

TITLE 9

MORTGAGES AND LIENS

- Chapter 86. Mortgages; Trust Deeds
87. Statutory Liens
88. Foreclosure of Liens Generally

Chapter 86

1993 EDITION

Mortgages; Trust Deeds

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REAL PROPERTY MORTGAGES**86.010 Nature of mortgagee's interest.**

A mortgage of real property is not a conveyance so as to enable the owner of the mortgage to recover possession of the property without a foreclosure and sale. This section is not intended as a limitation upon the right of the owner of real property to mortgage or pledge the rents and profits thereof, nor as prohibiting the mortgagee or pledgee of such rents and profits, or any trustee under a mortgage or trust deed from entering into possession of any real property, other than farmlands or the homestead of the mortgagor or successor in interest, for the purpose of operating the same and collecting the rents and profits thereof for application in accordance with the provisions of the mortgage or trust deed or other instrument creating the lien, nor as any limitation upon the power of a court of equity to appoint a receiver to take charge of the property and collect the rents and profits thereof.

86.020 Covenant to pay money not implied. No mortgage shall be construed as implying a covenant for the payment of the sum thereby secured. When there is no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

86.030 Absolute deed as a mortgage. When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by a deed of defeasance or other instrument, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance, or the heirs or devisees of the maker, or persons having actual notice thereof, unless the instrument of defeasance is recorded with the recording officer of the county where the lands lie.

86.040 Improvements on mortgaged lands. No person shall sell, dispose of, remove or damage any building or other improvements upon mortgaged lands. All such improvements are deemed a part of the mortgaged property and are subject to the mortgage lien. When any improvements are removed from the mortgaged premises in violation of this section, the mortgagee may follow and regain possession of such improvements wherever found or may recover the reasonable value thereof from the person removing them.

86.050 Payment of taxes and other charges by mortgagee. Whenever a mortgagor fails to pay when due any taxes,

assessments, interest on prior mortgages, insurance premiums or other charges necessary to be paid for the protection of the lien of a mortgagee, the mortgagee may pay the same, and such payments shall be added to the mortgage debt and secured by the mortgage held by the mortgagee, and shall bear interest at the same rate as specified in the mortgage. This section applies only to mortgages executed after June 3, 1929, and does not affect the right of parties to specifically contract otherwise than as provided in this section.

86.060 Assignment of mortgage. Mortgages may be assigned by an instrument in writing, executed and acknowledged with the same formality as required in deeds and mortgages of real property, and recorded in the records of mortgages of the county where the land is situated.

86.070 [Repealed by 1965 c.252 §1]

86.080 Record of assignment not notice to mortgagor. The recording of the assignment of a mortgage is not of itself notice of such assignment to the mortgagor, or the heirs or personal representatives of the mortgagor, so as to invalidate a payment made by any of them to the mortgagee.

86.090 [Repealed by 1965 c.252 §1]

86.095 Acts not affecting priority of mortgage lien. (1) Actions that do not affect the priority granted to the lien of a mortgage at the time it is first received for recordation shall include but shall not be limited to:

(a) Renegotiation or adjustment of the initial interest rate provided in the note or mortgage, upward or downward, which may increase or decrease the amount of periodic payments or may extend or shorten the term of the mortgage, or both;

(b) An increase in the underlying obligation secured by the mortgage during any part of the term of the mortgage as a result of deferment of all or a portion of the interest payments and the addition of such payments to the outstanding balance of the obligation;

(c) Execution of new notes at designated intervals during the term of the mortgage which reflect changes made pursuant to paragraph (a) or (b) of this subsection;

(d) Extension of the term of the mortgage;

(e) Substitution of a note if there is no increase in the principal amount or interest rate to be paid under the note; or

(f) Modification of periodic payments required under the note if there is no increase in the principal amount due or the interest rate to be paid under the note.

(2) As used in this section, the addition of accrued interest to the principal amount of the underlying obligation is not an increase in the principal amount.

(3) As used in this section, "mortgage" includes deed of trust and contract for sale of real property. [1981 c.304 §2; 1987 c.716 §2; 1991 c.246 §1]

86.100 Discharge of record on deed of release. Any mortgage shall be discharged of record whenever there is presented to the recording officer a certificate executed by the mortgagee, or the personal representatives or assigns of the mortgagee, acknowledged or proved and certified as prescribed by law to entitle conveyances to be recorded, specifying that such mortgage has been paid or otherwise discharged. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length. [Amended by 1965 c.252 §2]

86.110 Discharge of record by owner and holder of mortgage note who is not the mortgagee of record. (1) Whenever a promissory note secured by mortgage on real property is transferred by indorsement without a formal assignment of the mortgage, and the mortgage is recorded, the mortgage, upon payment of the promissory note, may be discharged of record by the owner and holder of the promissory note making and filing with the recording officer in whose custody the record of such mortgage is, a certificate, verified by oath, declaring, in substance, that the owner and holder is the owner and holder of the note secured by said mortgage by indorsement of the mortgagee, and that the note has been fully paid, and proving that fact to the satisfaction of the recording officer, and delivering the original note to such officer.

(2) Upon receiving the certificate and original note, the recording officer shall enter them in full length upon the record book of mortgages, and such entry shall have the same effect as a deed of release of the mortgagee duly acknowledged and recorded. [Amended by 1965 c.252 §3]

86.120 Discharge of mortgage on real property; effect of discharge. No mortgage upon real property shall be discharged except as provided in ORS 86.110 or by the person appearing upon the records of the county where the mortgage is recorded to be the owner thereof. A discharge of the mortgage by such person shall operate to free the land described in the mortgage from the lien of the mortgage as against all subsequent purchasers and incumbrances for value and without notice.

86.130 Discharge by foreign executors, administrators, conservators and guardi-

ans. Foreign executors, administrators, conservators and guardians may discharge mortgages upon the records of any county upon recording with the recording officer of the county in which the mortgage is recorded a certified copy of their letters testamentary, or of administration, or of guardianship or of conservatorship. The certificate shall include a statement that the letters are in effect, and the certificate shall be recorded in the mortgage records. [Amended by 1973 c.506 §§2,44]

86.140 Liability of mortgagee for failure to discharge mortgage. If any mortgagee or the personal representative or assignee of the mortgagee, after full performance of the condition of the mortgage before or after a breach thereof, shall, within 30 days after being thereto requested, and after tender of reasonable charges, fail to discharge the same, or to execute and acknowledge a certificate of discharge or release thereof, that person shall be liable to the mortgagor, or the heirs or assigns of the mortgagor, in the sum of \$500 damages and also for all actual damages occasioned by such failure, to be recovered in an action at law. The owner and holder of the promissory note referred to in ORS 86.110 is deemed the personal representative of the mortgagee for the purposes of this section. [Amended by 1955 c.29 §1; 1955 c.512 §1; 1993 c.648 §1]

86.150 Loan agreements and promissory notes to state maximum prepayment privilege penalty. (1) Any person making a loan having a loan period of more than three years secured by a mortgage or by a trust deed on real property located in this state shall, with respect to such loan, expressly and clearly state on the loan agreement and promissory note any maximum prepayment privilege penalty. The statement shall include the maximum prepayment penalty applicable for prepayment during the first year of the loan period and for each year thereafter.

