

CHAPTER 465

AN ACT

HB 2929

Relating to trustee's sales of foreclosed property; creating new provisions; and amending ORS 86.705, 86.755 and 86.790.

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

SECTION 1. ORS 86.755, as amended by section 9, chapter 112, Oregon Laws 2012, is amended to read:

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)(a) 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 postponement by public proclamation made at the time and place set for sale. The trustee, the at-

torney or an agent that the trustee or the attorney designates may make the proclamation.

(b) If a person postpones the sale date as provided in paragraph (a) of this subsection, the trustee, in the manner provided for service of the notice of sale under ORS 86.740 (1), shall cause written notice of the new time, date and place for the sale to be served on the grantor and on any person to whom notice of the sale was given under ORS 86.745. The notice must be given at least 15 days before the new sale date. The person may postpone the sale once, for not more than two calendar days, without giving notice as provided in this paragraph. The person may not postpone the sale for more than two calendar days or more than once without giving notice as provided in this paragraph.

(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.]

(4)(a) Within 10 calendar days after the date of the trustee's sale, the trustee may rescind the trustee's sale and void the trustee's deed only if:

(A) The trustee asserts that during the trustee's sale a bona fide error occurred in:

(i) Setting, advertising or otherwise specifying the opening bid amount for the property that is the subject of the trustee's sale;

(ii) Providing a correct legal description of the property that is the subject of the trustee's sale; or

(iii) Complying with a requirement or procedure that is imposed by law;

(B) The grantor and the beneficiary agreed to a foreclosure avoidance measure, as defined in section 2, chapter 112, Oregon Laws 2012, that would postpone or discontinue the trustee's sale; or

(C) The beneficiary accepted funds to reinstate the trust deed and obligation in accordance with ORS 86.753, even if the beneficiary did not have a legal duty to do so.

(b) Within 10 calendar days after the date of the trustee's sale that the trustee rescinded under paragraph (a) of this subsection, the trustee shall provide notice of the rescission of the trustee's sale to any person to whom notice of the sale was given. The trustee shall mail or serve notice of the rescission in the manner provided for serving or mailing the notice of sale under ORS 86.740 (1). The notice of rescission must:

(A) Display the date on which the trustee mailed the notice, served the notice or delivered the notice for service; and

(B) State that, and explain why, the trustee rescinded the trustee's sale and voided the trustee's deed.

(c) Not later than three calendar days after the date displayed on the rescission notice described in paragraph (b) of this subsection, the trustee shall refund to the purchaser the amount the purchaser paid for the property that is the subject of the rescission notice.

(d) If the trustee rescinded a trustee's sale and voided a trustee's deed in accordance with this subsection, the trustee, not later than 21 days after the date of the trustee's sale that resulted in the rescission, shall present for recording an affidavit that states that the trustee provided the notice of rescission described in paragraph (b) of this subsection. The affidavit must identify the trust deed that was subject to the rescinded trustee's sale and the voided trustee's deed.

(e) The trustee's deed conveys 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 the 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] the foreclosure 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 purchaser does not know 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:

- 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 ori-

ginal 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] **After** the fixed term of the tenancy **expires**, 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] **The tenant's failure** 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] **that seeks** to obtain possession pursuant to ORS 105.105 to 105.168 must attach proof of service of a written termination no-

tice 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 **pays** 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 en-

velope 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.

SECTION 2. ORS 86.755, as amended by section 7, chapter 510, Oregon Laws 2011, and section 10, chapter 112, Oregon Laws 2012, is amended to read:

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)(a) 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 postponement 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.

(b) If a person postpones the sale date as provided in paragraph (a) of this subsection, the trustee, in the manner provided for service of the notice of sale under ORS 86.740 (1), shall cause written notice of the new time, date and place for the sale to be served on the grantor and on any person to whom notice of the sale was given under ORS 86.745. The notice must be given at least 15 days before the new sale date. The person may postpone the sale once, for not more than two calendar days, without giving notice as provided in this paragraph. The person may not postpone the sale for more than two calendar days or more than once without giving notice as provided in this paragraph.

(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.]

