

D R A F T

SUMMARY

Establishes temporary limitations on lenders' remedies for borrowers' failures to make payments on obligations secured by mortgages, trust deeds or land sale contracts for certain real property.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to strategies to protect Oregonians from the effects of the COVID-19
3 pandemic; creating new provisions; amending ORS 86.707, 86.726, 86.729,
4 86.732, 86.736, 86.741, 86.752, 88.010, 646.607 and 646.638 and section 2,
5 chapter 4, Oregon Laws 2020 (first special session) (Enrolled House Bill
6 4204); and declaring an emergency.

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

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

9 **(a) The provisions of this section might affect the terms and con-**
10 **ditions of certain contracts into which residents of this state have**
11 **entered.**

12 **(b) The effects of the provisions of this section are not substantial**
13 **because the provisions have a limited scope and duration and are**
14 **necessary to protect the public health, safety and welfare. For these**
15 **reasons the provisions do not undermine a contractual bargain, inter-**
16 **fere with a party's reasonable expectations or prevent a party from**
17 **safeguarding or reinstating the party's rights.**

18 **(c) Even if a provision of this section has the effect of undermining**
19 **a contractual bargain, interfering with a party's reasonable expecta-**
20 **tions or preventing a party from safeguarding or reinstating the**

1 party's rights, the provision is appropriate and reasonable as a means
2 by which to implement the significant and legitimate public purpose
3 of responding to the COVID-19 pandemic emergency that began on
4 March 8, 2020, and has continued to date.

5 (2) As used in this section:

6 (a) "Borrower" means a person that does not own more than five
7 parcels of subject property and is:

8 (A) A mortgagor;

9 (B) A grantor, as defined in ORS 86.705;

10 (C) A purchaser in a land sale contract; or

11 (D) A successor in interest to a person described in subparagraphs
12 (A) to (C) of this paragraph. For the purposes of this paragraph,
13 "successor in interest" means a person who receives an interest in
14 subject property from a mortgagor, grantor or purchaser under any
15 of the following circumstances:

16 (i) The transfer of subject property occurs by devise, descent or
17 operation of law at the mortgagor's, grantor's or purchaser's death;

18 (ii) A relative of the mortgagor, grantor or purchaser receives the
19 interest in subject property as a result of the mortgagor's, grantor's
20 or purchaser's death;

21 (iii) The spouse or children of the mortgagor, grantor or purchaser
22 become owners of the subject property;

23 (iv) The transfer results from a decree of dissolution of marriage,
24 a legal separation agreement or an incidental separation agreement
25 under which the spouse of the mortgagor, grantor or purchaser be-
26 comes an owner of the subject property; or

27 (v) The transfer does not relate to rights to occupy the subject
28 property, but the subject property becomes trust property in an inter
29 vivos trust in which the mortgagor, grantor or purchaser remains a
30 beneficiary.

31 (b) "Emergency period" means a period that begins at 11:59 p.m. on

1 **December 31, 2020, and ends at 11:59 p.m. on July 1, 2021.**

2 **(c) “Financing agreement” means a contract under which a bor-**
3 **rower must make payments to a lender to satisfy an obligation that**
4 **is secured by a mortgage, a trust deed or a land sale contract for**
5 **subject property.**

6 **(d) “Foreclosure avoidance measure” has the meaning given that**
7 **term in ORS 86.707.**

8 **(e) “Forfeiture remedy” has the meaning given that term in ORS**
9 **93.905.**

10 **(f) “Lender” means a beneficiary, as defined in ORS 86.705, a**
11 **mortgagee, as defined in ORS 87.005, a seller in a land sale contract**
12 **or a licensee, as defined in ORS 86A.303.**

13 **(g) “Subject property” means real property upon which is situated**
14 **four or fewer improvements designed for residential use.**

15 **(h) “Trust deed” has the meaning given that term in ORS 86.705.**

16 **(i) “Trustee” has the meaning given that term in ORS 86.705.**

17 **(3)(a) During the emergency period, a lender may not treat as a**
18 **default a borrower’s failure to make a periodic installment payment**
19 **or failure to pay any other amount that is due to the lender on or in**
20 **connection with an obligation that is subject to a financing agreement**
21 **if within 60 days after the borrower first fails to make a periodic in-**
22 **stallment payment or other payment on the date the payment is due**
23 **the borrower notifies the lender that the borrower cannot make the**
24 **periodic installment payment or other payment. In lieu of treating the**
25 **failure to pay as a default, and only if the lender and borrower do not**
26 **otherwise agree to modify, defer or otherwise mitigate the obligation,**
27 **including by agreeing to a foreclosure avoidance measure, the lender**
28 **shall:**

29 **(A) Defer, during the emergency period, from collecting the periodic**
30 **installment payment or other payment; and**

31 **(B) Permit the borrower to pay an amount the borrower owes to the**

1 lender as a result of a deferral under this subsection at the scheduled
2 or anticipated date on which full performance of the obligation is due,
3 unless the scheduled or anticipated date on which full performance is
4 due is within the emergency period, in which case the lender shall
5 defer payment of the amount until after the emergency period expires.

6 (b) After an escrow analysis and in accordance with the Real Estate
7 Settlement Procedures Act (12 U.S.C. 2601 et seq.), a lender may adjust
8 the amount of any escrow impound payment the borrower has an ob-
9 ligation to make under the financing agreement and may take into
10 account any shortage or deficiency that results from deferring pay-
11 ments under this subsection.

