

HOUSE MINORITY REPORT AMENDMENTS TO HOUSE BILL 2009

By Nonconcurring Members of COMMITTEE ON BUSINESS AND LABOR

March 31

1 On page 1 of the printed bill, delete lines 6 through 30 and delete pages 2 through 5.

2 On page 6, delete lines 1 through 5 and insert:

3 **“SECTION 1. (1) The Legislative Assembly finds and declares that:**

4 **“(a) The provisions of this section might affect the terms and conditions of certain con-**
5 **tracts into which residents of this state have entered.**

6 **“(b) The effects of the provisions of this section are not substantial because the pro-**
7 **visions have a limited scope and duration and are necessary to protect the public health,**
8 **safety and welfare. For these reasons the provisions do not undermine a contractual bargain,**
9 **interfere with a party’s reasonable expectations or prevent a party from safeguarding or**
10 **reinstating the party’s rights.**

11 **“(c) Even if a provision of this section has the effect of undermining a contractual bar-**
12 **gain, interfering with a party’s reasonable expectations or preventing a party from safe-**
13 **guarding or reinstating the party’s rights, the provision is appropriate and reasonable as a**
14 **means by which to implement the significant and legitimate public purpose of responding to**
15 **the COVID-19 pandemic emergency that began on March 8, 2020, and has continued to date.**

16 **“(2) As used in this section:**

17 **“(a) ‘Emergency period’ means a period that extends from the effective date of this 2021**
18 **Act to June 30, 2021.**

19 **“(b) ‘Forfeiture remedy’ has the meaning given that term in ORS 93.905.**

20 **“(c) ‘Lender’ means a beneficiary, as defined in ORS 86.705, a mortgagee, as defined in**
21 **ORS 87.005, a seller in a land sale contract or a licensee, as defined in ORS 86A.303.**

22 **“(d) ‘Subject property’ means real property upon which is situated four or fewer dwelling**
23 **units, as defined in ORS 90.100, used primarily and designed solely for residential use.**

24 **“(e) ‘Trust deed’ has the meaning given that term in ORS 86.705.**

25 **“(f) ‘Trustee’ has the meaning given that term in ORS 86.705.**

26 **“(3) Notwithstanding ORS 18.860 to 18.993, 86.752, 88.010 and 93.905 to 93.940, and except**
27 **as provided in subsection (7) of this section, with respect to subject property, a lender or**
28 **trustee may not at any time during the emergency period:**

29 **“(a) Foreclose a trust deed by advertisement and sale;**

30 **“(b) Bring an action or suit to foreclose a mortgage or trust deed; or**

31 **“(c) Enforce a forfeiture remedy.**

32 **“(4)(a) Notwithstanding ORS 18.920, 18.924, 86.764 and 93.915 and except as provided in**
33 **subsection (7) of this section, if a lender or trustee recorded a notice of default and served**
34 **a notice of sale for a foreclosure by advertisement and sale, commenced a suit under ORS**

1 88.010 or otherwise initiated a foreclosure with respect to subject property on or after June
2 30, 2020, the foreclosure is stayed during the emergency period. After the emergency period
3 expires, a trustee's sale may occur if the lender or trustee complies with the provisions of
4 ORS 86.782 (12), a lender may obtain a forfeiture remedy if the lender complies with the
5 provisions of ORS 93.918 and, for other types of foreclosure proceedings, a foreclosure may
6 continue if the lender complies with the requirements of applicable law.

7 “(b) Notwithstanding the 180-day limit specified for postponing a trustee's sale set forth
8 in ORS 86.782 (2)(a), a trustee, an attorney for the trustee or an agent that the trustee or
9 attorney designates shall, for the duration of the emergency period, postpone all trustee's
10 sales of subject property with respect to which the trustee, attorney or agent acts in the
11 capacity of a trustee on behalf of a lender.

12 “(5) Notwithstanding ORS 18.860 to 18.993 and 88.010 and except as provided in subsection
13 (7) of this section, during the emergency period a court may not enter a judgment of fore-
14 closure and sale or issue a writ of execution with respect to subject property that secures
15 an obligation on which a mortgagor, a grantor or a purchaser in a land-sale contract has
16 failed to make a periodic installment payment or other payment.

17 “(6)(a) Notwithstanding ORS 86.782 and except as provided in subsection (7) of this sec-
18 tion, a trustee's sale of subject property may not occur during the emergency period. Any
19 purported trustee's sale of subject property during the emergency period is void and does
20 not transfer or foreclose any rights to the subject property.

