

Enrolled
Senate Bill 628

Sponsored by Senator BONAMICI, Representative HOLVEY; Senator WALKER, Representative KAHL

CHAPTER

AN ACT

Relating to residential property foreclosures; creating new provisions; amending ORS 86.750 and section 20, chapter 19, Oregon Laws 2008; and declaring an emergency.

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

SECTION 1. Section 20, chapter 19, Oregon Laws 2008, is amended to read:

Sec. 20. (1) If a notice of default is recorded for property that is subject to a residential trust deed, the sender of a notice of sale under ORS 86.740 shall, on or before the date the notice of sale is served or mailed, give notice under this section to the grantor by both first class and certified mail with return receipt requested. Subject to any rules adopted under subsection (2) of this section, the notice must be in substantially the following form and printed in at least 14-point type:

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

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

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

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

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

THIS IS WHEN AND WHERE
YOUR PROPERTY WILL BE SOLD

IF YOU DO NOT TAKE ACTION:

Date and time: _____, 2_____ at _____

Place: _____

THIS IS WHAT YOU CAN DO
TO STOP THE SALE:

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

There are government agencies and nonprofit organizations that can give you information about foreclosure and help you decide what to do. For the name and telephone number of an organization near you, please call the statewide telephone contact number at _____. You may also wish to talk to a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at _____ or toll-free in Oregon at _____ or you may visit its website at: _____. Legal assistance may be available if you have a low income and meet federal poverty guidelines. For more information and a directory of legal aid programs, go to _____.

Your lender may be willing to modify your loan to reduce the interest rate, reduce the monthly payments or both. You can get information about possible loan modification programs by contacting your lender at _____. If you can't reach your lender, you may contact the trustee at the telephone number at the bottom of this notice. If you have already entered into a loan modification with your lender, it is possible that you will not be able to modify your loan again unless your circumstances have changed. Your lender is not obligated to modify your loan.

You may request to meet with your lender to discuss options for modifying your loan. During discussions with your lender, you may have the assistance of a lawyer, a housing counselor or another person of your choosing. To receive a referral to a housing counselor or other assistance available in your community, call this toll-free consumer mortgage foreclosure information number: _____. Many lenders participate in new federal loan modification programs. You can obtain more information about these programs at: _____.

IF YOU WANT TO APPLY TO MODIFY YOUR LOAN, YOU MUST FILL OUT AND MAIL BACK THE ENCLOSED "MODIFICATION REQUEST FORM." YOUR LENDER MUST RECEIVE THE FORM BY _____, WHICH IS 30 DAYS AFTER THE DATE SHOWN BELOW.

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

DATED: _____, 2_____

Trustee name: _____ (print)

Trustee signature: _____

Trustee telephone number: _____

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

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

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

(b) One or more telephone numbers consisting of:

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

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

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

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

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

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

(5) If the sender giving notice under subsection (1) of this section has actual knowledge that the grantor is not the occupant of the residential real property, the sender shall also give notice to the occupant of the property by both first class and certified mail with return receipt requested.

(6) The notice required under subsection (1) of this section must be accompanied by a form to request a loan modification. The form must include the address to which and state the date by which the grantor must return the form. The date must be 30 days after the date on which the trustee signs the notice. The form may state that the grantor must disclose current information about the grantor's income and expenses, the grantor's address, phone number and electronic mail address and other facts that may affect the grantor's eligibility for a loan modification.

SECTION 2. Section 3 of this 2009 Act is added to and made a part of ORS 86.705 to 86.795.

SECTION 3. (1) If a grantor returns the form identified in section 20 (6), chapter 19, Oregon Laws 2008, to the lender by the date specified on the form, the beneficiary or an agent of the beneficiary shall review the information the grantor provided in the form and, in good faith, shall process the grantor's request. The beneficiary or the beneficiary's agent, as soon as reasonably practicable but not later than 45 days after receiving the form, shall notify the grantor whether the beneficiary approves or denies the request or requires additional information. A trustee's sale for the property subject to the loan may not occur until after the beneficiary or the beneficiary's agent timely responds to the grantor. During the 45-day period, the beneficiary or the beneficiary's agent may request the grantor to provide additional information required to determine whether the loan can be modified.