(4)(a) Within 10 calendar days after the date of the trustee's sale, the trustee may rescind the trustee's sale and void the trustee's deed only if:

(A) The trustee asserts that during the trustee's sale a bona fide error occurred in:

(i) Setting, advertising or otherwise specifying the opening bid amount for the property that is the subject of the trustee's sale;

(ii) Providing a correct legal description of the property that is the subject of the trustee's sale; or

(iii) Complying with a requirement or procedure that is imposed by law;

(B) The grantor and the beneficiary agreed to a foreclosure avoidance measure, as defined in section 2, chapter 112, Oregon Laws 2012, that would postpone or discontinue the trustee's sale; or

(C) The beneficiary accepted funds to reinstate the trust deed and obligation in accordance with ORS 86.753, even if the beneficiary did not have a legal duty to do so.

(b) Within 10 calendar days after the date of the trustee's sale that the trustee rescinded under paragraph (a) of this subsection, the trustee shall provide notice of the rescission of the trustee's sale to any person to whom notice of the sale was given. The trustee shall mail or serve notice of the rescission in the manner provided for serving or mailing the notice of sale under ORS 86.740 (1). The notice of rescission must:

(A) Display the date on which the trustee mailed the notice, served the notice or delivered the notice for service; and

(B) State that, and explain why, the trustee rescinded the trustee's sale and voided the trustee's deed.

(c) Not later than three calendar days after the date displayed on the rescission notice described in paragraph (b) of this subsection, the trustee shall refund to the purchaser the amount the purchaser paid for the property that is the subject of the rescission notice.

(d) If the trustee rescinded a trustee's sale and voided a trustee's deed in accordance with this subsection, the trustee, not later than 21 days after the date of the trustee's sale that resulted in the rescission, shall present for recording an affidavit that states that the trustee provided the notice of rescission described in paragraph (b) of this subsection. The affidavit must identify the trust deed that was subject to the rescinded trustee's sale and the voided trustee's deed.

(e) The trustee's deed conveys 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 the 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]* the **foreclosure** 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 **purchaser does not know** 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]* **The tenant's failure** 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*] **that seeks** 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 **pays** 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.

SECTION 3. ORS 86.790 is amended to read:

86.790. (1) The trustee of a trust deed under ORS 86.705 to 86.795 *[shall not be]*:

(a) **Is not** required to comply with the provisions of ORS chapters 707 and 709.

(b) *[and shall]* **Must** be:

[(a)] (A) *[Any]* **An** attorney who is an active member of the Oregon State Bar;

[(b)] (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)] (C) A title insurance company **or a subsidiary, affiliate, insurance producer or branch of the title insurance company that is** authorized to insure title to real property in this state~~, its subsidiaries, affiliates, insurance producers or branches~~;

[(d)] (D) The United States or any agency *[thereof]* **of the United States**; or

[(e)] (E) **An** escrow *[agents]* **agent who is** licensed under ORS 696.505 to 696.590.

(c) **Shall obtain from the Secretary of State a certificate of authority to transact business in this state as a foreign business entity, if the trustee is a person described in paragraph (b)(B) or (C) of this subsection, unless the trustee has registered with or obtained a certificate of authority from the Director of the Department of Consumer and Business Services.**

(2) An attorney who is a trustee under subsection *[(1)(a)]* **(1)(b)(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]* **has** 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]* **The provisions of** ORS 86.705 to 86.795 *[imposes]* **do not impose** a duty on the trustee or successor trustee to notify any person of any proceeding with respect to *[such]* **the** person, except a proceeding *[initiated by]* **that** the trustee or successor trustee **initiates**.

(6) A trustee or the attorney for the trustee or any agent *[designated by]* **that** the trustee or the attorney **designates** 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]* **does not have** a fiduciary duty or fiduciary obligation to the grantor or other persons **that have** *[having]* an interest in the property subject to the trust deed. The trustee or successor trustee *[shall not be]* **is not** relieved of the duty to reconvey the property subject to the trust deed to the grantor *[upon request for reconveyance by]* **when** the beneficiary **requests a reconveyance.**

SECTION 4. ORS 86.705, as amended by section 5, chapter 112, Oregon Laws 2012, is amended to read:

86.705. 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)]* **(1)(b)(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 default that results in an action to foreclose the obligation secured by the trust deed first occurs.