21 “(b) Notwithstanding ORS 18.860 to 18.993 and except as provided in subsection (7) of this
22 section, an execution sale of subject property that secures an obligation on which a
23 mortgagor, grantor or purchaser in a land sale contract has defaulted may not occur during
24 the emergency period. Any purported execution sale of subject property during the emer-
25 gency period is void and does not transfer or foreclose any rights to the subject property.

26 “(7) This section does not:

27 “(a) Apply to judgments of foreclosure and sale, writs of execution or notices of a
28 trustee's sale:

29 “(A) Under which a trustee's sale or execution sale concluded before June 30, 2020;

30 “(B) That occur in connection with a tax foreclosure proceeding under ORS 312.010 to
31 312.120 or 312.130 to 312.240;

32 “(C) That dispose of vacant or abandoned property; or

33 “(D) That result from waste, destruction or illegal use of subject property or a failure
34 to prevent waste, destruction or illegal use of subject property; or

35 “(b) Relieve a borrower of the duty to repay the full amount of any obligation that is
36 subject to a waiver, deferral, modification or forbearance under the provisions of this sec-
37 tion.”.

38 On page 8, after line 9, insert:

39 “**SECTION 5.** ORS 86.726, as amended by section 4 of this 2021 Act, is amended to read:

40 “86.726. (1)(a) Except as provided in paragraph (b) of this subsection and subsection (5) of this
41 section, a beneficiary that intends to foreclose a residential trust deed shall first request a resolu-
42 tion conference with the grantor before the beneficiary or the trustee files a notice of default under
43 ORS 86.752 or before the beneficiary brings suit under ORS 88.010.

44 “(b)(A) The requirement to request or participate in a resolution conference with a grantor in
45 accordance with subsection (2) or (3) of this section does not apply to a beneficiary if the beneficiary

1 submits to the Attorney General a sworn affidavit that states that during the preceding calendar
2 year the beneficiary did not commence or cause an affiliate, subsidiary or agent of the beneficiary
3 to commence more than [30] 175 actions to foreclose a residential trust deed by advertisement and
4 sale under ORS 86.752 or by suit under ORS 88.010. A beneficiary that is a trustee shall include as
5 part of the total number of foreclosure actions that the beneficiary commenced in the previous cal-
6 endar year all foreclosure actions that the beneficiary commenced under ORS 86.752 or 88.010 in the
7 beneficiary's capacity as a trustee. A beneficiary that intends to claim an exemption under this
8 subparagraph shall submit the affidavit in a form and with the contents the Attorney General
9 specifies by rule either:

10 "(i) Not later than January 31 in any calendar year in which the beneficiary intends to claim
11 the exemption for the remainder of the calendar year; or

12 "(ii) At the time the beneficiary files a notice of default under ORS 86.752 or brings suit under
13 ORS 88.010.

14 "(B) An exemption under subparagraph (A) of this paragraph expires at the end of the calendar
15 year in which the beneficiary claims the exemption.

16 "(c) Except as provided in subsection (5) of this section, a beneficiary that claims an exemption
17 under this subsection is not exempt from the requirements set forth in ORS 86.748.

18 "(2) The beneficiary shall request a resolution conference through the service provider. The
19 beneficiary shall submit the request to the service provider electronically, by facsimile or by mail
20 and shall submit a processing fee in an amount and in a manner that the Attorney General specifies
21 by rule. The service provider shall pay to the Attorney General, for deposit into the Foreclosure
22 Avoidance Fund established under ORS 86.744, moneys the service provider receives from the ben-
23 eficiary under this subsection. The beneficiary's request under this subsection must identify the
24 residential trust deed that the beneficiary intends to foreclose and list the name, title, address,
25 telephone number and other available contact information for:

26 "(a) The beneficiary;

27 "(b) Any agent of the beneficiary that will attend the resolution conference;

28 "(c) Any person other than a person identified in paragraph (a) or (b) of this subsection that
29 will receive, on the beneficiary's behalf, notices or other communications related to the resolution
30 conference; and

31 "(d) The grantor.

32 "(3)(a) If a beneficiary does not request a resolution conference under subsection (1) of this
33 section, a grantor may request a resolution conference with the beneficiary if:

34 "(A) The beneficiary or the trustee has not filed a notice of default under ORS 86.752 or the
35 beneficiary has not commenced a suit under ORS 88.010; and

36 "(B) The grantor first obtains from a housing counselor a certification in writing that the
37 grantor is more than 30 days in default on the obligation that the residential trust deed secures or,
38 if the grantor is not in default, that the grantor has a financial hardship that the housing counselor
39 believes may qualify the grantor for a foreclosure avoidance measure.