(2) Violation of subsection (1) of this section with respect to a loan agreement or promissory note shall render any prepayment privilege penalty provision in the agreement void.

(3) "Loan agreement" as used in this section means a written document issued in connection with a particular loan which sets forth the terms upon which the loan will be made. "Loan agreement" does not include a mortgage or trust deed which secures a promissory note. Nothing in this section shall be deemed to require a lender to issue a loan agreement.

(4) This section does not apply to any loan agreement executed on or before September 13, 1967, or any loan not primarily for

personal, family or household use. [1967 c.336 §§1,2; 1987 c.716 §3]

86.155 Priority of line of credit instrument as to certain advances; procedure to limit indebtedness in residential line of credit instrument. (1) As used in this section:

(a) "Credit agreement" means any promissory note, loan agreement or other agreement which provides for advances subsequent to the date of recording of the line of credit instrument which secures such note or agreement.

(b) "Line of credit instrument" means a mortgage or trust deed which secures a consumer or commercial credit agreement and creates a lien on specified real property up to a stated amount, provided that the front page of the mortgage or trust deed:

(A) Contains the legend "line of credit mortgage," "line of credit trust deed" or "line of credit instrument" either in capital letters or underscored above the body of the mortgage or trust deed;

(B) States the maximum principal amount to be advanced pursuant to the credit agreement; and

(C) States the term or maturity date, if any, of the credit agreement exclusive of any option to renew or extend such term of maturity date.

(c) "Residential line of credit instrument" means any line of credit instrument creating a lien on real property upon which are situated or will be constructed four or fewer residential units, one of which, at the time the credit agreement is entered into, is the borrower's residence or is intended, following construction, to be a residence of the borrower.

(2) A line of credit instrument shall have priority, regardless of the knowledge of the lienholder of any intervening lien, as of its date of recording as to the following advances whether such advances are optional or obligatory advances:

(a) Principal advances made any time pursuant to the credit agreement, to the extent the total outstanding advances do not exceed the maximum principal amount stated in the line of credit instrument under subparagraph (B) of paragraph (b) of subsection (1) of this section;

(b) Interest, lawful charges and advances made any time pursuant to the credit agreement for the reasonable protection of the real property including, but not limited to, advances to pay real property taxes, hazard insurance premiums, maintenance charges imposed under a declaration or restrictive

covenant and reasonable attorney fees, whether or not such interest, lawful charges or advances shall exceed the maximum principal amount stated in the line of credit instrument under subparagraph (B) of paragraph (b) of subsection (1) of this section; and

(c) Advances made any time after the date of recording and pursuant to a credit agreement that is not secured by a residential line of credit instrument to complete construction of previously agreed-upon improvements on the real property, whether or not such advances exceed the maximum principal amount stated in the line of credit instrument under subparagraph (B) of paragraph (b) of subsection (1) of this section provided, however, that the front page of the instrument states that the maximum principal amount to be advanced pursuant to the credit agreement may be exceeded by advances to complete construction pursuant to this subsection.

(3) Actions that do not affect the priority granted to the advances set forth in subsection (2) of this section shall include, but not be limited to, those actions set forth in ORS 86.095 (1). ORS 86.095 (3) does not apply to a line of credit instrument. If any modification to a credit agreement increases the maximum principal amount to be advanced pursuant to the credit agreement, then principal advances that are made that exceed the original maximum principal amount stated in the line of credit instrument shall have priority as of the date of recording an amendment to the line of credit instrument that states the increased maximum principal amount.

(4) In the case of a residential line of credit instrument, the debtor may limit the indebtedness secured by that line of credit instrument to the amount of the credit outstanding by delivering a notice by personal service upon the lienholder or trust deed beneficiary or by mailing a notice by certified mail, return receipt requested, to the lienholder or trust deed beneficiary at the address given for payment or, if none, to the address of the lienholder or trust deed beneficiary indicated in the line of credit instrument or deed of trust. To be sufficient to limit indebtedness under this subsection, the notice must:

(a) State that it is made under this section;

(b) Contain the legal description in the line of credit instrument or the street address of the real property;

(c) Provide the information necessary to locate the line of credit instrument in the public record;

(d) State the debtor's intention to limit the amount of credit secured by the line of credit instrument to the amount owed at the time the notice is received;

(e) State the date sent; and

(f) Be signed and acknowledged by all debtors obligated under the line of credit instrument.

(5) Not later than the 20th day after receipt of the notice described in subsection (4) of this section, the lienholder or trust deed beneficiary shall:

(a) Indorse on the notice, or on an addendum to the notice, the principal amount of the indebtedness secured by the line of credit instrument on the date the lienholder or trust deed beneficiary received notice;

(b) Sign and acknowledge the notice or the addendum, if applicable; and

(c) Record the notice and addendum in the public record where the line of credit instrument was originally recorded.

(6) If the lienholder or trust deed beneficiary fails to record the notice and addendum, if applicable, within the time period specified in subsection (5) of this section, the debtor may record the notice in the public record where the line of credit instrument was originally recorded, together with proof of receipt by, or personal delivery to, the lienholder or trust deed beneficiary.

(7) Notwithstanding subsection (4) of this section, the line of credit instrument shall continue to have priority as of its date of recording as to:

(a) Principal advances, including any advance the creditor is required to honor, that were made before a notice under subsection (4) of this section is received;

(b) Interest, lawful charges and advances described in paragraphs (b) and (c) of subsection (2) of this section; and

(c) All advances made after a notice under subsection (4) of this section is received which are within the amount owed at the time the notice under subsection (4) of this section is given. [1987 c.716 §4, 1989 c.198 §1; 1991 c.313 §1; 1991 c.438 §1]

Note: 86.155 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 86 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

LATE CHARGES

86.160 Definitions for ORS 86.160 to 86.185. As used in ORS 86.160 to 86.185:

(1) "Late charge" means a sum payable by a mortgagor to the holder of a mortgage pursuant to a note or mortgage to compensate the holder for servicing and other costs

attributable to the receipt of mortgage payments from the mortgagor after the date upon which payment is due.