(2)(a) Except as provided in paragraph (b) of this subsection, if the grantor timely requests a meeting with the beneficiary, the beneficiary or the beneficiary's agent shall meet with the grantor in person or shall speak to the grantor by telephone before the beneficiary or the beneficiary's agent responds to the grantor's request to modify the loan. If the

grantor requests the meeting, the beneficiary or the beneficiary's agent shall take reasonable steps to schedule the meeting by contacting the grantor at the grantor's last known address or telephone number or at the grantor's electronic mail address, if the grantor indicates on the loan modification form that the beneficiary or the beneficiary's agent can contact the grantor at the electronic mail address.

(b) A beneficiary or the beneficiary's agent complies with the provisions of paragraph (a) of this subsection even if the beneficiary or beneficiary's agent does not speak to or meet with the grantor if, within seven business days after the beneficiary or beneficiary's agent attempts to contact the grantor, the grantor does not respond.

(c) The beneficiary or the beneficiary's agent that meets with the grantor shall have or be able to obtain authority to modify the loan.

(3)(a) The beneficiary or the beneficiary's agent shall provide the trustee with the affidavit described in ORS 86.750 (5). In the affidavit, the beneficiary or the beneficiary's agent shall describe how the beneficiary or the beneficiary's agent has complied with subsections (1) and (2) of this section.

(b) The trustee shall record the affidavit described in paragraph (a) of this subsection.

(4) Subsections (1) and (2) of this section do not apply to a beneficiary that determines in good faith, after considering the most current financial information the grantor provides, that the grantor is not eligible for a loan modification, provided that the beneficiary informs the grantor that the grantor is not eligible.

SECTION 4. Section 20, chapter 19, Oregon Laws 2008, as amended by section 1 of this 2009 Act, is amended to read:

Sec. 20. (1) If a notice of default is recorded for property that is subject to a residential trust deed, the sender of a notice of sale under ORS 86.740 shall, on or before the date the notice of sale is served or mailed, give notice under this section to the grantor by both first class and certified mail with return receipt requested. Subject to any rules adopted under subsection (2) of this section, the notice must be in substantially the following form and printed in at least 14-point type:

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

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

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

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

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

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

Date and time: _____, 2_____ at _____

Place: _____

THIS IS WHAT YOU CAN DO
TO STOP THE SALE:

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

There are government agencies and nonprofit organizations that can give you information about foreclosure and help you decide what to do. For the name and telephone number of an organization near you, please call the statewide telephone contact number at _____. You may also wish to talk to a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at _____ or toll-free in Oregon at _____ or you may visit its website at: _____. Legal assistance may be available if you have a low income and meet federal poverty guidelines. For more information and a directory of legal aid programs, go to _____.

[Your lender may be willing to modify your loan to reduce the interest rate, reduce the monthly payments or both. You can get information about possible loan modification programs by contacting your lender at _____. If you can't reach your lender, you may contact the trustee at the telephone number at the bottom of this notice. If you have already entered into a loan modification with your lender, it is possible that you will not be able to modify your loan again unless your circumstances have changed. Your lender is not obligated to modify your loan.]

[You may request to meet with your lender to discuss options for modifying your loan. During discussions with your lender, you may have the assistance of a lawyer, a housing counselor or another person of your choosing. To receive a referral to a housing counselor or other assistance available in your community, call this toll-free consumer mortgage foreclosure information number: _____. Many lenders participate in new federal loan modification programs. You can obtain more information about these programs at: _____]

[IF YOU WANT TO APPLY TO MODIFY YOUR LOAN, YOU MUST FILL OUT AND MAIL BACK THE ENCLOSED "MODIFICATION REQUEST FORM." YOUR LENDER MUST RECEIVE THE FORM BY _____, WHICH IS 30 DAYS AFTER THE DATE SHOWN BELOW.]

