

Enrolled House Bill 4065

Sponsored by Representative WHITSETT; Representatives CONGER, FREDERICK, GALLEGOS, GELSER, GILLIAM, HOYLE, HUFFMAN, JENSON, JOHNSON, KENNEMER, KENY-GUYER, KOTEK, OLSON, SPRENGER, THOMPSON, WEIDNER, WHISNANT, Senators BAERTSCHIGER JR, JOHNSON, OLSEN, ROBLAN, SHIELDS, STEINER HAYWARD (Presession filed.)

CHAPTER

AN ACT

Relating to required disclosures in connection with sales of real property; creating new provisions; and amending ORS 86.771 and 86.774.

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

SECTION 1. ORS 86.771 is amended to read:

86.771. The notice of sale [*shall*] **must**:

- (1) List the names of the grantor, trustee and beneficiary in the trust deed, and the mailing address of the trustee.
- (2) Describe the property the trust deed covers.
- (3) Identify the book and page of the mortgage records that record the trust deed.
- (4) State the default for which the foreclosure is made.
- (5) State the sum owing on the obligation that the trust deed secures.
- (6) State that the property will be sold to satisfy the obligation.
- (7) Set forth the date, time and place of the sale.
- (8) State that the right exists under ORS 86.778 to have the proceeding dismissed and the trust deed reinstated by paying the entire amount then due, together with costs, trustee's fees and attorney fees, and by curing any other default complained of in the notice of default, at any time that is not later than five days before the date last set for the sale.

(9) Include language that reads substantially as follows:

Without limiting the trustee's disclaimer of representations or warranties, Oregon law requires the trustee to state in this notice that some residential property sold at a trustee's sale may have been used in manufacturing methamphetamines, the chemical components of which are known to be toxic. Prospective purchasers of residential property should be aware of this potential danger before deciding to place a bid for this property at the trustee's sale.

[~~(9)~~] **(10)** If the property includes one or more dwelling units that are subject to ORS chapter 90, include a notice addressed clearly to any individual who occupies the property and who is or might be a residential tenant. The notice required under this subsection must:

- (a) Include contact information for the Oregon State Bar and a person or organization that provides legal help to individuals at no charge to the individual;
 - (b) Include information concerning the right the individual has to notice under ORS 86.782 (6)(c);
 - (c) Be set apart from other text in the notice of sale; and
 - (d) Be in substantially the following form:
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NOTICE TO RESIDENTIAL TENANTS

The property in which you are living is in foreclosure. A foreclosure sale is scheduled for _____ (date). The date of this sale may be postponed. Unless the lender that is foreclosing on this property is paid before the sale date, the foreclosure will go through and someone new will own this property. After the sale, the new owner is required to provide you with contact information and notice that the sale took place.

The following information applies to you only if you are a bona fide tenant occupying and renting this property as a residential dwelling under a legitimate rental agreement. The information does not apply to you if you own this property or if you are not a bona fide residential tenant.

If the foreclosure sale goes through, the new owner will have the right to require you to move out. Before the new owner can require you to move, the new owner must provide you with written notice that specifies the date by which you must move out. If you do not leave before the move-out date, the new owner can have the sheriff remove you from the property after a court hearing. You will receive notice of the court hearing.

PROTECTION FROM EVICTION

IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING THIS PROPERTY AS A RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE FORECLOSURE SALE FOR:

- THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED TERM LEASE; OR
- AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE.

If the new owner wants to move in and use this property as a primary residence, the new owner can give you written notice and require you to move out after 90 days, even though you have a fixed term lease with more than 90 days left.

You must be provided with at least 90 days' written notice after the foreclosure sale before you can be required to move.

A bona fide tenant is a residential tenant who is not the borrower (property owner) or a child, spouse or parent of the borrower, and whose rental agreement:

- Is the result of an arm's-length transaction;
- Requires the payment of rent that is not substantially less than fair market rent for the property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
- Was entered into prior to the date of the foreclosure sale.

