

Enrolled
House Bill 3004

Sponsored by Representatives CLEM, C EDWARDS (at the request of Jane Cummins)

CHAPTER

AN ACT

Relating to sales of foreclosed property; creating new provisions; amending ORS 86.755, 86.770 and 88.070 and section 6, chapter ___, Oregon Laws 2009 (Enrolled Senate Bill 952); repealing section 1, chapter ___, Oregon Laws 2009 (Enrolled Senate Bill 952); and declaring an emergency.

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

SECTION 1. ORS 86.755 is amended to read:

86.755. (1) The **trustee shall hold the trustee's sale** *[shall be held]* on the date and at the time and place designated in the notice of sale. 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. The attorney for the trustee, or *[any agent designated by]* **an agent that** the trustee or the attorney **designates**, may conduct the sale and act in the sale as the **trustee's** auctioneer *[of the trustee]*.

(2) The trustee or the attorney for the trustee, or *[any agent designated by]* **an agent that** the trustee or the attorney conducting the sale **designates**, may postpone the sale for one or more periods totaling 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 proclamation may be made by]* The trustee, the attorney, *or any agent designated by]* **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, 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 *[which]* **that** the grantor had, or had the power to convey, at the time *[of the execution by the grantor of]* **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) The purchaser at the trustee's sale shall be entitled to possession of the property on the 10th day following the sale, and any persons remaining in possession after that day under any interest, except one prior to the trust deed or created voluntarily by the grantor or a successor of the grantor, shall be deemed to be tenants at sufferance. All persons not holding under an interest prior to the trust deed may be removed from possession by following the procedures set out in ORS 105.105 to 105.168 or other applicable judicial procedure, provided that a person holding under an interest created voluntarily by the grantor or a successor of the grantor must first receive 30 days' written notice of the intent to remove that person served no earlier than 30 days before the date first set for the sale. Notices under this subsection shall be served by first class mail. "First class

mail” for purposes of this section does not include certified or registered mail, or any other form of mail which may delay or hinder actual delivery of mail to the addressee.

(6)(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 *[gives]* **sends** amended notice of sale by registered or certified mail to the last-known address of *[those]* **the** persons listed in ORS 86.740 and 86.750 (1). *[and to]*

(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 *[which]* **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.

(7) The amended notice of sale *[shall]* **must:**

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

(b) Set an amended date of sale *[which]* **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 [and this subsection]** 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.

[7] **(8) If the publication of the notice of sale was not completed [prior to] 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 [subsection (6)] subsections (6) and (7) of this section, the trustee shall complete the publication by publishing an amended notice of sale [which] that states that the notice has been amended following release from the stay[, and which] and that contains the amended date of sale. The amended notice [shall] 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 [shall] must be reduced by the number of publications that were completed [prior to] before the effective date of the stay. The last publication [shall] must be made more than 20 days [prior to] before the date the trustee conducts the sale.**

SECTION 1a. If Senate Bill 952 becomes law, section 1, chapter __, Oregon Laws 2009 (Enrolled Senate Bill 952) (amending ORS 86.755), is repealed and ORS 86.755, as amended by section 1 of this 2009 Act, is amended to read:

86.755. (1) The trustee shall hold the trustee’s sale on the date and at the time and place designated in the notice of sale[.], **which must be at a designated time after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110 and at a designated place in the county or one of the counties where the property is situated.** 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. The 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.