(2) "Mortgagor" includes the grantor under a deed of trust.

(3) "Mortgage" includes a deed of trust.

(4) "Residential real property" means a single-family, owner-occupied dwelling and appurtenances. [1977 c.427 §1]

86.165 Late charge. No lender may impose a late charge:

(1) With respect to any periodic installment payment received by it within 15 days after the due date. However, if the 15-day period ends on a Saturday, Sunday or legal holiday the 15-day period is extended to the next business day.

(2) In a dollar amount which exceeds five percent of the sum of principal and interest of the delinquent periodic installment payment or the amount provided in the note or mortgage held by the lender, whichever is the lesser.

(3) Unless the note or mortgage held by the lender provides for payment of a late charge on delinquent periodic installments and a monthly billing, coupon or notice is provided by the lender disclosing the date on which periodic installments are due and that a late charge may be imposed if payment is not received by lender within 15 days thereafter. However, if the lender and the borrower have provided in the note or other written loan agreement that the payments on the loan shall be made by the means of automatic deductions from a deposit account maintained by the borrower, the lender shall not be required to provide the borrower with a monthly billing, coupon or notice under this subsection with respect to any occasion on which there are insufficient funds in the borrower's account to cover the amount of a loan payment on the date the loan payment becomes due and within the period described in subsection (1) of this section.

(4) More than once on any single installment. [1977 c.427 §2; 1979 c.101 §1; 1993 c.280 §1]

86.170 Prohibited mortgage provisions. Notwithstanding ORS 708.480 (3), any provision in a mortgage for a late charge except as authorized by ORS 86.160 to 86.185 shall be invalid. [1977 c.427 §3]

86.175 Scope. ORS 86.160 to 86.185 shall be applicable only to late charges on loans secured by residential real property. [1977 c.427 §4]

86.180 ORS 86.160 to 86.185 not applicable to certain mortgages; notice to borrowers. Nothing in ORS 86.160 to 86.185 shall pertain to a mortgage banking company or mortgage servicing company except that

if the terms of the mortgage do not conform to the requirements of ORS 86.165, the borrower shall be notified prior to the execution of the mortgage. [1977 c.427 §5]

86.185 ORS 86.160 to 86.185 not applicable to certain loans. Nothing in ORS 86.160 to 86.185 shall apply to loans insured, guaranteed or purchased by an instrumentality of the Federal Government, whose regulations establish late charge limitations. [1977 c.427 §6]

REAL ESTATE LOANS; SECURITY PROTECTION

86.205 Definitions for ORS 86.205 to 86.275. As used in ORS 86.205 to 86.275:

(1) "Borrower" means any person who becomes obligated on a real estate loan agreement, either directly or indirectly, and includes, but is not limited to, mortgagors, grantors under trust deeds, vendees under conditional land sales contracts, and persons who purchase real property securing a real estate loan agreement, whether the persons assume the loan or purchase the property subject to the loan.

(2) "Direct reduction provision" or "capitalization provision" means any provision which is part of a real estate loan agreement, whether incorporated into the agreement or as part of a separately executed document, whereby the borrower makes periodic prepayment of property taxes, insurance premiums and similar charges to the lender or the designee of the lender, who applies such prepayments first to accrued interest and then to the principal amount of the loan, and upon payment of such charges, adds the amount of such payment to the principal amount of the loan.

(3) "Escrow account" means any account which is a part of a real estate loan agreement, whether incorporated into the agreement or as part of a separately executed document, whereby the borrower makes periodic prepayment to the lender or the designee of the lender of taxes, insurance premiums, and similar charges, and the lender or the designee of the lender pays the charges out of the account at the due dates.

(4) "Lender" means any person who makes, extends, or holds a real estate loan agreement and includes, but is not limited to, mortgagees, beneficiaries under trust deeds, and vendors under conditional land sales contracts.

(5) "Lender's security protection provision" means any provision which is a part of a real estate loan agreement, whether incorporated into the agreement or as part of a separately executed document, whereby the

borrower prepays, pledges or otherwise commits cash or other assets owned by the borrower in advance of due dates for payments of property taxes, insurance premiums and similar charges relating to the property securing the loan in order to assure timely payment of the charges and protect the lender's security interest in the property, and includes, but is not limited to, escrow accounts, direct reduction provisions, capitalization provisions, and pledges of savings accounts.

(6) "Person" means individuals, corporations, associations, partnerships and trusts, and includes, but is not limited to, banks, trust companies, national banks, savings banks, savings and loan associations, private bankers, credit unions, investment companies, insurance companies, pension funds, and mortgage companies.

(7) "Real estate loan agreement" or "real estate loan" means any agreement providing for a loan on residential property, including multifamily, occupied by the borrower in the amount of \$100,000 or less, secured in whole or in part by real property, or any interest therein, located in this state, and includes, but is not limited to, mortgages, trust deeds and conditional land sales contracts. [1975 c.337 §1]

86.210 Types of lender security protection provisions allowed. A lender may require a lender's security protection provision under ORS 86.205 to 86.275 either as a direct reduction provision, an escrow account, or a pledge of an interest-bearing savings account in an amount not to exceed the maximum amount which a lender may require a borrower to deposit in a lender's security protection provision under ORS 86.240 and bearing interest at a rate not less than the rate required on lender's security protection provisions by ORS 86.245. [1975 c.337 §2; 1987 c.577 §1]

86.214 Application of ORS 86.210 and 86.245 to real estate loan agreements. To the extent not inconsistent with provisions of existing real estate loan agreements and provided such agreements are not silent with regard to a lender's security protection provision, the provisions of ORS 86.210, 86.245 and this section shall apply to real estate loan agreements entered into prior to, on and after October 1, 1987. To the extent that the provisions of existing real estate loan agreements are inconsistent with the provisions of ORS 86.210, 86.245 and this section, the existing real estate loan agreements are silent as to a lender's security protection provision, or any part of ORS 86.210, 86.245 and this section is declared unconstitutional as to existing real estate loan agreements, the provisions of ORS 86.205 to 86.275 (1985 Re-

placement Part) shall govern and be in full force and effect. [1987 c.577 §4]

86.215 [1975 c.337 §§3,4,5; 1985 c.613 §2; repealed by 1987 c.577 §5]

86.220 [1975 c.337 §6; repealed by 1987 c.577 §5]

86.225 [1975 c.337 §6a; repealed by 1987 c.577 §5]

86.230 [1975 c.337 §6b; repealed by 1987 c.577 §5]

86.235 [1975 c.337 §7; repealed by 1987 c.577 §5]