12 (c) A borrower does not need to provide a notification to a lender
13 under paragraph (a) of this subsection more than once. The notifica-
14 tion must attest that the borrower's failure to pay is a result of the
15 borrower's loss of income related to the COVID-19 pandemic.

16 (d) During the emergency period, if a borrower gives notice as pro-
17 vided in paragraph (a) of this subsection, a lender may not:

18 (A) Impose or collect charges, fees, penalties, attorney fees or other
19 amounts that, but for the provisions of this section, the lender might
20 have imposed or collected from a borrower for failing, during the
21 emergency period, to make a periodic installment payment or to pay
22 another amount due on or in connection with the borrower's obli-
23 gation;

24 (B) Impose a default rate of interest that, but for the provisions of
25 this section, the lender might have imposed or collected from a bor-
26 rower for failing, during the emergency period, to make a periodic
27 installment payment or to pay another amount due on or in con-
28 nection with the borrower's obligation;

29 (C) Treat in any manner the borrower's failure during the emer-
30 gency period to make a periodic installment payment or pay another
31 amount due on or in connection with the obligation as an ineligibility

1 for a foreclosure avoidance measure; or

2 (D) Require or charge for an inspection, appraisal or broker opinion
3 of value during the emergency period.

4 (4) Notwithstanding ORS 18.860 to 18.993, 86.752, 88.010 and 93.905 to
5 93.940, and except as provided in subsection (10) of this section, with
6 respect to subject property, a lender or trustee may not at any time
7 during the emergency period:

8 (a) Foreclose a trust deed by advertisement and sale;

9 (b) Bring an action or suit to foreclose a mortgage or trust deed;
10 or

11 (c) Enforce a forfeiture remedy.

12 (5)(a) Notwithstanding ORS 18.920, 18.924, 86.764 and 93.915 and ex-
13 cept as provided in subsection (10) of this section, if a lender or trustee
14 recorded a notice of default and served a notice of sale for a foreclo-
15 sure by advertisement and sale, commenced a suit under ORS 88.010
16 or otherwise initiated a foreclosure with respect to subject property
17 on or after March 8, 2020, the foreclosure is stayed during the emer-
18 gency period. After the emergency period expires, a trustee's sale may
19 occur if the lender or trustee complies with the provisions of ORS
20 86.782 (12), a lender may obtain a forfeiture remedy if the lender com-
21 plies with the provisions of ORS 93.918 and, for other types of foreclo-
22 sure proceedings, a foreclosure may continue if the lender complies
23 with the requirements of applicable law.

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

30 (6)(a) Notwithstanding ORS 18.860 to 18.993 and 88.010 and except as
31 provided in subsection (10) of this section, during the emergency pe-

1 **riod a court may not enter a judgment of foreclosure and sale or issue**
2 **a writ of execution with respect to subject property that secures an**
3 **obligation on which a mortgagor, a grantor or a purchaser in a land-**
4 **sale contract has failed to make a periodic installment payment or**
5 **other payment.**

6 **(b) A court shall dismiss without prejudice any action or suit com-**
7 **menced during the emergency period that seeks to foreclose a lien**
8 **upon subject property.**

9 **(7)(a) Notwithstanding ORS 86.782 and except as provided in sub-**
10 **section (10) of this section, a trustee's sale of subject property may**
11 **not occur during the emergency period. Any purported trustee's sale**
12 **of subject property during the emergency period is void and does not**
13 **transfer or foreclose any rights to the subject property.**

14 **(b) Notwithstanding ORS 18.860 to 18.993 and except as provided in**
15 **subsection (10) of this section, an execution sale of subject property**
16 **that secures an obligation on which a mortgagor, grantor or purchaser**
17 **in a land sale contract has defaulted may not occur during the emer-**
18 **gency period. Any purported execution sale of subject property during**
19 **the emergency period is void and does not transfer or foreclose any**
20 **rights to the subject property.**

21 **(8) A borrower that suffers an ascertainable loss of money or prop-**
22 **erty because a lender or trustee took an action prohibited under this**
23 **section may bring an action in a circuit court of this state to recover**
24 **the borrower's actual damages. A borrower who prevails in the action**
25 **may also recover the borrower's court costs and attorney fees.**

26 **(9) Within 60 days following the effective date of this 2020 third**
27 **special session Act, each lender that transacts business related to**
28 **subject property with a borrower who is a resident of this state, or**
29 **that has made or serviced a loan for subject property that is located**
30 **in this state, must provide written notice by mail to all of the lender's**
31 **borrowers of the borrowers' rights for accommodation under this sec-**

1 tion unless the lender has given a similar notice of the borrowers'
2 rights under section 1, chapter 4, Oregon Laws 2020 (first special ses-
3 sion) (Enrolled House Bill 4204).