(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 totaling 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, 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) The purchaser at the trustee's sale *[shall be]* is entitled to possession of the property on the 10th day *[following]* after the sale, *and any persons remaining*. **A person that remains in possession after *[that]* the 10th day under any interest, except *[one]* an interest prior to the trust deed or an interest the grantor or a successor of the grantor created voluntarily *[by the grantor or a successor of the grantor, shall be deemed to be tenants]* 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. *[All persons not holding under an interest prior to the trust deed may be removed from possession by following the procedures set out in ORS 105.105 to 105.168 or other applicable judicial procedure, provided that a person holding under an interest created voluntarily by the grantor or a successor of the grantor must first receive 30 days' written notice of the intent to remove that person served no earlier than 30 days before the date first set for the sale. Notices under this subsection shall be served by first class mail. "First class mail" for purposes of this section does not include certified or registered mail, or any other form of mail which may delay or hinder actual delivery of mail to the addressee.]***

(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 is a dwelling unit, as defined in ORS 90.100 (9), that the person holds under a tenancy that the grantor or a successor of the grantor created voluntarily and in good faith, the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure to obtain possession if after the sale the purchaser terminates the tenancy in a written notice given to the person:

(A) At least 60 days before the termination date specified in the notice, if the tenancy is a fixed term tenancy, as defined in ORS 90.100, and at least 30 days before the date first set for the trustee's sale the person provided the trustee with a copy of the rental agreement that established the fixed term tenancy. The provisions of this subparagraph do not apply to a purchaser that does not intend to terminate a fixed term tenancy before the date on which the fixed term tenancy ends.

(B) At least 30 days before the termination date specified in the notice, if:

(i) The tenancy is a month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS 90.100, and at least 30 days before the date first set for the trustee's sale the person provided the trustee with a copy of the rental agreement that established the tenancy or with other written evidence of the existence of a rental agreement, if the person cannot provide the rental agreement; or

(ii) The tenancy is a fixed term tenancy for which the person has provided notice to the trustee as provided in subparagraph (A) of this paragraph and the purchaser intends to occupy the property that is subject to the fixed term tenancy as the purchaser's primary residence.

(d) 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.

(e) For the purposes of this subsection:

(A) A month-to-month tenancy or a week-to-week tenancy that a grantor or a successor of the grantor first created after a notice of sale was served under ORS 86.750 is presumed not to be a tenancy created in good faith.

(B) A fixed term tenancy that a grantor or a successor of the grantor created after a notice of sale was served under ORS 86.750 is not a tenancy created in good faith.

(6) A purchaser shall serve a notice under subsection (5) of this section by first class mail and not by certified or registered mail or a form of mail that may delay or hinder actual delivery of mail to the addressee. The notice is effective three days after the notice is mailed.

(7)(a) Notwithstanding the provisions of subsection (5)(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 person who possesses the property under a tenancy described in subsection (5)(c) of this section;

(B) Enters into a new rental agreement with the person who possesses the property under a tenancy described in subsection (5)(c) of this section; or

(C) Fails to terminate the tenancy as provided in subsection (5)(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.

(8)(a) Except as provided in paragraph (b) of this subsection, the purchaser is not liable to the person who possesses the property under a tenancy described in subsection (5)(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 (7)(a) of this section is liable to the person who possesses the property under a tenancy described in subsection (5)(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 person pays after the date of the trustee's sale.

[(6)(a)] (9)(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.

[(7)] **(10)** The amended notice of sale must:

(a) Be given at least 20 days prior to 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.

[(8)] **(11)** 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 [(6) and (7)] **(9) and (10)** 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 1b. If Senate Bill 952 becomes law, section 6, chapter ___, Oregon Laws 2009 (Enrolled Senate Bill 952), is amended to read:

Sec. 6. Section 4, **chapter ___, Oregon Laws 2009 (Enrolled Senate Bill 952)**, [of this 2009 Act and] the amendments to ORS 86.745 [and 86.755 by sections 1 and 2 of this 2009 Act] **by section 2, chapter ___, Oregon Laws 2009 (Enrolled Senate Bill 952), and the amendments to ORS 86.755 by section 1a of this 2009 Act** apply to notices given under ORS 86.740 on or after the effective date of **chapter ___, Oregon Laws 2009 (Enrolled Senate Bill 952)**, [this 2009 Act] and to proceedings or actions under ORS 105.105 to 105.168 that begin on or after the effective date of **chapter ___, Oregon Laws 2009 (Enrolled Senate Bill 952)** [this 2009 Act].

