

Senate Bill 968

Sponsored by Senator JOHNSON, Representative OLSON, Senator HANSELL; Senators BAERTSCHIGER JR, FERRIOLI, Representatives BARKER, CLEM, WITT

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**.

Revises definition of "beneficiary."

Modifies requirements for trustee to foreclose trust deed by advertisement and sale.

Declares recorded trustee's deed prima facie evidence that all assignments required to be recorded are recorded. Declares instrument executed by beneficiary prima facie evidence that beneficiary is authorized to execute instrument.

Permits beneficiary to designate agent or nominee to act on behalf of beneficiary.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to trust deeds; creating new provisions; amending ORS 86.705, 86.713, 86.752 and 86.803; and
3 declaring an emergency.

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

5 **SECTION 1.** ORS 86.705 is amended to read:

6 86.705. As used in ORS 86.705 to 86.815:

7 (1) "Affordable housing covenant" has the meaning given that term in ORS 456.270.

8 (2) "Beneficiary" means [a] **the** person named or otherwise designated in a trust deed as the
9 [person for whose benefit a trust deed is given] **beneficiary**, or the person's successor in interest[,
10 and who is not the trustee unless the beneficiary is qualified to be a trustee under ORS 86.713
11 (1)(b)(D)].

12 (3) "Eligible covenant holder" has the meaning given that term in ORS 456.270.

13 (4) "Grantor" means the person that conveys an interest in real property by a trust deed as
14 security for the performance of an obligation.

15 (5) "Law practice" means a professional corporation, partnership, limited liability partnership,
16 limited liability company or sole proprietorship that is engaged in the practice of law in this state.

17 (6) "Residential trust deed" means a trust deed on property upon which are situated four or
18 fewer residential units, one of which the grantor, the grantor's spouse or the grantor's minor or
19 dependent child occupies as a principal residence at the time the trust deed is recorded or, in the
20 case of a purchase money loan, one of which is intended to be the principal residence of the grantor,
21 the grantor's spouse or the grantor's minor or dependent child after the trust deed is recorded.

22 (7) "Residential unit" means an improvement designed for residential use.

23 (8) "Trust deed" means a deed executed in conformity with ORS 86.705 to 86.815 that conveys
24 an interest in real property to a trustee in trust to secure the performance of an obligation the
25 grantor or other person named in the deed owes to a beneficiary **or a person for whom the ben-**
26 **eficiary is acting as agent or nominee.**

27 (9) "Trustee" means a person, other than the beneficiary, to whom a trust deed conveys an in-
28 terest in real property, or the person's successor in interest, or an employee of the beneficiary, if

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 the employee is qualified to be a trustee under ORS 86.713.

2 **SECTION 2.** ORS 86.713 is amended to read:

3 86.713. (1) The trustee of a trust deed under ORS 86.705 to 86.815:

4 (a) Is not required to comply with the provisions of ORS chapters 707 and 709.

5 (b) Must be:

6 (A) An attorney who is an active member of the Oregon State Bar or a law practice that in-
7 cludes an attorney who is an active member of the Oregon State Bar;

8 (B) A financial institution or trust company, as defined in ORS 706.008, that is authorized to do
9 business under the laws of Oregon or the United States;

10 (C) A title insurance company or a subsidiary, affiliate, insurance producer or branch of the title
11 insurance company that is authorized to insure title to real property in this state;

12 (D) The United States or any agency of the United States; or

13 (E) An escrow agent that is licensed under ORS 696.505 to 696.590.

14 (c) Shall obtain from the Secretary of State a certificate of authority to transact business in this
15 state as a foreign business entity, if the trustee is a person described in paragraph (b)(B) or (C) of
16 this subsection, unless the trustee has registered with or obtained a certificate of authority from the
17 Director of the Department of Consumer and Business Services.

18 **(2) The person named or otherwise designated as the beneficiary in a trust deed may not**
19 **be the trustee under the trust deed unless the person is qualified to be a trustee under**
20 **subsection (1)(b)(D) of this section.**

21 [(2)] (3) A law practice that, or an attorney who, is a trustee under subsection (1)(b)(A) of this
22 section may represent the beneficiary in addition to performing the duties of trustee.

23 [(3)] (4) At any time after a trust deed is executed, the beneficiary may appoint in writing an-
24 other qualified trustee. If the appointment of the successor trustee is recorded in the mortgage re-
25 cords of the county or counties in which the trust deed is recorded, the successor trustee has the
26 powers of the original trustee.