86.240 Limit on amount required in security protection escrow account. No lender, in connection with a real estate loan agreement, shall require a borrower or prospective borrower:

(1) To deposit in any escrow account which may be established in connection with the agreement, prior to or upon the date of settlement, a sum in excess of the estimated total amount of property taxes, insurance premiums, and similar charges which actually will be due and payable on the date of settlement, and the pro rata portion thereof which has accrued, plus one-twelfth of the estimated total amount of the charges which will become due and payable during the 12-month period beginning on the date of settlement; or

(2) To deposit in any escrow account, which may be established in connection with the agreement, in any month beginning after the date of settlement a sum in excess of one-twelfth of the total amount of estimated property taxes, insurance premiums or similar charges which will become due and payable during the 12-month period beginning on the first day of the month, except that in the event the lender determines there will be a deficiency on the due date, the lender shall not be prohibited from requiring additional monthly deposits in the escrow account of pro rata portions of the deficiency corresponding to the number of months from the date of the lender's determination of the deficiency to the date upon which the charges become due and payable. [1975 c.337 §13]

86.245 Interest on security protection deposits; inapplicable to certain agreements. (1) Except as provided in subsections (2) and (4) of this section, any lender who requires a lender's security protection provision in connection with a real estate loan agreement shall pay interest to the borrower on funds deposited in the account at a rate not less than four and one-half percent. Interest shall be computed on the average monthly balance in the account and shall be paid quarterly to the borrower by crediting to the escrow account the amount of the interest due.

(2) Except as provided in subsection (3) of this section, this section shall not apply to real estate loan agreements entered into

prior to September 1, 1975, or on which the payment of interest on a lender's security protection provision violates any state or federal law or regulation.

(3) If federal law or regulation does not prohibit the payment of interest on a lender's security protection provision by federally chartered or organized lenders, then this section shall apply to the federally chartered or organized lenders and the state chartered or organized lenders that are similar to the federally chartered or organized lenders with respect to a lender's security protection provision executed in connection with real estate loan agreement entered into prior to and in existence on September 1, 1975.

(4) This section shall not apply to real estate loan agreements which are made by the State of Oregon or are made, or held, for sale to, or sold to, the State of Oregon. [1975 c.337 §8; 1979 c.327 §29; 1983 c.492 §1; 1987 c.577 §2]

Note: Section 2, chapter 492, Oregon Laws 1983, provides:

Sec. 2. The amendments to ORS 86.245 by section 1 of this Act shall not apply to real estate loan agreements entered into prior to the effective date of this Act [October 15, 1983].

86.250 Service charge prohibited where interest required. No lender requiring a lender's security protection provision with respect to which interest is required to be paid by the lender under ORS 86.245 shall impose a service charge in connection with such provision. [1975 c.337 §9]

86.255 Arrangements where security protection provisions not required; information to borrower. In any real estate loan agreement with respect to which a lender does not require a lender's security protection provision, the parties may mutually agree to any arrangement whereby the borrower prepays, pledges or otherwise commits assets in advance of due dates for payment of property taxes, insurance premiums and similar charges relating to the real property in order to assist the borrower in making timely payments of the charges. Prior to entering any such arrangement, the lender shall furnish the borrower a statement in writing, which may be set forth in the loan application:

(1) That the arrangement is not a condition to the real estate loan agreement;

(2) If it is an escrow account, whether or not the lender will pay interest and if interest is to be paid, the rate of interest; and

(3) Whether or not the borrower must pay the lender a charge for the service. If a charge is agreed to, the charge shall not exceed the amount of interest income earned under subsection (2) of this section. [1975 c.337 §10]

86.260 Payment of taxes where security protection provision required; credit of discount where taxes not paid; cause of action by borrower. (1) If a lender has a requirement that the borrower pay funds into a lender's security protection provision for the payment of property taxes on property that is the security for the real estate loan agreement, insurance premiums, and similar charges, and there are funds in the account, the lender shall pay the taxes or the amount in the account if less than the taxes due, in time to take advantage of any discount authorized by ORS 311.505, and all other charges on or before the due dates for payments.

(2)(a) If the lender fails to pay the taxes in accordance with subsection (1) of this section resulting in a loss of discount to the borrower, the lender shall credit the lender's security protection provision in an amount equal to the amount of discount denied on account of such failure, together with any interest that has accrued on the unpaid property taxes to the date the property taxes are finally paid.

(b) If the failure of the lender to comply with subsection (1) of this section is willful and results in the loss to the borrower of the discount, or if the failure to comply was not willful but upon discovery of the failure to comply and the loss of discount, the lender fails to credit the lender's security protection provision required by paragraph (a) of this subsection, the borrower shall have a cause of action against the lender to recover an amount equal to 15 times the amount of discount the borrower would have received, together with any interest that accrued on the unpaid property taxes to the date of recovery. Any borrower recovering damages under this section shall be entitled to reasonable attorney fees at trial and on appeal as determined by the court in addition to costs and necessary disbursements. [1975 c.337 §11; 1979 c.703 §15; 1981 c.897 §18]

86.265 Effect of lender violation of ORS 86.205 to 86.275. A violation of ORS 86.205 to 86.275 by a lender shall render the lender's security protection provision voidable at the option of the borrower, and the lender shall be liable to the borrower in an amount equal to:

(1) The borrower's actual damages or \$100, whichever is greater, and

(2) In the case of any successful action to enforce the foregoing liability, the court costs of the action together with reasonable attorney fees at trial and on appeal as determined by the court if the court finds that written demand for the payment of the borrower's claim was made on the lender not less than 10 days before the commencement

of the action. No attorney fees shall be allowed to the borrower if the court finds that the lender tendered to the borrower, prior to the commencement of the action, an amount not less than the damages awarded to the borrower. [1975 c.337 §14; 1981 c.897 §19]

86.270 ORS 86.205 to 86.275 inapplicable to certain loan agreements; notice to borrower. ORS 86.205 to 86.275 shall not apply to a real estate loan agreement which is serviced or held for sale within one year by a mortgage servicing company neither affiliated with nor owned in whole or in part by the purchaser and which is made, extended or held by a purchaser whose principal place of business is outside this state; provided that if the purchaser requires a lender's security protection provision, prior to entering into such agreement, the mortgage servicing company shall furnish the borrower a statement in writing, which may be set forth in the loan application, that the mortgage servicing company is not required by the laws of this state to pay interest on the lender's security protection provision, and specifically informing the borrower why the borrower is not entitled to interest on the account. [1975 c.337 §15]