ABOUT YOUR TENANCY BETWEEN NOW AND THE FORECLOSURE SALE: RENT

YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY IS SOLD OR UNTIL A COURT TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED. BE SURE TO KEEP PROOF OF ANY PAYMENTS YOU MAKE.

SECURITY DEPOSIT

You may apply your security deposit and any rent you paid in advance against the current rent you owe your landlord as provided in ORS 90.367. To do this, you must notify your landlord in writing that you want to subtract the amount of your security deposit or prepaid rent from your rent payment. You may do this only for the rent you owe your current landlord. If you do this, you

must do so before the foreclosure sale. The business or individual who buys this property at the foreclosure sale is not responsible to you for any deposit or prepaid rent you paid to your landlord.

**ABOUT YOUR TENANCY
AFTER THE FORECLOSURE SALE**

The new owner that buys this property at the foreclosure sale may be willing to allow you to stay as a tenant instead of requiring you to move out after 90 days or at the end of your fixed term lease. After the sale, you should receive a written notice informing you that the sale took place and giving you the new owner's name and contact information. You should contact the new owner if you would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement with you or does not notify you in writing within 30 days after the date of the foreclosure sale that you must move out, the new owner becomes your new landlord and must maintain the property. Otherwise:

- You do not owe rent;
- The new owner is not your landlord and is not responsible for maintaining the property on your behalf; and
- You must move out by the date the new owner specifies in a notice to you.

The new owner may offer to pay your moving expenses and any other costs or amounts you and the new owner agree on in exchange for your agreement to leave the premises in less than 90 days or before your fixed term lease expires. You should speak with a lawyer to fully understand your rights before making any decisions regarding your tenancy.

IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT A LAWYER. If you believe you need legal assistance, contact the Oregon State Bar and ask for the lawyer referral service. Contact information for the Oregon State Bar is included with this notice. If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to receive legal assistance for free. Information about whom to contact for free legal assistance is included with this notice.

SECTION 2. ORS 86.771, as amended by section 6, chapter 510, Oregon Laws 2011, is amended to read:

86.771. The notice of sale [*shall*] **must**:

- (1) List the names of the grantor, trustee and beneficiary in the trust deed, and the mailing address of the trustee.
- (2) Describe the property the trust deed covers.
- (3) Identify the book and page of the mortgage records that record the trust deed.
- (4) State the default for which the foreclosure is made.
- (5) State the sum owing on the obligation that the trust deed secures.
- (6) State that the property will be sold to satisfy the obligation.
- (7) Set forth the date, time and place of the sale.
- (8) State that the right exists under ORS 86.778 to have the proceeding dismissed and the trust deed reinstated by paying the entire amount then due, together with costs, trustee's fees and attorney fees, and by curing any other default complained of in the notice of default, at any time that is not later than five days before the date last set for the sale.

(9) Include language that reads substantially as follows:

Without limiting the trustee's disclaimer of representations or warranties, Oregon law requires the trustee to state in this notice that some residential property sold at a trustee's sale may have been used in manufacturing methamphetamines, the chemical components of

which are known to be toxic. Prospective purchasers of residential property should be aware of this potential danger before deciding to place a bid for this property at the trustee's sale.

[(9)] (10) If the property includes one or more dwelling units that are subject to ORS chapter 90, include a notice addressed clearly to any individual who occupies the property and who is or might be a residential tenant. The notice required under this subsection must:

- (a) Include contact information for the Oregon State Bar and a person or organization that provides legal help to individuals at no charge to the individual;
 - (b) Include information concerning the right the individual has to notice under ORS 86.782 (6)(c);
 - (c) Be set apart from other text in the notice of sale; and
 - (d) Be in substantially the following form:
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The following information applies to you only if you are a bona fide tenant occupying and renting this property as a residential dwelling under a legitimate rental agreement. The information does not apply to you if you own this property or if you are not a bona fide residential tenant.