27 [(4)] (5) A trustee or successor trustee is a necessary and proper party to any proceeding to
28 determine the validity of a trust deed, or to enjoin any private or judicial proceeding to foreclose
29 a trust deed, but a trustee or successor trustee is not a necessary or proper party to any proceeding
30 to determine title to the property subject to the trust deed, or to any proceeding to impose, enforce
31 or foreclose any other lien on the subject property.

32 [(5)] (6) The provisions of ORS 86.705 to 86.815 do not impose a duty on the trustee or successor
33 trustee to notify any person of any proceeding with respect to the person, except a proceeding that
34 the trustee or successor trustee initiates.

35 [(6)] (7) A trustee or the attorney for the trustee or any agent that the trustee or the attorney
36 designates may announce and accept a bid from the beneficiary whether or not the beneficiary is
37 present at the sale.

38 [(7)] (8) The trustee or successor trustee does not have a fiduciary duty or fiduciary obligation
39 to the grantor or other persons that have an interest in the property subject to the trust deed. The
40 trustee or successor trustee is not relieved of the duty to reconvey the property that is subject to
41 the trust deed to the grantor when the beneficiary requests a reconveyance.

42 [(8)] (9) If a law practice is the trustee under subsection (1)(b)(A) of this section, an attorney
43 who is an active member of the Oregon State Bar and is a shareholder, partner, member or employee
44 of the law practice shall sign on the trustee's behalf any document that is permitted or required to
45 be signed under ORS 86.705 to 86.815. The attorney who signs the document shall make evident in

1 the document the attorney's name and Oregon State Bar number and shall state in the document
2 that the trustee has authorized the attorney to sign the document on the trustee's behalf.

3 [(9)] (10) If an attorney is the trustee under subsection (1)(b)(A) of this section, another attorney
4 who is an active member of the Oregon State Bar and is a shareholder, partner, member or employee
5 of the law practice in which the attorney practices law may sign on the trustee's behalf any docu-
6 ment that is permitted or required to be signed under ORS 86.705 to 86.815. The attorney who signs
7 the document shall make evident in the document the attorney's name and Oregon State Bar number
8 and shall state in the document that the trustee has authorized the attorney to sign the document
9 on the trustee's behalf.

10 **SECTION 3.** ORS 86.752 is amended to read:

11 86.752. A trustee may not foreclose a trust deed by advertisement and sale in the manner pro-
12 vided in ORS 86.764 to 86.782 unless:

13 (1)(a) The trust deed, [*any assignments of the trust deed by the trustee or the beneficiary and*] any
14 appointment of a successor trustee **and any assignment that changes the designation of the**
15 **beneficiary of the trust deed** are recorded in the mortgage records in the counties in which the
16 property described in the deed is situated;

17 [(2) *There is a default by the grantor or other person that owes an obligation, the performance of*
18 *which is secured by the trust deed, or by the grantor's or other person's successors in interest with*
19 *respect to a provision in the deed that authorizes sale in the event of default of the provision;*]

20 **(b) The grantor or other person, or the grantor's or other person's successor in interest,**
21 **defaults on an obligation for which the trust deed secures performance and with respect to**
22 **which a provision in the trust deed authorizes sale in the event of default;**

23 [(3)] (c) The trustee or beneficiary has filed for [*record*] **recording** in the county clerk's office
24 in each county where the trust property, or some part of the trust property, is situated, a notice of
25 default containing the information required by ORS 86.771 and containing the trustee's or
26 beneficiary's election to sell the property to satisfy the obligation;

27 [(4)] (d) The beneficiary has filed for recording in the official records of the county or counties
28 in which the property that is subject to the residential trust deed is located:

29 [(a)] (A) A certificate of compliance that a service provider issued to the beneficiary under ORS
30 86.736 that is valid and unexpired at the time the notice of default is recorded; or

31 [(b)] (B) A copy of the affidavit with which the beneficiary claimed, under ORS 86.726 (1)(b), an
32 exemption that has not expired;

33 [(5)] (e) The beneficiary **or the beneficiary's agent** has complied with the provisions of ORS
34 86.748, **if the provisions apply to the beneficiary; and**

35 [(6) *The grantor has not complied with the terms of any foreclosure avoidance measure upon which*
36 *the beneficiary and the grantor have agreed; and*]

37 [(7)] (f) An action has not been commenced to recover the debt or any part of the debt then
38 remaining secured by the trust deed, or, if an action has been commenced, the action has been dis-
39 missed, except that:

40 [(a)] (A) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action
41 may be commenced to appoint a receiver or to obtain a temporary restraining order during fore-
42 closure of a trust deed by advertisement and sale, except that a receiver may not be appointed with
43 respect to a single-family residence that the grantor, the grantor's spouse or the grantor's minor or
44 dependent child occupies as a principal residence.

