

Enrolled
House Bill 2359

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen Rosenblum)

CHAPTER

AN ACT

Relating to copies of notices of a denial of eligibility for a foreclosure avoidance measure; amending ORS 86.741 and 86.748.

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

SECTION 1. ORS 86.741 is amended to read:

86.741. (1) The Attorney General shall:

(a) Appoint and enter into an agreement with a service provider to coordinate and manage a program to implement the provisions of ORS 86.726, 86.729, 86.732 and 86.736.

(b) Enter into an agreement for information technology goods or services.

(c) Receive affidavits submitted under ORS 86.726 (1)(b) [*and copies of notices sent under ORS 86.748 (1)*].

(d) Specify the amount a beneficiary must pay to the service provider under ORS 86.726 (2) and 86.729 (4)(a) and the amount that the grantor must pay to the service provider under ORS 86.729 (2)(a).

(e) Prescribe qualifications, training and experience requirements for facilitators that conduct or assist resolution conferences.

(f) Specify procedures and guidelines for conducting a resolution conference.

(g) Adopt additional rules to implement ORS 86.726, 86.729, 86.732, 86.736, 86.744 and 86.748.

(2) The Attorney General shall pay for the service provider's services and for information technology goods and services from the Foreclosure Avoidance Fund established under ORS 86.744. The Attorney General is not subject to ORS chapter 279A, 279B or 279C in appointing a service provider or entering into an agreement under subsection (1)(a) or (b) of this section.

(3) In addition to and not in lieu of any other penalty provided by law, violation of ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2) by a beneficiary is an unlawful practice under ORS 646.607 that is subject to enforcement under ORS 646.632.

SECTION 2. ORS 86.748 is amended to read:

86.748. (1)(a) Whether or not a beneficiary participates in a resolution conference under ORS 86.726, if the beneficiary determines that a grantor of a residential trust deed is not eligible for a foreclosure avoidance measure or that the grantor has not complied with the terms of a foreclosure avoidance measure to which the grantor has agreed, the beneficiary shall mail a written notice to the grantor within 10 days after making the determination. [*The beneficiary shall mail a copy of the notice to the Department of Justice on the same date that the beneficiary mails the notice to the grantor.*]

(b) The notice described in paragraph (a) of this subsection must in plain language explain the basis for the beneficiary's determination. [The notice and any information in the notice are not subject to disclosure under ORS 192.410 to 192.505.]

(c) This subsection does not impose an affirmative duty on the beneficiary to determine if a grantor is eligible for a foreclosure avoidance measure.

(2) At least five days before the trustee sells the property that is subject to foreclosure, the beneficiary shall record in the mortgage records in the county or in one of the counties in which the property is located an affidavit that states that the beneficiary has complied with the requirements set forth in subsection (1) of this section.

(3)(a) A beneficiary that fails to substantially comply with subsection (1)(b) of this section, or otherwise fails to comply with subsection (1)(a) or (2) of this section, is liable to the grantor in the amount of \$500 plus the amount of the grantor's actual damages for each failure.

(b) A grantor may bring an action against a beneficiary in a circuit court of this state to recover the amounts described in paragraph (a) of this subsection. The grantor shall commence the action within one year after the date on which the beneficiary should have complied, but did not comply, with the provisions of this section.

(c) Notwithstanding an agreement to the contrary, a court may award reasonable attorney fees, costs and disbursements to a grantor that obtains a final judgment in the grantor's favor.

Passed by House March 2, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 16, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

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Dennis Richardson, Secretary of State