4 (10) This section does not:

5 (a) Apply to judgments of foreclosure and sale, writs of execution
6 or notices of a trustee's sale:

7 (A) For which, before June 30, 2020, a notice of default has been
8 recorded as provided in ORS 86.752 and a notice of sale has been served
9 as provided in ORS 86.764;

10 (B) For which a suit was commenced under ORS 88.010 before June
11 30, 2020;

12 (C) That occur in connection with a tax foreclosure proceeding un-
13 der ORS 312.010 to 312.120 or 312.130 to 312.240; or

14 (D) That occur after a person has recorded a notice of intent to
15 abandon real property under ORS 93.770 (2)(a) or a judicial order that
16 authorizes an abandonment of real property under ORS 93.770 (2)(b);

17 (b) Apply to actions to seek a remedy for a breach of a financing
18 agreement that were commenced before June 30, 2020; or

19 (c) Relieve a borrower of the duty to repay the full amount of any
20 obligation that is subject to a waiver, deferral, modification or
21 forbearance under the provisions of this section.

22 **SECTION 2.** Section 2, chapter 4, Oregon Laws 2020 (first special session)
23 (Enrolled House Bill 4204), is amended to read:

24 **Sec. 2.** Section 1 [*of this 2020 special session Act*], **chapter 4, Oregon**
25 **Laws 2020 (first special session) (Enrolled House Bill 4204)**, is repealed
26 [*90 days after the expiration of the emergency period as defined in section 1*
27 *of this 2020 special session Act*] **on January 1, 2021.**

28 **SECTION 3.** ORS 86.707 is amended to read:

29 86.707. As used in this section and ORS 86.726, 86.729, 86.732, 86.736,
30 86.741, 86.744 and 86.748:

31 (1) "Facilitator" means a person that a service provider selects to conduct

1 a resolution conference.

2 (2) “Foreclosure avoidance measure” means an agreement between a ben-
3 eficiary and a grantor that uses one or more of the following methods to
4 modify an obligation that is secured by a residential trust deed:

5 (a) The beneficiary defers or forbears from collecting one or more pay-
6 ments due on the obligation.

7 (b) The beneficiary modifies, temporarily or permanently, the payment
8 terms or other terms of the obligation.

9 (c) The beneficiary accepts a deed in lieu of foreclosure from the grantor.

10 (d) The grantor conducts a short sale.

11 (e) The beneficiary provides the grantor with other assistance that ena-
12 bles the grantor to avoid a foreclosure.

13 (3) “Housing counselor” means a counselor employed by a nonprofit
14 housing counseling agency that the Housing and Community Services De-
15 partment or a successor state agency approves.

16 (4) **“Remote audio or video communication” means a method of**
17 **remote communication that gives a participant in the communication**
18 **the capability and opportunity to clearly transmit and, as appropriate,**
19 **perceive at substantially the same time the participant’s own, and**
20 **other participants’, spoken or sign language, visual or audio aids,**
21 **gestures, expressions, tones of voice and other indicators of meaning**
22 **apart from spoken or written language.**

23 [(4)] (5) “Resolution conference” means a meeting at which a grantor and
24 a beneficiary attempt to negotiate and agree upon a foreclosure avoidance
25 measure.

26 [(5)] (6) “Service provider” means a person that the Attorney General
27 appoints under ORS 86.741 to coordinate a program to implement the pro-
28 visions of ORS 86.726, 86.729, 86.732 and 86.736.

29 **SECTION 4.** ORS 86.726 is amended to read:

30 86.726. [(1)(a)] (1) Except as provided in [*paragraph (b) of this subsection*
31 *and*] subsection [(5)] (4) of this section, a beneficiary that intends to fore-

1 close a residential trust deed shall first request a resolution conference with
2 the grantor before the beneficiary or the trustee files a notice of default
3 under ORS 86.752 or before the beneficiary brings suit under ORS 88.010.

4 *[(b)(A) The requirement to request or participate in a resolution conference*
5 *with a grantor in accordance with subsection (2) or (3) of this section does not*
6 *apply to a beneficiary if the beneficiary submits to the Attorney General a*
7 *sworn affidavit that states that during the preceding calendar year the bene-*
8 *ficiary did not commence or cause an affiliate, subsidiary or agent of the*
9 *beneficiary to commence more than 175 actions to foreclose a residential trust*
10 *deed by advertisement and sale under ORS 86.752 or by suit under ORS*
11 *88.010. A beneficiary that is a trustee shall include as part of the total number*
12 *of foreclosure actions that the beneficiary commenced in the previous calendar*
13 *year all foreclosure actions that the beneficiary commenced under ORS 86.752*
14 *or 88.010 in the beneficiary's capacity as a trustee. A beneficiary that intends*
15 *to claim an exemption under this subparagraph shall submit the affidavit in*
16 *a form and with the contents the Attorney General specifies by rule either:]*

17 *[(i) Not later than January 31 in any calendar year in which the beneficiary*
18 *intends to claim the exemption for the remainder of the calendar year; or]*

19 *[(ii) At the time the beneficiary files a notice of default under ORS 86.752*
20 *or brings suit under ORS 88.010.]*

21 *[(B) An exemption under subparagraph (A) of this paragraph expires at the*
22 *end of the calendar year in which the beneficiary claims the exemption.]*

23 *[(c) Except as provided in subsection (5) of this section, a beneficiary that*
24 *claims an exemption under this subsection is not exempt from the requirements*
25 *set forth in ORS 86.748.]*

26 (2) The beneficiary shall request a resolution conference through the
27 service provider. The beneficiary shall submit the request to the service
28 provider electronically, by facsimile or by mail and shall submit a processing
29 fee in an amount and in a manner that the Attorney General specifies by
30 rule. The service provider shall pay to the Attorney General, for deposit into
31 the Foreclosure Avoidance Fund established under ORS 86.744, moneys the

1 service provider receives from the beneficiary under this subsection. The
2 beneficiary's request under this subsection must identify the residential trust
3 deed that the beneficiary intends to foreclose and list the name, title, ad-
4 dress, telephone number and other available contact information for:

5 (a) The beneficiary;

6 (b) Any agent of the beneficiary that will attend the resolution confer-
7 ence;

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

11 (d) The grantor.

