

Senate Bill 484

Sponsored by Senator BONAMICI (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires notice of sale in trust deed foreclosure to include documentation that establishes beneficiary or beneficiary's agent as real party in interest with respect to loan to be foreclosed. Requires documentation to consist of true copy of original debt instrument and evidence of chain of title from date of original loan to date of notice of sale.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to documentation requirements for foreclosures; creating new provisions; amending ORS
3 86.745 and 86.750; and declaring an emergency.

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

5 **SECTION 1.** ORS 86.745, as amended by sections 1 and 2, chapter 28, Oregon Laws 2010, is
6 amended to read:

7 86.745. The notice of sale shall:

8 (1) List the names of the grantor, trustee and beneficiary in the trust deed, and the mailing ad-
9 dress of the trustee.

10 (2) Describe the property the trust deed covers.

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

12 (4) **Include documentation as an attachment that establishes that the beneficiary or the**
13 **beneficiary's agent is the real party in interest with respect to the loan. The documentation**
14 **must consist of:**

15 (a) **A true copy of the original debt instrument that is the basis for the claimed right to**
16 **foreclose the residential trust deed; and**

17 (b) **Evidence of the chain of title, including conveyances, endorsements and assignments**
18 **of the residential trust deed, note and security instrument, from the date of the original loan**
19 **on which the beneficiary seeks to foreclose to the date of the notice of sale.**

20 [(4)] (5) State the default for which the foreclosure is made.

21 [(5)] (6) State the sum owing on the obligation that the trust deed secures.

22 [(6)] (7) State that the property will be sold to satisfy the obligation.

23 [(7)] (8) Set forth the date, time and place of the sale.

24 [(8)] (9) State that the right exists under ORS 86.753 to have the proceeding dismissed and the
25 trust deed reinstated by paying the entire amount then due, together with costs, trustee's fees and
26 attorney fees, and by curing any other default complained of in the notice of default, at any time
27 that is not later than five days before the date last set for the sale.

28 [(9)] (10) If the property includes one or more dwelling units, as defined in ORS 90.100, include
29 a notice addressed clearly to any person who occupies the property and who is or might be a resi-
30 dential tenant. The notice required under this subsection must:

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

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

3 (b) Include information concerning the right the person has to notice under ORS 86.755 (5)(c)
 4 and state that the person may have additional rights under federal law;

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

6 (d) Be in substantially the following form:
 7 _____
 8

9 **NOTICE TO RESIDENTIAL TENANTS**

10 The property in which you are living is in foreclosure. A foreclosure sale is scheduled for
 11 _____. Unless the lender who is foreclosing on this property is paid, the foreclosure
 12 will go through and someone new will own this property.

13 The following information applies to you only if you occupy and rent this property as a resi-
 14 dential dwelling under a legitimate rental agreement. The information does not apply to you if you
 15 own this property or if you are not a residential tenant.

16 If the foreclosure goes through, the business or individual who buys this property at the fore-
 17 closure sale has the right to require you to move out. The buyer must first give you an eviction
 18 notice in writing that specifies the date by which you must move out. The buyer may not give you
 19 this notice until after the foreclosure sale happens. If you do not leave before the move-out date, the
 20 buyer can have the sheriff remove you from the property after a court hearing. You will receive
 21 notice of the court hearing.

22 **FEDERAL LAW REQUIRES**
 23 **YOU TO BE NOTIFIED**

24 **IF YOU ARE OCCUPYING AND RENTING THIS PROPERTY AS A RESIDENTIAL DWELL-**
 25 **ING UNDER A LEGITIMATE RENTAL AGREEMENT, FEDERAL LAW REQUIRES THE BUYER**
 26 **TO GIVE YOU NOTICE IN WRITING A CERTAIN NUMBER OF DAYS BEFORE THE BUYER**
 27 **CAN REQUIRE YOU TO MOVE OUT. THE FEDERAL LAW THAT REQUIRES THE BUYER TO**
 28 **GIVE YOU THIS NOTICE IS EFFECTIVE UNTIL DECEMBER 31, 2012.** Under federal law, the
 29 buyer must give you at least 90 days' notice in writing before requiring you to move out. If you are
 30 renting this property under a fixed-term lease (for example, a six-month or one-year lease), you may
 31 stay until the end of your lease term. If the buyer wants to move in and use this property as the
 32 buyer's primary residence, the buyer can give you written notice and require you to move out after
 33 90 days, even if you have a fixed-term lease with more than 90 days left.

34 **STATE LAW NOTIFICATION REQUIREMENTS**

35 **IF THE FEDERAL LAW DOES NOT APPLY, STATE LAW STILL REQUIRES THE BUYER**
 36 **TO GIVE YOU NOTICE IN WRITING BEFORE REQUIRING YOU TO MOVE OUT IF YOU ARE**
 37 **OCCUPYING AND RENTING THE PROPERTY AS A TENANT IN GOOD FAITH. EVEN IF THE**
 38 **FEDERAL LAW REQUIREMENT IS NO LONGER EFFECTIVE AFTER DECEMBER 31, 2012, THE**
 39 **REQUIREMENT UNDER STATE LAW STILL APPLIES TO YOUR SITUATION.** Under state law,
 40 if you have a fixed-term lease (for example, a six-month or one-year lease), the buyer must give you
 41 at least 60 days' notice in writing before requiring you to move out. If the buyer wants to move in
 42 and use this property as the buyer's primary residence, the buyer can give you written notice and
 43 require you to move out after 30 days, even if you have a fixed-term lease with more than 30 days
 44 left.