40 "(b) A grantor shall request a resolution conference through the service provider. The grantor
41 shall submit the request to the service provider electronically, by facsimile or by mail and shall
42 enclose with the request the written certification the housing counselor provides under paragraph
43 (a)(B) of this subsection. The Attorney General by rule shall specify the information that the request
44 must include.

45 "(c) A beneficiary that receives a notice from a service provider after the service provider re-

1 ceives a request from a grantor under paragraph (b) of this subsection is subject to the requirements
2 set forth in this section and ORS 86.729, 86.732, 86.736 and 86.748.

3 “(d) This subsection does not apply to a beneficiary that has submitted an affidavit and is ex-
4 empt under subsection (1)(b) of this section.

5 “(4) A beneficiary that submitted an affidavit in accordance with subsection (1)(b) of this section
6 may, without waiving the exemption the beneficiary claimed in the affidavit, request a resolution
7 conference with a grantor. The beneficiary shall submit a request under this subsection in accord-
8 ance with the requirements set forth in subsection (2) of this section, except that submitting the
9 request does not require a processing fee.

10 “(5) The requirement to request or participate in a resolution conference with a grantor in ac-
11 cordance with subsection (2) or (3) of this section does not apply to the Department of Veterans’
12 Affairs in its capacity as a beneficiary of loans made under ORS 407.125.”.

13 In line 10, delete “5” and insert “6” and delete “6” and insert “7”.

14 In line 11, delete “6” and insert “7”.

15 In line 16, after “2021” insert “or 2022”.

16 In line 19, delete “or 2020”.

17 In line 27, delete “7” and insert “8” and delete “6” and insert “7” and delete “2024” and insert
18 “2023”.

19 In line 28, delete “8” and insert “9”.

20 On page 9, line 22, delete “9” and insert “10”.

21 On page 11, line 31, delete “10” and insert “11”.

22 On page 12, delete lines 11 through 20 and insert:

23 **“SECTION 12. The Housing and Community Services Department shall:**

24 **“(1) Apply at the earliest possible date to the United States Secretary of the Treasury for**
25 **the maximum amount available to the state from the Homeowner Assistance Fund estab-**
26 **lished under section 3206 of the American Rescue Plan Act of 2021, P.L. 117-2;**

27 **“(2) Consult with housing counseling agencies, financial institutions and other mortgage**
28 **lenders concerning the development and implementation, in the shortest feasible time, of**
29 **methods for:**

30 **“(a) Informing eligible borrowers of the existence of funds for mortgage payment assist-**
31 **ance and other financial assistance to allow the borrower to reinstate a mortgage or to pay**
32 **other eligible housing related costs; and**

33 **“(b) Disbursing funds to or for the benefit of eligible borrowers; and**

34 **“(3) Report to a committee of the Legislative Assembly within 30 days after the effective**
35 **date of this 2021 Act and at the end of every successive 45-day period until December 31, 2021,**
36 **concerning the department’s progress in implementing the provisions of this section.**

37 **“SECTION 13. Section 1 of this 2021 Act does not apply to or affect:**

38 **“(1) Any mortgage loan that an agency or instrumentality of the United States, a**
39 **government-sponsored enterprise or a Federal Home Loan Bank made, purchased, insured**
40 **or securitized;**

41 **“(2) The rights and obligations of a lender, issuer, servicer or trustee of a mortgage loan,**
42 **including a servicer of the Government National Mortgage Association; or**

43 **“(3) A mortgage loan that a lender made or serviced in accordance with the forbearance**
44 **programs that the Federal Housing Finance Agency follows for the administration’s mort-**
45 **gage loans, including a mortgage loan that was not made, purchased, insured or securitized**

1 by any agency or instrumentality of the United States.

2 “**SECTION 14.** Section 1 of this 2021 Act applies to a lender’s or trustee’s action during
3 the emergency period, as defined in section 1 of this 2021 Act, to foreclose a mortgage or
4 trust deed by advertisement and sale or by suit or to enforce a forfeiture remedy with re-
5 spect to a land sale contract.

6 “**SECTION 15.** The amendments to ORS 86.726 by section 5 of this 2021 Act become op-
7 erative on January 2, 2023.

8 “**SECTION 16.** (1) Section 1 of this 2021 Act is repealed 90 days after the expiration of the
9 emergency period as defined in section 1 of this 2021 Act.

10 “(2) Section 12 of this 2021 Act is repealed on January 2, 2023.

11 “**SECTION 17.** This 2021 Act being necessary for the immediate preservation of the public
12 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
13 on its passage.”.

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/s/ Daniel Bonham
Representative

/s/ Shelly Boshart Davis
Representative