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

15 (A) The beneficiary or the trustee has not filed a notice of default under
16 ORS 86.752 or the beneficiary has not commenced a suit under ORS 88.010;
17 and

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

23 (b) A grantor shall request a resolution conference through the service
24 provider. The grantor shall submit the request to the service provider elec-
25 tronically, by facsimile or by mail and shall enclose with the request the
26 written certification the housing counselor provides under paragraph (a)(B)
27 of this subsection. The Attorney General by rule shall specify the informa-
28 tion that the request must include.

29 (c) A beneficiary that receives a notice from a service provider after the
30 service provider receives a request from a grantor under paragraph (b) of this
31 subsection is subject to the requirements set forth in this section and ORS

1 86.729, 86.732, 86.736 and 86.748.

2 *[(d) This subsection does not apply to a beneficiary that has submitted an*
3 *affidavit and is exempt under subsection (1)(b) of this section.]*

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

10 [(5)] (4) The requirement to request or participate in a resolution confer-
11 ence with a grantor in accordance with subsection (2) or (3) of this section
12 does not apply to the Department of Veterans' Affairs in its capacity as a
13 beneficiary of loans made under ORS 407.125.

14 **SECTION 5.** ORS 86.732 is amended to read:

15 86.732. (1)(a) Except as provided in paragraph (b) of this subsection, a
16 beneficiary that must request a resolution conference with a grantor under
17 ORS 86.726 shall attend and participate in the resolution conference in per-
18 son **or by remote audio or video communication.**

19 (b)(A) A beneficiary may send an agent to the resolution conference if the
20 agent attends the resolution conference in person **or by remote audio or**
21 **video communication** and **the agent** has complete authority to negotiate
22 on the beneficiary's behalf and commit the beneficiary to a foreclosure
23 avoidance measure or, if the agent who attends the resolution conference in
24 person **or by remote audio or video communication** does not have com-
25 plete authority, the beneficiary also requires the participation, by remote
26 **audio or video** communication, of a person who does have complete au-
27 thority to negotiate on the beneficiary's behalf and commit the beneficiary
28 to a foreclosure avoidance measure.

29 (B) A grantor may have an attorney or a housing counselor, or both,
30 present to represent the grantor at the resolution conference, but the
31 grantor, or any individual that a court appoints to act on the grantor's be-

1 half, must attend the resolution conference in person **or by remote audio**
2 **or video communication** [*unless there are compelling circumstances that*
3 *prevent attendance in person*].

4 (2) If the beneficiary agrees to a foreclosure avoidance measure with the
5 grantor, the beneficiary and the grantor shall sign a written document that
6 sets forth the terms of the foreclosure avoidance measure.

7 (3) A facilitator may suspend or postpone a resolution conference after
8 the resolution conference has begun:

9 (a) One time only on the facilitator's initiative or in response to a request
10 for a suspension or postponement from the beneficiary or the grantor;

11 (b) After a suspension or postponement under paragraph (a) of this sub-
12 section only if the beneficiary and the grantor agree to the additional sus-
13 pension or postponement; or

14 (c) If the beneficiary or the grantor needs additional time to write or sign
15 a document that sets forth the terms of a foreclosure avoidance measure.

16 (4) After the resolution conference concludes, the facilitator shall submit
17 to the service provider a written report that:

18 (a) Lists the date or dates on which the resolution conference occurred;

19 (b) Lists the name, title, address, telephone number and other available
20 contact information for each person that participated in the resolution con-
21 ference, noting whether the person attended the resolution conference in
22 person or participated by remote **audio or video** communication;

23 (c) States whether the beneficiary or the agent of the beneficiary who
24 attended the resolution conference had complete authority to negotiate and
25 commit to a foreclosure avoidance measure;

26 (d) Summarizes the terms of the foreclosure avoidance measure to which
27 the beneficiary and the grantor agreed or notes that the beneficiary and the
28 grantor did not agree to a foreclosure avoidance measure; and

29 (e) Provides any other information the Attorney General requires by rule.

30 **SECTION 6.** ORS 86.729 is amended to read:

31 86.729. (1)(a) Within 10 days after a service provider receives a request for

1 a resolution conference under ORS 86.726, the service provider shall schedule
2 the resolution conference and mail a notice to the beneficiary and to the
3 grantor at all addresses on file with the service provider for the beneficiary
4 and grantor, including post office boxes. The service provider shall schedule
5 the resolution conference to occur within 75 days after the date on which the
6 service provider sends the notice.