86.275 Severability. If any section of ORS 86.205 to 86.275, or the application of any section to any real estate loan agreement shall be held invalid, the remainder of ORS 86.205 to 86.275, and the application of ORS 86.205 to 86.275 to any real estate loan agreement other than the one or those to which it is held invalid, shall not be affected thereby. [1975 c.337 §12]

86.310 [Amended by 1955 c.21 §1; repealed by 1961 c.726 §427]

86.315 [1953 c.700 §2; repealed by 1961 c.726 §427]

86.320 [Repealed by 1961 c.726 §427]

86.330 [Repealed by 1961 c.726 §427]

86.340 [Repealed by 1961 c.726 §427]

86.350 [Amended by 1955 c.182 §1; repealed by 1961 c.726 §427]

86.360 [Repealed by 1961 c.726 §427]

86.370 [Amended by 1957 c.404 §1; repealed by 1961 c.726 §427]

86.380 [Repealed by 1961 c.726 §427]

86.390 [Repealed by 1961 c.726 §427]

86.400 [Repealed by 1961 c.726 §427]

CHATTEL MORTGAGES

86.405 Secretary of State to furnish statement of mortgages filed before September 1, 1963; fee. Upon the payment of a fee of 50 cents for each name to be searched for chattel mortgages filed under former ORS 86.370 or 86.390, prior to September 1, 1963, the Secretary of State shall furnish to any person applying therefor a statement of any mortgages noted on the indexes created un-

der former ORS 86.380, or if no mortgages are noted, a statement to that effect. All such fees received by the Secretary of State shall be promptly paid to the State Treasurer and placed in the General Fund. [1961 c.726 §409]

86.410 [Repealed by 1961 c.726 §427]

86.420 [Repealed by 1961 c.726 §427]

86.430 [Repealed by 1961 c.726 §427]

86.440 Discharge of mortgage recorded or filed with county recording officer. (1) Whenever any mortgage recorded or filed under the provisions of ORS 86.350 (1959 Replacement Part) is paid or otherwise satisfied, it shall be discharged by the indorsing by the owner of record upon the original instrument, if filed, or upon the margin of the record thereof, if recorded, of a notation, attested by the county recording officer, of such discharge, or by the filing with the recording officer of a certificate of such owner, executed and acknowledged with the same formalities as are prerequisite to the filing or recording of any such mortgage, showing the date of execution, date of filing or recording, and file number or volume and page of the record thereof, and that such mortgage has been fully discharged.

(2) Upon receipt of the fee prescribed by law the recording officer shall prepare such notation and attest the execution of it, or file such certificate in an appropriate place in the office of the recording officer. Upon the making of the entry or the filing of the certificate, the recording officer shall deliver the original mortgage to the mortgagor, or the personal representatives or assigns of the mortgagor, if such mortgage shall have been filed, and shall enter the word "satisfied," with the date thereof, opposite each entry of the mortgage in the index.

86.450 [Repealed by 1961 c.726 §427]

86.460 Discharge of mortgage filed with Secretary of State. In the event of the satisfaction or release of any chattel mortgage, a certified copy of which has been filed with the Secretary of State prior to September 1, 1963; the person so satisfying or releasing the mortgage shall send a duly executed discharge or certified copy thereof, with a fee of 25 cents, to the Secretary of State, who shall note such discharge in an appropriate column of the index kept by the Secretary of State. All such fees received by the Secretary of State shall be promptly paid to the State Treasurer and placed in the General Fund. [Amended by 1961 c.726 §407]

86.470 Discharge, assignment and foreclosure of mortgages on chattels registered and licensed by Department of Transportation. The recording officer of counties having less than 50,000 population

on the last day of each calendar month, and the recording officer of counties having more than 50,000 population on the last day of each calendar week, shall notify the Department of Transportation, upon forms to be provided by the department, of the partial or full satisfaction, assignment or foreclosure during such period of all mortgages theretofore certified to the department prior to September 1, 1963, as formerly provided in ORS 86.390. The notice shall completely identify the mortgage so satisfied, assigned or foreclosed; and the department thereupon shall note on each index margin such satisfaction, assignment or foreclosure. [Amended by 1961 c.726 §408]

86.480 [Repealed by 1961 c.726 §427]

86.490 [Repealed by 1961 c.726 §427]

86.500 [Amended by 1955 c.30 §1; repealed by 1961 c.726 §427]

86.510 [Repealed by 1961 c.726 §427]

86.520 [Repealed by 1961 c.726 §427]

INVESTMENTS; FEDERAL HOUSING ADMINISTRATOR

86.610 Power of banks, fiduciaries and others to make loans secured by property insured by Federal Housing Administrator. Banks, trust companies, savings and loan associations, trustees, guardians, conservators, executors, administrators, other fiduciaries and all other persons, associations and corporations, subject to the laws of this state, may make such loans, secured by real property or leasehold, as the Federal Housing Administrator insures or makes a commitment to insure, and may obtain such insurance. [Amended by 1967 c.359 §678; 1973 c.823 §93]

86.620 Investment of funds of banks, fiduciaries and others in bonds and mortgages accepted by Federal Housing Administrator, debentures issued thereby, and obligations of national mortgage associations. Banks, trust companies, savings and loan associations, trustees, guardians, conservators, executors, administrators, other fiduciaries and all other persons, associations and corporations, subject to the laws of this state, may invest their funds, and the money in their custody or possession, eligible for investment, in bonds and mortgages on real property insured by the Federal Housing Administrator, in debentures issued by the Federal Housing Administrator, and in obligations of national mortgage associations. [Amended by 1967 c.359 §679; 1973 c.823 §94]

86.630 Eligibility of securities described in ORS 86.620 as security for deposits, investment or reserve of securities. Whenever, by statute, collateral is required as security for the deposit of

public or other funds, or deposits are required to be made with any public official or department, or an investment of capital or surplus, or a reserve or other fund is required to be maintained consisting of designated securities, the securities described in ORS 86.620 shall be eligible for such purposes.

86.640 Applicability of other laws requiring security or regulating loans and investments. No law of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount or form of such security, or prescribing or limiting the period for which loans or investments may be made, shall apply to loans or investments made pursuant to ORS 86.610 and 86.620.

TRUST DEEDS

86.705 Definitions for ORS 86.705 to 86.795. As used in ORS 86.705 to 86.795, unless the context requires otherwise:

(1) "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or the person's successor in interest, and who shall not be the trustee unless the beneficiary is qualified to be a trustee under ORS 86.790 (1)(d).

(2) "Grantor" means the person conveying an interest in real property by a trust deed as security for the performance of an obligation.

(3) "Residential trust deed" means a trust deed on property upon which are situated four or fewer residential units and one of the residential units is occupied as the principal residence of the grantor, the grantor's spouse or the grantor's minor or dependent child at the time a trust deed foreclosure is commenced.