45 [(b)] (B) An action may be commenced to foreclose, judicially or nonjudicially, the same trust

1 deed as to any other property covered by the trust deed, or any other trust deeds, mortgages, se-
 2 curity agreements or other consensual or nonconsensual security interests or liens that secure re-
 3 payment of the debt.

4 **(2) For purposes of subsection (1) of this section, a negotiation, transfer or assignment**
 5 **of a note does not constitute an assignment that changes the designation of the beneficiary**
 6 **of a trust deed.**

7 **SECTION 4.** ORS 86.803 is amended to read:

8 86.803. (1)(a) [*When the*] **If a trustee's deed is recorded in the deed records of the county or**
 9 **counties where the property described in the deed is situated, the recitals contained in the deed and**
 10 **in the [*affidavits*] documents required to be recorded under ORS [*86.774 (3) and (4) shall be*] 86.705**
 11 **to 86.815 are prima facie evidence [*in any court*] of the truth of the matters set forth [*therein*] in**
 12 **the recitals, but the recitals [*shall be*] are conclusive in favor of a purchaser for value in good faith**
 13 **relying upon [*them*] the recitals.**

14 **(b) A trustee's deed recorded as provided in paragraph (a) of this subsection is prima**
 15 **facie evidence that all assignments of the trust deed that must be recorded under ORS 86.752**
 16 **are recorded, but the recording is conclusive in favor of a purchaser for value in good faith**
 17 **that relies upon the recording of the trustee's deed.**

18 **(2) A trustee's sale that forecloses a trust deed in which a nominee is designated as**
 19 **beneficiary and that is completed before the effective date of this 2017 Act is not void or**
 20 **voidable by reason of the absence in the record of an assignment of the trust deed unless the**
 21 **assignment changes the designation of the beneficiary of the trust deed.**

22 **(3) An instrument that a beneficiary executes is prima facie evidence that the beneficiary**
 23 **has authorization to execute the instrument from the person that owns or holds the debt**
 24 **or other obligation that the trust deed secures. The instrument is conclusive in favor of a**
 25 **purchaser for value in good faith that relies on the instrument unless, before the purchaser's**
 26 **reliance begins, the beneficiary has recorded an instrument that withdraws or repudiates the**
 27 **instrument the beneficiary previously executed.**

28 **SECTION 5.** Section 6 of this 2017 Act is added to and made a part of ORS 86.705 to 86.815.

29 **SECTION 6.** (1) A beneficiary, including a beneficiary designated as an agent or nominee,
 30 may designate an agent or nominee to act on behalf of the beneficiary.

31 **(2) A third party may rely on a designation of an agent or nominee in a recorded trust**
 32 **deed or in a separate document that has been recorded in the records of the counties in**
 33 **which the trust deed was recorded unless:**

34 **(a) A termination of the designation was recorded in the records; or**

35 **(b) The third party has actual notice that the designation was terminated.**

36 **(3) Recording the original trust deed establishes the identity of the original beneficiary**
 37 **as agent or nominee for a successor in interest unless:**

38 **(a) An assignment to the successor in interest was recorded and the assignment does**
 39 **not designate the original beneficiary as agent or nominee for the successor in interest; or**

40 **(b) A document was recorded that designates a person other than the original beneficiary**
 41 **as agent or nominee for the successor in interest.**

42 **SECTION 7.** (1) Section 6 of this 2017 Act and the amendments to ORS 86.705, 86.713,
 43 86.752 and 86.803 by sections 1 to 4 of this 2017 Act apply to:

44 **(a) All foreclosures by advertisement and sale whether commenced before, on or after**
 45 **the effective date of this 2017 Act; and**

1 **(b) All actions in which a final judgment has not been entered before the effective date**
2 **of this 2017 Act.**

3 **(2) As used in subsection (1) of this section, “final judgment” means a judgment for which**
4 **time to appeal has expired without a party filing an appeal or that is not subject to further**
5 **appeal or review.**

6 **SECTION 8.** **This 2017 Act being necessary for the immediate preservation of the public**
7 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
8 **on its passage.**

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