7 (b) A notice under this subsection must:

8 (A) Specify a range of dates within which and a location at which **or**
9 **means of remote audio or video communication by which** the resolution
10 conference will occur;

11 (B) State that the beneficiary and the grantor each must pay the
12 facilitator's fees for the resolution conference;

13 (C) List and describe the documents that the beneficiary and the grantor
14 must submit to the service provider;

15 (D) State that the grantor must consult a housing counselor before at-
16 tending the resolution conference unless the grantor notifies the service
17 provider that the grantor could not obtain an appointment with a housing
18 counselor before the date of the resolution conference;

19 (E) State that the grantor may have an attorney or housing counselor
20 present to represent the grantor at the resolution conference, and that the
21 attorney or housing counselor must attend the resolution conference in per-
22 son **or by remote audio or video communication** [*unless there are com-*
23 *PELLING circumstances that prevent attendance in person*]; and

24 (F) Include any other information the Attorney General requires by rule.

25 (2) Within 25 days after the date on which the service provider sends a
26 notice under subsection (1) of this section:

27 (a) The grantor shall pay a fee to the service provider in an amount and
28 in a manner that the Attorney General specifies by rule. The grantor's fee
29 may not exceed \$200. Within five days after receiving the fee from the
30 grantor, the service provider shall send a written notice to the grantor and
31 the beneficiary that specifies the date, time and location of, **and, if neces-**

1 **sary, a method of remote audio or video communication for,** the resol-
2 ution conference.

3 (b) The service provider shall pay to the Attorney General, for deposit
4 into the Foreclosure Avoidance Fund established under ORS 86.744, moneys
5 the service provider receives from the grantor under paragraph (a) of this
6 subsection.

7 (c) The grantor shall submit to the service provider:

8 (A) Information about the grantor's income, expenses, debts and other
9 obligations;

10 (B) A description of the grantor's financial hardship, if any;

11 (C) Documents that verify the grantor's income; and

12 (D) Any other information the Attorney General requires by rule.

13 (3) The grantor shall consult a housing counselor before attending the
14 resolution conference unless the grantor cannot obtain an appointment with
15 a housing counselor before the date of the resolution conference.

16 (4) Within 25 days after the service provider makes the information the
17 grantor submitted under subsection (2) of this section available to the bene-
18 ficiary, the beneficiary shall:

19 (a) Pay a fee to the service provider in an amount that is not more than
20 \$600 and in a manner that the Attorney General specifies by rule. The ser-
21 vice provider shall pay to the Attorney General, for deposit into the Fore-
22 closure Avoidance Fund established under ORS 86.744, moneys the service
23 provider receives from the beneficiary under this paragraph.

24 (b) Submit to the service provider:

25 (A) Copies of:

26 (i) The residential trust deed; and

27 (ii) The promissory note that is evidence of the obligation that the resi-
28 dential trust deed secures and that the beneficiary or beneficiary's agent
29 certifies is a true copy;

30 (B) The name and address of the person that owns the obligation that is
31 secured by the residential trust deed;

1 (C) A record of the grantor's payment history for the longer of the pre-
2 ceding 12 months or since the beneficiary last deemed the grantor current
3 on the obligation;

4 (D) An itemized statement that shows:

5 (i) The amount the grantor owes on the obligation, itemized to reflect the
6 principal, interest, fees, charges and any other amounts included within the
7 obligation; and

8 (ii) The amount the grantor must pay to cure the grantor's default;

9 (E) A document that identifies:

10 (i) The input values for each net present value model that the beneficiary
11 or the beneficiary's agent uses; and

12 (ii) The output values that each net present value model produces;

13 (F) The appraisal or price opinion the beneficiary relied on most recently
14 to determine the value of the property that is the subject of the residential
15 trust deed;

16 (G) The portion of any pooling agreement, servicing agreement or other
17 agreement that the beneficiary cites as a limitation or prohibition on modi-
18 fying the terms of the obligation, together with a statement that describes
19 the extent to which the beneficiary sought to have the limitation or prohi-
20 bition waived;

21 (H) A description of any additional documents the beneficiary requires to
22 evaluate the grantor's eligibility for a foreclosure avoidance measure; and

23 (I) Any other information the Attorney General requires by rule.

24 (5)(a) The service provider may postpone or reschedule a resolution con-
25 ference that the service provider scheduled under subsection (1) of this sec-
26 tion if:

27 (A) The beneficiary and the grantor agree to a new date;

28 (B) The beneficiary or the grantor requests a new date in writing that is
29 not more than 30 days after the original date scheduled for the resolution
30 conference and can show good cause for the request; or

31 (C) The beneficiary does not pay the fee required under subsection (4)(a)

1 of this section by the date the fee is due. The service provider may wait until
2 the beneficiary has paid the fee before rescheduling the resolution confer-
3 ence.

4 (b) The service provider shall cancel a resolution conference that the
5 service provider scheduled under subsection (1) of this section if the grantor
6 does not pay the fee required under subsection (2)(a) of this section by the
7 date the fee is due.

8 (6)(a) A resolution conference conducted in accordance with this section
9 and ORS 86.726, 86.732 and 86.736 is not subject to ORS chapter 36 and does
10 not preclude mediation that a court or another provision of law requires.

11 (b) A facilitator is not subject to a subpoena and cannot be compelled to
12 testify in any proceeding that is related to a resolution conference, other
13 than a proceeding against a facilitator for an act or omission for which the
14 facilitator may be liable under paragraph (c) of this subsection.