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

(5) "Trust deed" means a deed executed in conformity with ORS 86.705 to 86.795, and conveying an interest in real property to a trustee in trust to secure the performance of an obligation owed by the grantor or other person named in the deed to a beneficiary.

(6) "Trustee" means a person, other than the beneficiary, to whom an interest in real property is conveyed by a trust deed, or such person's successor in interest. The term includes a person who is an employee of the beneficiary, if the person is qualified to be a trustee under ORS 86.790. [1959 c.625 §1; 1961 c.616 §1; 1975 c.618 §1; 1983 c.719 §1; 1985 c.817 §1; 1989 c.190 §1]

86.710 Trust deeds authorized to secure performance of an obligation; meth-

ods of foreclosure after breach. Transfers in trust of an interest in real property may be made to secure the performance of an obligation of a grantor, or any other person named in the deed, to a beneficiary. Where any transfer in trust of an interest in real property is made pursuant to the provisions of ORS 86.705 to 86.795 to secure the performance of an obligation, a power of sale is conferred upon the trustee. The power of sale may be exercised after a breach of the obligation for which the transfer is security; and a trust deed, executed in conformity with ORS 86.705 to 86.795, may be foreclosed by advertisement and sale in the manner provided in ORS 86.705 to 86.795, or, at the option of the beneficiary, may be foreclosed by the beneficiary as provided by law for the foreclosure of mortgages on real property. [1959 c.625 §2; 1961 c.616 §2; 1965 c.457 §1; 1975 c.618 §2; 1979 c.879 §1; 1983 c.719 §2; 1987 c.480 §1]

86.715 Trust deed deemed to be mortgage on real property. A trust deed is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of ORS 86.705 to 86.795, in which event the provisions of ORS 86.705 to 86.795 shall control. For the purpose of applying the mortgage laws, the grantor in a trust deed is deemed the mortgagor and the beneficiary is deemed the mortgagee. [1959 c.625 §21]

86.720 Reconveyance upon performance; liability for failure to reconvey; release of trust deed. (1) Within 30 days after performance of the obligation secured by the trust deed, the beneficiary shall deliver a written request to the trustee to reconvey the estate of real property described in the trust deed to the grantor. Within 30 days after the beneficiary delivers the written request to reconvey to the trustee, the trustee shall reconvey the estate of real property described in the trust deed to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by ORS 86.140 in the case of refusal to execute a discharge or satisfaction of a mortgage on real property. The trustee may charge a reasonable fee for all services involved in the preparation, execution and recordation of any reconveyance executed pursuant to this section.

(2) If a full reconveyance of a trust deed has not been executed and recorded pursuant to the provisions of subsection (1) of this section within 60 calendar days of the date the obligation was fully satisfied, then:

(a) If the obligation was satisfied by a title insurance company or agent or by pay-

ment through an escrow transacted by the title insurance company or agent, upon the written request of the grantor or the grantor's successor in interest, the tender of reasonable charges and the compliance with the notice requirements of subsection (3) of this section, the title insurance company or agent shall prepare, execute and record a release of trust deed.

(b) In all cases not described in paragraph (a) of this subsection, upon the written request of the grantor or the grantor's successor in interest, the tender of reasonable charges and the compliance with the notice requirements of subsection (3) of this section, the title insurance company or agent may prepare, execute and record a release of trust deed.

(3) Prior to the issuance and recording of a release pursuant to this section, the title insurance company or agent shall give notice of the intention to record a release of trust deed to the trustee (except when the title company or agent is the trustee), grantor and beneficiary of record, or their successors in interest of record. Notice shall be effective upon receipt. Such notice shall:

(a) Provide that the parties to whom such notice is sent shall have a period of 30 days to send to the title company or agent their written objections to the execution and recording of the release of trust deed; and

(b) Be delivered by certified mail with return receipt and postage prepaid, addressed to the named interested parties at their last-known addresses.

(4) The release of trust deed shall recite on the first page that it has been executed and recorded pursuant to the provisions of this section. The release shall be properly acknowledged and shall set forth:

(a) The name of the beneficiary to whom the payment was made;

(b) The name of the original grantor of the trust deed and any successor in interest on whose behalf payment was made;

(c) The recording reference to the trust deed that is to be released;

(d) A recital that the obligation secured by the trust deed has been paid in full;

(e) The date and amount of payment;

(f) The date of receipt of notice required by this section; and

(g) A recital that no written objections were received by the title insurance company or agent.

(5) The release of trust deed executed pursuant to this section shall be entitled to recordation and, when recorded, shall be

deemed to be the equivalent of a reconveyance of a trust deed.

(6) The title insurance company or agent shall not record or cause to be recorded a release of trust deed when any of the following circumstances exist:

(a) The 30-day period following notice given under this section has not expired; or

(b) Written objection to such recordation has been received by the title insurance company or agent from any of the parties to whom notice was sent.

(7) The trustee, title insurance company or agent may charge a reasonable fee for all services involved in the preparation, execution, recordation and compliance with this section, to effect the release of trust deed.

(8) Subsection (2) of this section does not excuse the beneficiary or trustee from compliance with subsection (1) of this section.

(9) In addition to any other remedy provided by law, a title insurance company or agent preparing, executing or recording a release of trust deed shall be liable to any party for damages, including attorney fees, that any person may sustain by reason of the negligence or willful misconduct of the title insurance company or agent in connection with the issuance, execution or recording of the release pursuant to this section.

(10) As used in this section, "agent" means an authorized issuer of title insurance policies of a title insurance company who is licensed as an agent for that purpose pursuant to ORS chapter 744.

(11) Subsections (2) to (10) of this section shall be applicable only to full reconveyances of the property described in the trust deed and not to reconveyances of parts or portions of the property.

(12) Subsections (1) to (11) of this section are applicable to all trust deeds, whether executed before, on or after November 4, 1993.