45 If you are renting under a month-to-month or week-to-week rental agreement, the buyer must

1 give you at least 30 days' notice in writing before requiring you to move out.

2 **IMPORTANT:** For the buyer to be required to give you notice under state law, you must prove
3 to the business or individual who is handling the foreclosure sale that you are occupying and rent-
4 ing this property as a residential dwelling under a legitimate rental agreement. The name and ad-
5 dress of the business or individual who is handling the foreclosure sale is shown on this notice under
6 the heading "TRUSTEE." You must mail or deliver your proof not later than
7 _____ (30 days before the date first set for the foreclosure sale). Your proof must
8 be in writing and should be a copy of your rental agreement or lease. If you do not have a written
9 rental agreement or lease, you can provide other proof, such as receipts for rent you paid.

10 ABOUT YOUR SECURITY DEPOSIT

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

17 ABOUT YOUR TENANCY

18 AFTER THE FORECLOSURE SALE

19 The business or individual who buys this property at the foreclosure sale may be willing to al-
20 low you to stay as a tenant instead of requiring you to move out. You should contact the buyer to
21 discuss that possibility if you would like to stay. Under state law, if the buyer accepts rent from you,
22 signs a new residential rental agreement with you or does not notify you in writing within 30 days
23 after the date of the foreclosure sale that you must move out, the buyer becomes your new landlord
24 and must maintain the property. Otherwise, the buyer is not your landlord and is not responsible for
25 maintaining the property on your behalf and you must move out by the date the buyer specifies in
26 a notice to you.

27 **YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY**
28 **IS SOLD TO ANOTHER BUSINESS OR INDIVIDUAL OR UNTIL A COURT OR A LENDER**
29 **TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED. AS EX-**
30 **PLAINED ABOVE, YOU MAY BE ABLE TO APPLY A DEPOSIT YOU MADE OR PREPAID**
31 **RENT YOU PAID AGAINST YOUR CURRENT RENT OBLIGATION. BE SURE TO KEEP PROOF**
32 **OF ANY PAYMENTS YOU MAKE AND OF ANY NOTICE YOU GIVE OR RECEIVE CONCERN-**
33 **ING THE APPLICATION OF YOUR DEPOSIT OR YOUR PREPAID RENT.**

34 **IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR HOME**
35 **WITHOUT FIRST GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT**
36 **YOUR RIGHTS, YOU MAY WISH TO CONSULT A LAWYER.** If you believe you need legal as-
37 sistance, contact the Oregon State Bar and ask for the lawyer referral service. Contact information
38 for the Oregon State Bar is included with this notice. If you do not have enough money to pay a
39 lawyer and are otherwise eligible, you may be able to receive legal assistance for free. Information
40 about whom to contact for free legal assistance is included with this notice.

41 _____
42
43 **SECTION 2.** ORS 86.750, as amended by section 3, chapter 28, Oregon Laws 2010, and section
44 2, chapter 40, Oregon Laws 2010, is amended to read:

45 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in

1 ORS 86.745 must be served upon an occupant of the property described in the trust deed in the
 2 manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before
 3 the day the trustee conducts the sale.

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

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

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

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

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

25 (b) The copy of the notice of sale required to be published under paragraph (a) of this subsection
 26 does not need to include **the documentation described in ORS 86.745 (4) or** the notice to tenants
 27 required under ORS 86.745 [(9)] (10).

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

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

35 (4) At or before the time the trustee conducts the sale, the trustee shall file for recording in the
 36 official record of the county or counties in which the property described in the deed is situated an
 37 affidavit of mailing with respect to the notice to the grantor required under ORS 86.737.

38 (5) Not later than five days before the date the trustee conducts the sale, the trustee shall file
 39 for recording in the official record of the county or counties in which the property is located an
 40 affidavit from the beneficiary or the beneficiary's agent that states how the beneficiary or the
 41 beneficiary's agent has complied with the provisions of section 3 (1) and (2), chapter 864, Oregon
 42 Laws 2009.

43 **SECTION 3.** ORS 86.750, as amended by section 6, chapter 864, Oregon Laws 2009, section 4,
 44 chapter 28, Oregon Laws 2010, and section 3, chapter 40, Oregon Laws 2010, is amended to read:

45 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in

1 ORS 86.745 must be served upon an occupant of the property described in the trust deed in the
2 manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before
3 the day the trustee conducts the sale.

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

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

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

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

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

25 (b) The copy of the notice of sale required to be published under paragraph (a) of this subsection
26 does not need to include the **documentation described in ORS 86.745 (4) or the** notice to tenants
27 required under ORS 86.745 [(9)] (10).

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

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

35 (4) At or before the time the trustee conducts the sale, the trustee shall file for recording in the
36 official record of the county or counties in which the property described in the deed is situated an
37 affidavit of mailing with respect to the notice to the grantor required under ORS 86.737.

38 **SECTION 4. The amendments to ORS 86.745 and 86.750 by sections 1 to 3 of this 2011 Act**
39 **apply to a notice of sale sent on or after the effective date of this 2011 Act.**

40 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
41 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
42 **on its passage.**