15 (c) A facilitator is not civilly liable for any act or omission done or made
16 while engaged in efforts to assist or facilitate a resolution conference unless
17 the facilitator acted or made an omission in bad faith, with malicious intent
18 or in an manner that exhibited a willful or wanton disregard of the rights,
19 safety or property of another person.

20 (d) The limitations on liability provided by this subsection apply to the
21 officers, directors, employees and agents of the service provider and any
22 dispute resolution program engaged in facilitating resolution conferences.

23 (e) Information that a beneficiary or grantor submits under this section
24 is not subject to ORS 192.311 to 192.478.

25 **SECTION 7.** ORS 86.736 is amended to read:

26 86.736. (1)(a) The service provider shall issue, within five days after re-
27 ceiving a report from a facilitator under ORS 86.732 (4), a certificate of
28 compliance to a beneficiary that:

29 (A) Complied with ORS 86.726, 86.729 and 86.732;

30 (B) Submitted the materials required under ORS 86.729 (4) to the service
31 provider;

1 (C) Appeared in person **or by remote audio or video communication**
2 at, or sent an agent in person **or by remote audio or video communi-**
3 **cation** to, the resolution conference with complete authority to negotiate on
4 the beneficiary's behalf and commit the beneficiary to a foreclosure avoid-
5 ance measure or, if the beneficiary or agent did not have complete authority,
6 required the participation by remote **audio or video** communication of a
7 person with complete authority to negotiate on the beneficiary's behalf and
8 commit the beneficiary to a foreclosure avoidance measure; and

9 (D) Signed a document that sets forth the terms of any foreclosure
10 avoidance measure to which the beneficiary and the grantor agreed.

11 (b) A certificate of compliance expires one year after the date on which
12 the service provider issues the certificate of compliance under paragraph (a)
13 of this subsection.

14 (c) The service provider shall notify a beneficiary that failed to meet a
15 requirement to which the beneficiary was subject under ORS 86.726, 86.729
16 or 86.732 that the service provider will not issue a certificate of compliance,
17 explaining in the notice why the service provider will not issue the certifi-
18 cate of compliance. The service provider shall provide a copy of the notice
19 under this paragraph to the grantor and to the Attorney General.

20 (2) Notwithstanding the requirements set forth in subsection (1) of this
21 section, if a service provider cancels a resolution conference under ORS
22 86.729 (5)(b), the service provider shall issue a certificate of compliance to
23 the beneficiary within five days after canceling the resolution conference.

24 **SECTION 8.** ORS 86.741 is amended to read:

25 86.741. (1) The Attorney General shall:

26 (a) Appoint and enter into an agreement with a service provider to coor-
27 dinate and manage a program to implement the provisions of ORS 86.726,
28 86.729, 86.732 and 86.736.

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

30 [(c) Receive affidavits submitted under ORS 86.726 (1)(b).]

31 [(d)] (c) Specify the amount a beneficiary must pay to the service provider

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

3 [(e)] (d) Prescribe qualifications, training and experience requirements for
4 facilitators that conduct or assist resolution conferences.

5 [(f)] (e) Specify procedures and guidelines for conducting a resolution
6 conference.

7 [(g)] (f) Adopt additional rules to implement ORS 86.726, 86.729, 86.732,
8 86.736, 86.744 and 86.748.

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

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

18 **SECTION 9.** ORS 86.752 is amended to read:

19 86.752. A trustee may not foreclose a trust deed by advertisement and sale
20 in the manner provided in ORS 86.764 to 86.782 unless:

21 (1) The trust deed, any assignments of the trust deed by the trustee or the
22 beneficiary and any appointment of a successor trustee are recorded in the
23 mortgage records in the counties in which the property described in the deed
24 is situated;

25 (2) There is a default by the grantor or other person that owes an obli-
26 gation, the performance of which is secured by the trust deed, or by the
27 grantor's or other person's successors in interest with respect to a provision
28 in the deed that authorizes sale in the event of default of the provision;

29 (3) The trustee or beneficiary has filed for recording in the county clerk's
30 office in each county in which the trust property, or some part of the trust
31 property, is situated, a notice of default containing the information required

1 by ORS 86.771 and containing the trustee's or beneficiary's election to sell
2 the property to satisfy the obligation;

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

6 (a) A certificate of compliance that a service provider issued to the ben-
7 eficiary under ORS 86.736 that is valid and unexpired at the time the notice
8 of default is recorded; **or**

9 *[(b) A copy of the affidavit with which the beneficiary claimed, under ORS*
10 *86.726 (1)(b), an exemption that has not expired; or]*

11 *[(c)]* (b) A signed affidavit from the Director of Veterans' Affairs that
12 states that the Department of Veterans' Affairs, in the department's capacity
13 as a beneficiary of loans made under ORS 407.125, is exempt from the re-
14 quirement under ORS 86.726 to request or participate in a resolution con-
15 ference with a grantor;

16 (5) The beneficiary has complied with the provisions of ORS 86.748;

17 (6) The grantor has not complied with the terms of any foreclosure
18 avoidance measure upon which the beneficiary and the grantor have agreed;
19 and

20 (7) An action has not been commenced to recover the debt or any part
21 of the debt then remaining secured by the trust deed, or, if an action has
22 been commenced, the action has been dismissed, except that:

23 (a) Subject to ORS 86.010 and the procedural requirements of ORCP 79
24 and 80 and the Oregon Receivership Code, as applicable, an action may be
25 commenced to appoint a receiver or to obtain a temporary restraining order
26 during foreclosure of a trust deed by advertisement and sale, except that a
27 receiver may not be appointed with respect to a single-family residence that
28 the grantor, the grantor's spouse or the grantor's minor or dependent child
29 occupies as a principal residence.