(13) A title insurance company or agent is not required to prepare, execute and record a release of trust deed under subsections (2) to (11) of this section if the obligation secured by the trust deed was satisfied prior to November 4, 1993. [1959 c.625 §18; 1993 c.648 §2]

86.725 Time within which foreclosure must be commenced. The foreclosure of a trust deed by advertisement and sale or the foreclosure of a trust deed by judicial procedure shall be commenced within the time, including extensions, provided by ORS 88.110 and 88.120 for the foreclosure of a mortgage on real property. [1959 c.625 §20]

86.730 [1959 c.625 §§17,22; repealed by 1961 c.616 §8]

86.735 Foreclosure by advertisement and sale. The trustee may foreclose a trust deed by advertisement and sale in the manner provided in ORS 86.740 to 86.755 if:

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

(2) There is a default by the grantor or other person owing an obligation, the performance of which is secured by the trust deed, or by their successors in interest with respect to any provision in the deed which authorizes sale in the event of default of such provision; and

(3) The trustee or beneficiary has filed for record in the county clerk's office in each county where the trust property, or some part of it, is situated, a notice of default containing the information required by ORS 86.745 and containing the trustee's or beneficiary's election to sell the property to satisfy the obligation; and

(4) No action has been instituted to recover the debt or any part of it then remaining secured by the trust deed, or, if such action has been instituted, the action has been dismissed, except that:

(a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80, an action may be instituted to appoint a receiver or to obtain a temporary restraining order during foreclosure of a trust deed by advertisement and sale, except that a receiver shall not be appointed with respect to a single-family residence which is occupied as the principal residence of the grantor, the grantor's spouse or the grantor's minor or dependent child.

(b) An action may be commenced for the judicial or nonjudicial foreclosure of the same trust deed as to any other property covered thereby, or any other trust deeds, mortgages, security agreements or other consensual or nonconsensual security interests or liens securing repayment of the debt. [1959 c.625 §§4,5; 1965 c.457 §2; 1983 c.719 §3; 1985 c.817 §2; 1989 c.190 §2]

86.740 Notice of sale to be given to certain persons. (1) Subsequent to recording notice of default as provided in ORS 86.735 and at least 120 days before the day the trustee conducts the sale, notice of the sale shall be served pursuant to ORCP 7 D(2) and 7 D(3) or mailed by both first class and certified mail with return receipt requested, to the last-known address of the following persons or their legal representatives, if any:

(a) The grantor in the trust deed.

(b) Any successor in interest to the grantor whose interest appears of record, or of whose interest the trustee or the beneficiary has actual notice.

(c) Any person, including the Department of Revenue or any other state agency, having a lien or interest subsequent to the trust deed if the lien or interest appears of record or the beneficiary has actual notice of the lien or interest.

(d) Any person requesting notice as provided in ORS 86.785.

(2)(a) The disability, insanity or death of any person to whom notice of sale must be given under this section shall not delay or impair in any way the trustee's right under a trust deed to foreclose under the deed. If the disability, insanity or death occurs prior to the recording of notice of default, the notice shall be given instead to the guardian, the conservator of the estate of the person or the administrator or personal representative of the person, as the case may be, in the manner and by the time set forth in this section.

(b) If the disability, insanity or death of any person to whom notice of sale must be given under this section occurs on or after the recording of notice of default, the trustee shall, if and when the trustee has knowledge of the disability, insanity or death, promptly give the guardian, conservator of the estate or the administrator or personal representative, as the case may be, the notice provided in ORS 86.745. This notice shall be given by first class and certified mail with return receipt requested, to the last-known address of the guardian, conservator or administrator or personal representative.

(c) In the event there is no administrator or personal representative of the estate of the person to whom notice of sale must be given under this section, the notice may be given instead to the heirs at law or devisees of the deceased person in the manner and by the time set forth in this section. [1959 c.625 §6; 1961 c.616 §3; 1965 c.457 §3; 1973 c.823 §95; 1979 c.879 §2; 1983 c.719 §4; 1989 c.190 §3]

86.742 Failure to give notice of sale; action by omitted person; defense; pleading and proving knowledge of sale; attorney fees; exclusive remedy. (1) If the trustee fails to give notice of the sale to any person entitled to notice under ORS 86.740 (1)(c), and such person did not have actual notice of the sale at least 25 days prior to the date the trustee conducted the sale, such omitted person shall have the same rights possessed by the holder of a junior lien or interest who was omitted as a party defendant in a judicial foreclosure proceeding, and the purchaser at the trustee's sale or the

purchaser's heirs, assigns or transferees, shall have the same rights possessed by a purchaser at a sheriff's sale following a judicial foreclosure.

(2) The omitted person may also commence an action against the trustee in the circuit court in the county where the real property is located. In an action against the trustee, the omitted person shall be entitled to damages upon proof that:

(a) The trustee did not give notice of the sale to the omitted person in the manner required by ORS 86.740 (1)(c) and 86.750;

(b) A search of the record under the name of the grantor as it appears on the trust deed, or the name of the grantor's successor in interest, would have revealed the omitted person's interest;

(c) The omitted person could and would have cured the default under ORS 86.753; and

(d) The omitted person sustained actual damages as a result of such person's loss of the opportunity to cure the default under ORS 86.753 (1).

(3) In an action against the trustee under subsection (2) of this section, any defendant or third party defendant may move for dismissal on the ground that the omitted person would not or could not have cured the default and reinstated the trust deed if the omitted person had received the notice required by ORS 86.740 (1)(c). The court shall hold a hearing on such motion prior to any hearing on any motion for summary judgment, and prior to trial of the action. The court shall deny the motion only if the omitted person produces affidavits or other evidence sufficient for a reasonable jury to find, applying a standard of clear and convincing evidence, that the omitted person had the financial ability to cure the default under ORS 86.753 prior to the date of the trustee's sale, and that the omitted person would have done so had the omitted person received the notice required by ORS 86.740 (1)(c). If the court grants the motion to dismiss it shall award attorney fees pursuant to subsection (5) of this section.

(4) In any action against the trustee or any other party under this section the omitted person shall plead that the omitted person did not have actual knowledge of the sale at least 25 days prior to the date the trustee conducted the sale, but thereafter the defendant shall have the burden of proving that the omitted person did have such notice.

(5) In all suits brought under this section, the applicable court shall, upon entering judgment, allow as a part of the costs a reasonable amount for attorney fees at trial and on appeal.

(6) The remedies described in subsections (1) to (5) of this section shall be the sole remedies available to a person entitled to notice of foreclosure by advertisement and sale under ORS 86.740 (1)(c), who failed to receive such notice. Such a person's failure to redeem or to commence an action against the trustee within five years of the date of a trustee's sale under ORS 86.755 shall bar any action under this section or any other applicable law. [1985 c.817 §9]

86.745 Contents of notice of sale. The notice of sale shall set forth:

(1) The names of the grantor, trustee and beneficiary in the trust deed.

(2) A description of the property covered by the trust deed.

(3) The book and page of the mortgage records where the trust deed is recorded.

(4) The default for which the foreclosure is made.

(5) The sum owing on the obligation secured by the trust deed.

(6) The election to sell the property to satisfy the obligation.

