of this section, except when a beneficiary has participated in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by proceedings in bankruptcy or for any other lawful reason shall, after release from the stay, continue as if uninterrupted, if within 30 days after release the trustee sends amended notice of sale by registered or certified mail to the last-known address of the persons listed in ORS 86.740 and 86.750 (1).

(b) In addition to the notice required under paragraph (a) of this subsection, the trustee shall send amended notice of sale:

(A) By registered or certified mail to:

(i) The address provided by each person who was present at the time and place set for the sale that was stayed; and

(ii) The address provided by each member of the Oregon State Bar who by registered or certified mail requests the amended notice of sale and includes with the request the notice of default or an identification number for the trustee's sale that would assist the trustee in identifying the property subject to the trustee's sale and a self-addressed, stamped envelope measuring at least 8.5 by 11 inches in size; or

(B) By posting a true copy or a link to a true copy of the amended notice of sale on the trustee's Internet website.

(13) The amended notice of sale must:

(a) Be given at least 20 days before the amended date of sale;

(b) Set an amended date of sale that may be the same as the original sale date, or date to which the sale was postponed, provided the requirements of this subsection and ORS 86.740 and 86.750 are satisfied;

(c) Specify the time and place for sale;

(d) Conform to the requirements of ORS 86.745; and

(e) State that the original sale proceedings were stayed and the date the stay terminated.

(14) If the publication of the notice of sale was not completed before the date the foreclosure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other lawful reason, after release from the stay, in addition to complying with the provisions of subsections (12) and (13) of this section, the trustee shall complete the publication by publishing an amended notice of sale that states that the notice has been amended following release from the stay and that contains the amended date of sale. The amended notice must be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks, except that the required number of publications must be reduced by the number of publications that were completed before the effective date of the stay. The last publication must be made more than 20 days before the date the trustee conducts the sale.

**86.757 Request for information from trustee.** (1) Not later than 15 days before the date of a sale of property set forth in the notice of sale under ORS 86.745, the grantor, an occupant, a holder of a junior lien or any other person interested in bidding at the sale may send a written request to the trustee requesting that the trustee provide a written statement of information as described in ORS 86.759.

(2) The written request under subsection (1) of this section shall be sent to the trustee at the address given in the notice of sale by:

(a) Certified mail, return receipt requested; or

(b) Personal delivery.

(3) The written request under subsection (1) of this section shall include a mailing address, a facsimile number or an electronic mail address to which the trustee shall send the written statement of information.

(4) The trustee is not required to respond to a written request that does not include an address, facsimile number or electronic mail address described in subsection (3) of this section.

(5) Upon receiving a written request under subsection (1) of this section, the trustee shall send the written statement of information to the address, facsimile number or electronic mail address provided in the written request at least seven days prior to the date of the sale. If the person requesting the written statement of information provided a mailing address, the trustee shall send the written statement of information by certified mail, return receipt requested and by first class mail. [2003 c.251 §2]

**86.759 Information provided by trustee.** (1) The written statement of information provided by a trustee under ORS 86.757 shall include:

(a) A statement of the exact amount required, as of a specified date, to cure the default or satisfy the obligation, including the costs of foreclosure, trustee fees, attorney fees and per diem interest; and

(b) A description of any other performance necessary to cure the default or satisfy the obligation.

(2) If the amount required to cure the default or satisfy the obligation is not calculable to an exact amount, the trustee may estimate the maximum amount required to cure the default or satisfy the obligation.

(3) If the trustee does not provide the written statement of information within the time specified in ORS 86.757, the trustee may postpone the sale of the property to provide the person requesting the written statement of information at least seven days between receipt of the statement and the date of the sale.

(4) A person requesting a written statement of information under ORS 86.757 has the rights of an omitted person under ORS 86.742 if:

(a) The person requesting the statement proves that the person sent a written request under ORS 86.757 at least 15 days before the date of sale; and

(b) The trustee cannot prove that the trustee sent the written statement of infor-

mation at least seven days before the date of the sale.