30 (b) An action may be commenced to foreclose, judicially or nonjudicially,
31 the same trust deed as to any other property covered by the trust deed, or

1 any other trust deeds, mortgages, security agreements or other consensual
2 or nonconsensual security interests or liens that secure repayment of the
3 debt.

4 **SECTION 10.** ORS 88.010 is amended to read:

5 88.010. (1)(a) Except as otherwise provided by law, a lien upon real or
6 personal property, other than that of a judgment, whether created by mort-
7 gage or otherwise, must be foreclosed, and the property adjudged to be sold
8 to satisfy the debt the lien secures, by bringing suit. A judgment in the suit
9 must include a declaration of the amount of the debt that the lien secures.

10 (b) Except as provided in ORS 86.797 or 88.103 or other applicable law,
11 if the lien debtor or another person, as principal or otherwise, has given a
12 promissory note or other personal obligation to pay the debt and if the
13 plaintiff in the complaint asks the court for a money award in the judgment,
14 the court shall include in the judgment a money award against the lien
15 debtor or other person for the amount of the debt.

16 (c) The provisions of this chapter as to liens upon personal property do
17 not exclude a person that has a lien from any other remedy or right that the
18 person otherwise has with respect to the property.

19 (2)(a) A complaint in a suit to foreclose a residential trust deed on the
20 lien debtor must include as an attachment a copy of a notice to lien debtors,
21 in substantially the following form and printed in at least 14-point type:

22 _____
23 **WARNING:** You may get offers from people who tell you they can help you
24 keep your property. You may get offers from people who want to buy your
25 “redemption rights” or “all rights under ORS chapter 18.” You should be
26 careful about those offers, as a sale of your rights to a property in foreclo-
27 sure may include your right to claim any surplus funds arising from the
28 foreclosure sale. Make sure you understand any papers you are asked to sign.
29 If you have any questions, talk to a lawyer or one of the organizations
30 mentioned below before signing.

31

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

11 _____

12 (b) The person filing the complaint shall insert in the notice under this
13 subsection the resource telephone contact numbers and website addresses
14 prescribed by the Department of Consumer and Business Services by rule
15 under ORS 86.756.

16 (3)(a) A complaint in a suit to foreclose a residential trust deed under this
17 section must include as an attachment a true copy of:

18 (A) A valid and unexpired certificate of compliance that a service pro-
19 vider issued to a beneficiary under ORS 86.736;

20 [(B) *The affidavit the person submitted under ORS 86.726 (1)(b), provided*
21 *that the exemption the person claimed in the affidavit has not expired;*]

22 [(C)] (B) The notice the beneficiary received under ORS 86.736 (1)(c); or

23 [(D)] (C) A signed affidavit from the Director of Veterans’ Affairs that
24 states that the Department of Veterans’ Affairs, in the department’s capacity
25 as a beneficiary of loans made under ORS 407.125, is exempt from the re-
26 quirement under ORS 86.726 to request or participate in a resolution con-
27 ference with a grantor.

28 (b)(A) A court on the court’s own motion or in response to a motion from
29 a defendant may dismiss without prejudice a suit that a person brings under
30 this section to foreclose a residential trust deed, or may stay proceedings on
31 the suit, if the person:

1 (i) Fails to file with the court the certificate described in paragraph (a)(A)
2 of this subsection or the affidavit described in paragraph [(a)(B) or (D)]
3 (a)(C) of this subsection; or

4 (ii) Files with the court the notice described in paragraph [(a)(C)] (a)(B)
5 of this subsection.

6 (B) The court may release a stay the court granted under subparagraph
7 (A) of this paragraph if the person files with the court the certificate de-
8 scribed in paragraph (a)(A) of this subsection or the affidavit described in
9 paragraph [(a)(B) or (D)] (a)(C) of this subsection.

10 (C) The court may award a defendant that prevails on a motion under this
11 paragraph reasonable costs and attorney fees associated with bringing the
12 motion and any other relief the court deems proper.

13 (4) Except as provided in ORS 408.515 (3), the information required under
14 ORS 408.515 must be included with a summons in an action under this sec-
15 tion to foreclose a lien upon residential real property, as defined in ORS
16 408.515.

17 **SECTION 11.** ORS 646.607 is amended to read:

18 646.607. A person engages in an unlawful trade practice if in the course
19 of the person's business, vocation or occupation the person:

20 (1) Employs any unconscionable tactic in connection with selling, renting
21 or disposing of real estate, goods or services, or collecting or enforcing an
22 obligation.

23 (2) Fails to deliver all or any portion of real estate, goods or services as
24 promised, and at a customer's request, fails to refund money that the cus-
25 tomer gave to the person to purchase the undelivered real estate, goods or
26 services and that the person does not retain pursuant to any right, claim or
27 defense the person may assert in good faith. This subsection does not create
28 a warranty obligation and does not apply to a dispute over the quality of real
29 estate, goods or services delivered to a customer.