If the foreclosure sale goes through, the new owner will have the right to require you to move out. Before the new owner can require you to move, the new owner must provide you with written notice that specifies the date by which you must move out. If you do not leave before the move-out date, the new owner can have the sheriff remove you from the property after a court hearing. You will receive notice of the court hearing.

PROTECTION FROM EVICTION

IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING THIS PROPERTY AS A RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE FORECLOSURE SALE FOR:

- 60 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF YOU HAVE A FIXED TERM LEASE; OR
- AT LEAST 30 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE, IF YOU HAVE A MONTH-TO-MONTH OR WEEK-TO- WEEK RENTAL AGREEMENT.

If the new owner wants to move in and use this property as a primary residence, the new owner can give you written notice and require you to move out after 30 days, even though you have a fixed term lease with more than 30 days left.

You must be provided with at least 30 days' written notice after the foreclosure sale before you can be required to move.

A bona fide tenant is a residential tenant who is not the borrower (property owner) or a child, spouse or parent of the borrower, and whose rental agreement:

- Is the result of an arm's-length transaction;
- Requires the payment of rent that is not substantially less than fair market rent for the property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
- Was entered into prior to the date of the foreclosure sale.

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You may apply your security deposit and any rent you paid in advance against the current rent you owe your landlord as provided in ORS 90.367. To do this, you must notify your landlord in writing that you want to subtract the amount of your security deposit or prepaid rent from your rent payment. You may do this only for the rent you owe your current landlord. If you do this, you must do so before the foreclosure sale. The business or individual who buys this property at the foreclosure sale is not responsible to you for any deposit or prepaid rent you paid to your landlord.

ABOUT YOUR TENANCY AFTER THE FORECLOSURE SALE

The new owner that buys this property at the foreclosure sale may be willing to allow you to stay as a tenant instead of requiring you to move out after 30 or 60 days. After the sale, you should receive a written notice informing you that the sale took place and giving you the new owner's name and contact information. You should contact the new owner if you would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement with you or does not notify you in writing within 30 days after the date of the foreclosure sale that you must move out, the new owner becomes your new landlord and must maintain the property. Otherwise:

- You do not owe rent;
- The new owner is not your landlord and is not responsible for maintaining the property on your behalf; and
- You must move out by the date the new owner specifies in a notice to you.

The new owner may offer to pay your moving expenses and any other costs or amounts you and the new owner agree on in exchange for your agreement to leave the premises in less than 30 or 60 days. You should speak with a lawyer to fully understand your rights before making any decisions regarding your tenancy.

IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE AND GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT A LAWYER. If you believe you need legal assistance, contact the Oregon State Bar and ask for the lawyer referral service. Contact information for the Oregon State Bar is included with this notice. If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to receive legal assistance for free. Information about whom to contact for free legal assistance is included with this notice.

SECTION 3. ORS 86.774 is amended to read:

86.774. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in ORS 86.771 must 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 that attempts to effect service shall post a copy of the notice in a conspicuous place on the property on the date of the first attempt. The person that attempts to effect 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 that attempts to effect service shall post a copy of the notice in a conspicuous place on the property on the date of the second attempt. The person that attempts to effect 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 that attempts to effect 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 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) Except as provided in paragraph (b) of this subsection, a copy of the notice of sale 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. The last publication must be made more than 20 days prior to the date the trustee conducts the sale.

(b) The copy of the notice of sale required to be published under paragraph (a) of this subsection does not need to include the notice to tenants required under ORS 86.771 [(9)] (10).

(3) At or before the time 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) At or before the time 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 ORS 86.756.

SECTION 4. The amendments to ORS 86.771 and 86.774 by sections 1 to 3 of this 2014 Act apply to notices of sale that are sent on or after the effective date of this 2014 Act.

Passed by House February 14, 2014

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate February 24, 2014

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2014

Approved:

.....M.,....., 2014

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2014

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Kate Brown, Secretary of State