(5) The provisions of this section and ORS 86.757 do not affect the duty of beneficiaries to provide information to grantors. [2003 c.251 §3]

**86.760** [1959 c.625 §10; 1961 c.616 §6; 1965 c.457 §7; 1979 c.879 §4; repealed by 1983 c.719 §13]

**86.765 Disposition of proceeds of sale.**

The trustee shall apply the proceeds of the trustee's sale as follows:

(1) To the expenses of the sale, including the compensation of the trustee, and a reasonable charge by the attorney.

(2) To the obligation secured by the trust deed.

(3) To all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority.

(4) The surplus, if any, to the grantor of the trust deed or to the successor in interest of the grantor entitled to such surplus. [1959 c.625 §11; 1965 c.457 §8]

**86.770 Effect of sale; actions for deficiency; restrictions.** (1) If, under ORS 86.705 to 86.795, a trustee sells property covered by a trust deed, the trustee's sale forecloses and terminates the interest in the property that belongs to a person to which notice of the sale was given under ORS 86.740 and 86.750 or to a person that claims an interest by, through or under the person to which notice was given. A person whose interest the trustee's sale foreclosed and terminated may not redeem the property from the purchaser at the trustee's sale. A failure to give notice to a person entitled to notice does not affect the validity of the sale as to persons that were notified.

(2) Except in accordance with subsection (4) of this section, after a trustee's sale under ORS 86.705 to 86.795, or after a judicial foreclosure of a residential trust deed, an action for a deficiency may not be brought or a judgment entered against the grantor, the grantor's successor in interest or another person obligated on:

(a) The note, bond or other obligation secured by the trust deed for the property that was subject to the trustee's sale or the judicial foreclosure; or

(b) Any other note, bond or other obligation secured by a residential trust deed for, or mortgage on, the property that was subject to the trustee's sale or the judicial foreclosure when the debt, of which the note, bond or other obligation is evidence:

(A) Was created on the same day as, and used as part of the same purchase or repur-

chase transaction as, the note, bond or other obligation secured by the foreclosed residential trust deed; and

(B) Is owed to or was originated by the beneficiary or an affiliate of the beneficiary in the residential trust deed that was subject to the trustee's sale or the foreclosure.

(3) Notwithstanding ORS 88.070, in a judicial foreclosure of a trust deed that is not a residential trust deed the judgment must provide that if the sale proceeds are insufficient to satisfy the judgment, execution may issue for the amount by which the unpaid balance of the obligation secured by the trust deed exceeds the net sale proceeds payable to the beneficiary.

(4) This section does not preclude:

(a) An action that forecloses, judicially or nonjudicially:

(A) Other property covered by the trust deed that is the subject of the foreclosure; or

(B) Another trust deed, mortgage, security agreement, consensual or nonconsensual security interest or lien that covers other real or personal property that is also used as security for the note, bond or other obligation that is secured by the trust deed for the property that was sold.

(b) An action against a guarantor for a deficiency that remains after a judicial foreclosure.

(5) A guarantor of an obligation secured by a residential trust deed may not recover a deficiency from the grantor or a successor in interest of the grantor. [1959 c.625 §§12,13; 1965 c.457 §9; 1981 c.811 §1; 1983 c.719 §8; 1985 c.817 §7; 1989 c.190 §6; 1997 c.786 §1; 2007 c.166 §16; 2009 c.883 §2; 2010 c.48 §1]

**86.775 Contents of trustee's deed to purchaser.** The trustee's deed to the purchaser at the trustee's sale shall contain, in addition to a description of the property conveyed, a recital of the facts concerning the default, the notice given, the conduct of the sale and the receipt of the purchase money from the purchaser. [1959 c.625 §14]