(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.

SECTION 5. The amendments to ORS 86.705, 86.755 and 86.790 by sections 1 to 4 of this 2013 Act apply to trustee’s sales that occur on or after the effective date of this 2013 Act.

SECTION 6. If House Bill 2569 becomes law, section 3 of this 2013 Act (amending ORS 86.790) is repealed and ORS 86.790, as amended by section 2, chapter 125, Oregon Laws 2013 (Enrolled House Bill 2569), is amended to read:

86.790. (1) The trustee of a trust deed under ORS 86.705 to 86.795:

(a) Is not required to comply with the provisions of ORS chapters 707 and 709 *[and]*.

(b) Must be:

[(a)] **(A)** An attorney who is an active member of the Oregon State Bar or a law practice that includes an attorney who is an active member of the Oregon State Bar;

[(b)] **(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)] **(C)** A title insurance company or a subsidiary, affiliate, insurance producer or branch of the title insurance company that is authorized to insure title to real property in this state *[and the subsidiaries, affiliates, insurance producers or branches of the title insurance company]*;

[(d)] **(D)** The United States or any agency of the United States; or

[(e)] **(E)** An escrow agent that is licensed under ORS 696.505 to 696.590.

(c) Shall obtain from the Secretary of State a certificate of authority to transact business in this state as a foreign business entity, if the trustee is a person described in paragraph (b)(B) or (C) of this subsection, unless the trustee has registered with or obtained a certificate of authority from the Director of the Department of Consumer and Business Services.

(2) A law practice that, or an attorney who, is a trustee under subsection *[(1)(a)]* **(1)(b)(A)** of this section may represent the beneficiary in addition to performing the duties of trustee.

(3) At any time after a 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 *[is vested with all]* **has** 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 a trust deed, or to enjoin any private or judicial proceeding to foreclose a trust deed, but a trustee or successor trustee is not a necessary or 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]* **The provisions of ORS 86.705 to 86.795** *[imposes]* **do not impose** a duty on the trustee or successor trustee to notify any person of any proceeding with respect to the person, except a proceeding that the trustee or successor trustee initiates.

(6) A trustee or the attorney for the trustee or any agent **that** the trustee or the attorney designates 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 *[has no]* **does not have** a fiduciary duty or fiduciary obligation to the grantor or other persons that have an interest in the property subject to the trust deed. The trustee or successor trustee *[may not be]* **is not**

relieved of the duty to reconvey the property that is subject to the trust deed to the grantor [*upon the beneficiary's request for*] **when the beneficiary requests a reconveyance.**

(8) If a law practice is the trustee under subsection [(1)(a)] **(1)(b)(A)** of this section, an attorney who is an active member of the Oregon State Bar and is a shareholder, partner, member or employee of the law practice shall sign on the trustee's behalf any document that is permitted or required to be signed under ORS 86.705 to 86.795. The attorney who signs the document shall make evident in the document the attorney's name and Oregon State Bar number and shall state in the document that the trustee has authorized the attorney to sign the document on the trustee's behalf.

(9) If an attorney is the trustee under subsection [(1)(a)] **(1)(b)(A)** of this section, another attorney who is an active member of the Oregon State Bar and is a shareholder, partner, member or employee

of the law practice in which the attorney practices law may sign on the trustee's behalf any document that is permitted or required to be signed under ORS 86.705 to 86.795. The attorney who signs the document shall make evident in the document the attorney's name and Oregon State Bar number and shall state in the document that the trustee has authorized the attorney to sign the document on the trustee's behalf.

SECTION 7. If House Bill 2569 becomes law, section 5 of this 2013 Act is amended to read:

Sec. 5. The amendments to ORS 86.705, 86.755 and 86.790 by sections 1 [*to 4*], **2, 4 and 6** of this 2013 Act apply to trustee's sales that occur on or after the effective date of this 2013 Act.

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