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

DATED: _____, 2_____

Trustee name: _____ (print)

Trustee signature: _____

Trustee telephone number: _____

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

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

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

(b) One or more telephone numbers consisting of:

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

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

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

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

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

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

(5) If the sender giving notice under subsection (1) of this section has actual knowledge that the grantor is not the occupant of the residential real property, the sender shall also give notice to the occupant of the property by both first class and certified mail with return receipt requested.

[(6) The notice required under subsection (1) of this section must be accompanied by a form to request a loan modification. The form must include the address to which and state the date by which the grantor must return the form. The date must be 30 days after the date on which the trustee signs the notice. The form may state that the grantor must disclose current information about the grantor's income and expenses, the grantor's address, phone number and electronic mail address and other facts that may affect the grantor's eligibility for a loan modification.]

SECTION 5. ORS 86.750, as amended by section 1, chapter 229, Oregon Laws 2009 (Enrolled Senate Bill 239), is amended to read:

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

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

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

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

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

(2) A copy of the notice of sale shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks. The last publication shall be made more than 20 days prior to the date the trustee conducts the sale.

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

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

(4) On or before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property described in the deed is situated an affidavit of mailing with respect to the notice to the grantor required under section 20, chapter 19, Oregon Laws 2008.

(5) On or before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property is located an affidavit from the beneficiary or the beneficiary's agent that states how the beneficiary or the beneficiary's agent has complied with the provisions of section 3 (1) and (2) of this 2009 Act.

SECTION 6. ORS 86.750, as amended by section 1, chapter 229, Oregon Laws 2009 (Enrolled Senate Bill 239), and section 5 of this 2009 Act, is amended to read:

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

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

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

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

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

(2) A copy of the notice of sale shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks. The last publication shall be made more than 20 days prior to the date the trustee conducts the sale.

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

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

(4) On or before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property described in the deed is situated an affidavit of mailing with respect to the notice to the grantor required under section 20, chapter 19, Oregon Laws 2008.

[5) On or before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property is located an affidavit from the beneficiary or the beneficiary's agent that states how the beneficiary or the beneficiary's agent has complied with the provisions of section 3 (1) and (2) of this 2009 Act.]

SECTION 7. (1) Notwithstanding the purposes set forth in ORS 180.095, and except as provided in subsection (2) of this section, the Department of Justice shall use the proceeds of the State of Oregon's settlement with Countrywide Financial Corporation that are deposited into the Consumer Protection and Education Revolving Account to make grants, in consultation with the Housing and Community Services Department, to nonprofit entities to provide foreclosure relief services.

(2) The Department of Justice need not use the proceeds identified in subsection (1) of this section if sufficient funding for the purposes identified in subsection (1) of this section is available from another source.

SECTION 8. (1) Section 3 of this 2009 Act and the amendments to ORS 86.750 and section 20, chapter 19, Oregon Laws 2008, by sections 1 and 5 of this 2009 Act apply to a notice of sale sent on or after the 60th day following the effective date of this 2009 Act.

(2) Section 3 of this 2009 Act and the amendments to ORS 86.750 and section 20, chapter 19, Oregon Laws 2008, by sections 1 and 5 of this 2009 Act do not apply to property secured by a trust deed that a government agency holds for a loan the government agency funded through a government program.

SECTION 9. The amendments to ORS 86.750 and section 20, chapter 19, Oregon Laws 2008, by sections 4 and 6 of this 2009 Act become operative on January 2, 2012.

SECTION 10. Section 3 of this 2009 Act is repealed on January 2, 2012.

SECTION 11. 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 Senate June 26, 2009

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Secretary of Senate

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President of Senate

Passed by House June 29, 2009

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Speaker of House

Received by Governor:

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

Approved:

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

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Governor

Filed in Office of Secretary of State:

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

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Secretary of State