**86.780 Recitals in trustee's deed and certain affidavits as prima facie or conclusive evidence.** When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under ORS 86.750 (3) and (4) shall be prima facie evidence in any court of the truth of the matters set forth therein, but the recitals shall be conclusive in favor of a purchaser for value in good faith relying upon them. [1959 c.625 §15; 1983 c.719 §12; 1985 c.565 §8; 2009 c.229 §2]

**86.785 Requests for copies of notice of default or notice of sale.** At any time subsequent to the recordation of a trust deed and prior to a recording of notice of default under the deed, any person desiring a copy of any notice of default or any notice of sale under a trust deed as provided in ORS 86.740 (1) may cause to be filed for record in the county clerk's office of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale or default where service is made upon the trustee. The request shall contain the name and address of the person requesting copies of the notice or notices and shall identify the trust deed by stating the names of the parties to the deed, the date of recordation of the deed and the book and page where the deed is recorded. The county clerk shall immediately make a cross-reference of the request to the trust deed, either on the margin of the page where the trust deed is recorded or in some other suitable place. No request, statement or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien or charge upon the property referred to in the trust deed. [1959 c.625 §16]

**86.790 Qualifications of trustee; appointment of successor trustee; duty of trustee.** (1) The trustee of a trust deed under ORS 86.705 to 86.795 shall not be required to comply with the provisions of ORS chapters 707 and 709 and shall be:

- (a) Any attorney who is an active member of the Oregon State Bar;
- (b) A financial institution or trust company, as defined in ORS 706.008, that is authorized to do business under the laws of Oregon or the United States;
- (c) A title insurance company authorized to insure title to real property in this state, its subsidiaries, affiliates, insurance producers or branches;
- (d) The United States or any agency thereof; or
- (e) Escrow agents licensed under ORS 696.505 to 696.590.

(2) An attorney who is a trustee under subsection (1)(a) of this section may represent the beneficiary in addition to performing the duties of trustee.

(3) At any time after the trust deed is executed, the beneficiary may appoint in

writing another qualified trustee. If the appointment of the successor trustee is recorded in the mortgage records of the county or counties in which the trust deed is recorded, the successor trustee shall be vested with all the powers of the original trustee.

(4) A trustee or successor trustee is a necessary and proper party to any proceeding to determine the validity of or enjoin any private or judicial proceeding to foreclose a trust deed, but a trustee or successor trustee is neither a necessary nor a proper party to any proceeding to determine title to the property subject to the trust deed, or to any proceeding to impose, enforce or foreclose any other lien on the subject property.

(5) Nothing in ORS 86.705 to 86.795 imposes a duty on the trustee or successor trustee to notify any person of any proceeding with respect to such person, except a proceeding initiated by the trustee or successor trustee.

(6) A trustee or the attorney for the trustee or any agent designated by the trustee or the attorney may announce and accept a bid from the beneficiary whether or not the beneficiary is present at the sale.

(7) The trustee or successor trustee shall have no fiduciary duty or fiduciary obligation to the grantor or other persons having an interest in the property subject to the trust deed. The trustee or successor trustee shall not be relieved of the duty to reconvey the property subject to the trust deed to the grantor upon request for reconveyance by the beneficiary. [1959 c.625 §3; 1967 c.359 §680; 1975 c.618 §2a; 1979 c.879 §5; 1981 c.192 §1; 1983 c.719 §9; 1989 c.190 §7; 1997 c.70 §1; 1997 c.631 §388; 2003 c.364 §50]

**86.795 Compensation of trustee.** The charge of a trustee for the performance of powers and duties of foreclosure by advertisement and sale imposed under ORS 86.705 to 86.795 shall not exceed 50 percent of the compensation allowable to an executor or administrator under ORS 116.173 or a minimum charge of \$100. Such compensation shall be based upon the amount due on the obligation, both principal and interest, at the time of the trustee's sale. [1959 c.625 §19; 1961 c.616 §7; 1965 c.457 §10]

## PENALTIES

**86.990 Penalties.** Violation of ORS 86.040 is a Class B misdemeanor. [Amended by 1961 c.726 §410; 2011 c.597 §154]