30 (3) Violates ORS 401.965 (2).

31 (4) Violates a provision of ORS 646A.725 to 646A.750.

1 (5) Violates ORS 646A.530.

2 (6) Employs a collection practice that is unlawful under ORS 646.639.

3 (7) Is a beneficiary that violates ORS 86.726 [(1)(a)] (1) or (2), 86.729 (4)
4 or 86.732 (1) or (2).

5 (8) Violates ORS 646A.093.

6 (9) Violates a provision of ORS 646A.600 to 646A.628.

7 (10) Violates ORS 646A.808 (2).

8 (11) Violates ORS 336.184.

9 (12) Publishes on a website related to the person's business, or in a con-
10 sumer agreement related to a consumer transaction, a statement or repre-
11 sentation of fact in which the person asserts that the person, in a particular
12 manner or for particular purposes, will use, disclose, collect, maintain, delete
13 or dispose of information that the person requests, requires or receives from
14 a consumer and the person uses, discloses, collects, maintains, deletes or
15 disposes of the information in a manner that is materially inconsistent with
16 the person's statement or representation.

17 (13) Violates ORS 646A.813 (2).

18 **SECTION 12.** ORS 646.638 is amended to read:

19 646.638. (1) Except as provided in subsections (8) and (9) of this section,
20 a person that suffers an ascertainable loss of money or property, real or
21 personal, as a result of another person's willful use or employment of a
22 method, act or practice declared unlawful under ORS 646.608, may bring an
23 individual action in an appropriate court to recover actual damages or stat-
24 utory damages of \$200, whichever is greater. The court or the jury may
25 award punitive damages and the court may provide any equitable relief the
26 court considers necessary or proper.

27 (2) A person that brings an action under subsection (1) of this section
28 shall mail a copy of the complaint or other initial pleading to the Attorney
29 General at the time the action commences and, upon entry of any judgment
30 in the action, shall mail a copy of the judgment to the Attorney General.
31 Failure to mail a copy of the complaint is not a jurisdictional defect, but a

1 court may not enter judgment for the plaintiff until proof of mailing is filed
2 with the court. Proof of mailing may be by affidavit or by return receipt of
3 mailing.

4 (3) The court may award reasonable attorney fees and costs at trial and
5 on appeal to a prevailing plaintiff in an action under this section. The court
6 may award reasonable attorney fees and costs at trial and on appeal to a
7 prevailing defendant only if the court finds that an objectively reasonable
8 basis for bringing the action or asserting the ground for appeal did not exist.

9 (4) The court may not award attorney fees to a prevailing defendant under
10 the provisions of subsection (3) of this section if the action under this section
11 is maintained as a class action pursuant to ORCP 32.

12 (5) Any permanent injunction or final judgment or order the court makes
13 under ORS 646.632 or 646.636 is prima facie evidence in an action brought
14 under this section that the respondent used or employed a method, act or
15 practice declared unlawful under ORS 646.608, but an assurance of voluntary
16 compliance, whether or not approved by the court, is not evidence of the
17 violation.

18 (6) Actions brought under this section must be commenced within one
19 year after the discovery of the unlawful method, act or practice. Notwith-
20 standing this limitation, if a prosecuting attorney filed a complaint to pre-
21 vent, restrain or punish a violation of ORS 646.608, the complaint tolls the
22 statute of limitations with respect to every private right of action under this
23 section that is based in whole or in part on any matter set forth in the
24 prosecuting attorney's complaint for the period of time in which the pro-
25 ceeding that the prosecuting attorney initiated is pending.

26 (7) Notwithstanding subsection (6) of this section, in any action that a
27 seller or lessor brings against a purchaser or lessee of real estate, goods or
28 services, the purchaser or lessee may assert any counterclaim that the pur-
29 chaser or lessee has arising out of a violation of ORS 336.184 and 646.605 to
30 646.652.

31 (8) A class action may be maintained under this section. In any class

1 action under this section:

2 (a) Statutory damages under subsection (1) of this section may be recov-
3 ered on behalf of class members only if the plaintiffs in the action establish
4 that the members have sustained an ascertainable loss of money or property
5 as a result of a reckless or knowing use or employment by the defendant of
6 a method, act or practice declared unlawful by ORS 646.608;

7 (b) The trier of fact may award punitive damages; and

8 (c) The court may award appropriate equitable relief.

9 (9) This section does not apply to:

10 (a) Any method, act or practice described in ORS 646.608 (1)(aa). Actions
11 for violation of laws relating to odometers are provided under ORS 815.410
12 and 815.415.

13 (b) A violation of ORS 86.726 [(1)(a)] (1) or (2), 86.729 (4) or 86.732 (1) or
14 (2).

15 **SECTION 13. Section 1 of this 2020 third special session Act becomes**
16 **operative on December 31, 2020.**

17 **SECTION 14. Section 1 of this 2020 third special session Act is re-**
18 **pealed 90 days after the expiration of the emergency period as defined**
19 **in section 1 of this 2020 third special session Act.**

20 **SECTION 15. This 2020 third special session Act being necessary for**
21 **the immediate preservation of the public peace, health and safety, an**
22 **emergency is declared to exist, and this 2020 third special session Act**
23 **takes effect on its passage.**

24