SECTION 1c. The amendments to ORS 86.755 by section 1a of this 2009 Act become operative on the effective date of **chapter ___, Oregon Laws 2009 (Enrolled Senate Bill 952)**.

SECTION 2. ORS 86.770 is amended to read:

86.770. [(1) A sale made by a trustee under ORS 86.705 to 86.795 shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under ORS 86.740 and 86.750 and of any other person claiming by, through or under such persons, and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of these persons shall not affect the validity of the sale as to persons so notified.]

[(2) Except as provided in subsection (4) of this section, no other or further action shall be brought, nor judgment entered for any deficiency, against the grantor, or the grantor's successor in interest, if any, on the note, bond, or other obligation secured by the trust deed or against any other person obligated on such note, bond or other obligation after a sale is made:]

[(a) By a trustee under ORS 86.705 to 86.795; or]

[(b) Under a judicial foreclosure of a residential trust deed.]

[(3) Notwithstanding ORS 88.070, when there is a judicial foreclosure of a trust deed that is not a residential trust deed, the judgment shall provide that if the sale proceeds are insufficient to satisfy

the judgment, execution may issue for any amount by which the unpaid balance of the obligation secured by the trust deed exceeds the net sale proceeds payable to the beneficiary.]

[(4) Nothing in this section shall preclude an action judicially or nonjudicially foreclosing 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 interest or liens covering any other real or personal property security for the note, bond or other obligation secured by the trust deed under which a sale has been made or an action against a guarantor to the extent of any remaining deficiency following judicial foreclosure. A guarantor of an obligation secured by a residential trust deed shall not have the right to recover any deficiency from the grantor or any successor in interest of the grantor.]

(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 that received notice of the sale under ORS 86.740 and 86.750 or to a person that claims an interest by, through or under the person that received notice. 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 residential trust deed for the property that was subject to the trustee's sale or the 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 foreclosure when the debt, of which the note, bond or other obligation is evidence:

(A) Was created at the same time as the note, bond or other obligation secured by the foreclosed residential trust deed; and

(B) Is owed to 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.

SECTION 3. ORS 88.070 is amended to read:

88.070. **(1)** When real property is sold pursuant to a judgment foreclosing a mortgage and the proceeds of the sale are not adequate to satisfy the amounts secured by the mortgage, all judgment remedies for collection of the unsatisfied amounts expire when the sale is made if:

[(1)] (a) The mortgage was given to a seller to secure the unpaid balance of the purchase price of real property; or

[(2)] (b) The mortgage was given after September 13, 1975, to a person other than a seller to secure not more than \$50,000 of the unpaid balance of the purchase price of real property used by the purchaser as the primary or secondary single family residence of the purchaser.

(2) If a purchaser gives more than one mortgage to a seller or a single lender to finance the purchase of real property that the purchaser uses as the purchaser's primary single family residence and the seller or lender or a subsidiary, affiliate or successor of the seller or lender continues to hold the mortgages at the time of foreclosure, judgment remedies for the collection of unsatisfied amounts that the grantor owes to the seller or lender or the subsidiary, affiliate or successor of the seller or lender on notes secured by the mortgages expire when the real property is sold in accordance with the foreclosure.

SECTION 4. (1) The amendments to ORS 86.755 by section 1 of this 2009 Act apply to sales that occur on or after the effective date of this 2009 Act.

(2) The amendments to ORS 86.770 and 88.070 by sections 2 and 3 of this 2009 Act apply to a trust deed or mortgage or a note, bond or other obligation secured by a trust deed or mortgage that was executed before, on or after the effective date of this 2009 Act.

SECTION 5. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House June 4, 2009

Received by Governor:

Repassed by House June 25, 2009

.....M.,....., 2009

Approved:

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Chief Clerk of House

.....M.,....., 2009

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Speaker of House

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Governor

Passed by Senate June 24, 2009

Filed in Office of Secretary of State:

.....M.,....., 2009

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President of Senate

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Secretary of State