(7) The date, time and place of the sale, which shall be held at a designated time after 9 a.m. and before 4 p.m. based on the standard of time established by ORS 187.110 and at a designated place in the county or one of the counties where the property is situated.

(8) The right under ORS 86.753 to have the proceeding dismissed and the trust deed reinstated by payment of the entire amount then due, together with costs, trustee's and attorney's fees, and by curing any other default complained of in the notice of default, at any time prior to five days before the date last set for the sale. [1959 c.625 §7; 1961 c.616 §4; 1965 c.457 §4; 1983 c.719 §5; 1985 c.817 §3]

86.750 Service and publication of notice; recording proof of compliance. (1) The notice prescribed in ORS 86.745 shall be served upon an occupant of the property described in the trust deed in the manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before the day the trustee conducts the sale.

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

(3) On or before the date the trustee conducts the sale, an affidavit of mailing notice of sale, proof of service (if any), and an affidavit of publication of notice of sale shall

be recorded in the official records in the county or counties in which the property described in the deed is situated. [1959 c.625 §8; 1961 c.616 §5; 1965 c.457 §5; 1979 c.879 §3; 1983 c.719 §6; 1985 c.817 §4]

86.753 Discontinuance of foreclosure proceedings after cure of default. (1)

Where a trustee has commenced foreclosure of a trust deed by advertisement and sale, the grantor, the grantor's successor in interest to all or any part of the trust property, any beneficiary under a subordinate trust deed, or any person having a subordinate lien or encumbrance of record on the property, may cure the default or defaults at any time prior to five days before the date last set for the sale. If the default consists of a failure to pay, when due, sums secured by the trust deed, the default may be cured by paying the entire amount due at the time of cure under the terms of the obligation, other than such portion as would not then be due had no default occurred. Any other default of the trust deed obligation that is capable of being cured may be cured by tendering the performance required under the obligation or trust deed. In any case, and in addition to paying the sums or tendering the performance necessary to cure the default, the person effecting the cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the obligation and trust deed, together with trustee's and attorney fees in the amount of:

(a) A total of \$550 for both trustee's fees and attorney fees, or the amount actually charged by the trustee and attorney, whichever is less, if the trust deed is a residential trust deed; or

(b) Reasonable attorney fees and trustee's fees actually charged by the trustee and attorney if the trust deed is not a residential trust deed. Any person entitled to cure the default may, either before or after reinstatement, request any court of competent jurisdiction to determine the reasonableness of the fee demanded or paid as a condition of reinstatement. The court may award attorney fees to the prevailing party. An action to determine reasonable attorney fees or trustee's fees under this section shall not forestall any sale or affect its validity.

(2) After cure of the default under subsection (1) of this section, all proceedings under ORS 86.740 to 86.755 shall be dismissed by the trustee, and the obligation and trust deed shall be reinstated and shall remain in force the same as if no acceleration had occurred. [1983 c.719 §11; 1985 c.817 §5; 1989 c.190 §4]

86.755 Sale of property. (1) The sale shall be held on the date and at the time and place designated in the notice of sale. The trustee may sell the property in one parcel

or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the trustee's sale. The attorney for the trustee, or any agent designated by the trustee or the attorney, may conduct the sale and act in the sale as the auctioneer of the trustee.

(2) The trustee or the attorney for the trustee, or any agent designated by the trustee or the attorney conducting the sale, may postpone the sale for one or more periods totaling not more than 180 days from the original sale date, giving notice of each adjournment by public proclamation made at the time and place set for sale. The proclamation may be made by the trustee, the attorney, or any agent designated by the trustee or the attorney.

(3) The purchaser shall pay at the time of sale the price bid, and, within 10 days following payment, the trustee shall execute and deliver the trustee's deed to the purchaser.

(4) The trustee's deed shall convey to the purchaser the interest in the property which the grantor had, or had the power to convey, at the time of the execution by the grantor of the trust deed, together with any interest the grantor or the grantor's successors in interest acquire after the execution of the trust deed.

(5) The purchaser at the trustee's sale shall be entitled to possession of the property on the 10th day following the sale, and any persons remaining in possession after that day under any interest, except one prior to the trust deed or created voluntarily by the grantor or a successor of the grantor, shall be deemed to be tenants at sufferance. All persons not holding under an interest prior to the trust deed may be removed from possession by following the procedures set out in ORS 105.105 to 105.168 or other applicable judicial procedure, provided that a person holding under an interest created voluntarily by the grantor or a successor of the grantor must first receive 30 days' written notice of the intent to remove that person served no earlier than 30 days before the date first set for the sale. Notices under this subsection shall be served by first class mail. "First class mail" for purposes of this section does not include certified or registered mail, or any other form of mail which may delay or hinder actual delivery of mail to the addressee.

(6) Notwithstanding subsection (2) of this section, except when a beneficiary has participated in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by proceedings in bankruptcy or for

any other lawful reason shall, after release from the stay, continue as if uninterrupted, if within 30 days after release the trustee gives amended notice of sale by registered or certified mail to the last-known address of those persons listed in ORS 86.740 and 86.750 (1) and to the address provided by each person who was present at the time and place set for the sale which was stayed. The amended notice of sale shall:

(a) Be given at least 20 days prior to the amended date of sale;

(b) Set an amended date of sale which may be the same as the original sale date, or date to which the sale was postponed, provided the requirements of ORS 86.740, 86.750 and this subsection are satisfied;

(c) Specify the time and place for sale;

(d) Conform to the requirements of ORS 86.745; and

(e) State that the original sale proceedings were stayed and the date the stay terminated.

(7) If the publication of the notice of sale was not completed prior to the date the foreclosure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other lawful reason, after release from the stay, in addition to complying with the provisions of subsection (6) of this section, the trustee shall complete the publication by publishing an amended notice of sale which states that the notice has been amended following release from the stay, and which contains the amended date of sale. The amended notice shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks, except that the required number of publications shall be reduced by the number of publications that were completed prior to the effective date of the stay. The last publication shall be made more than 20 days prior to the date the trustee conducts the sale. [1959 c.625 §9; 1965 c.457 §6; 1983 c.719 §7; 1985 c.817 §6; 1989 c.190 §5; 1989 c.506 §1]

86.760 [1959 c.625 §10; 1961 c.616 §6, 1965 c.457 §7; 1979 c.879 §4; repealed by 1983 c.719 §13]

86.765 Disposition of proceeds of sale. The trustee shall apply the proceeds of the trustee's sale as follows:

(1) To the expenses of the sale, including the compensation of the trustee, and a reasonable charge by the attorney.

(2) To the obligation secured by the trust deed.

(3) To all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority.

(4) The surplus, if any, to the grantor of the trust deed or to the successor in interest of the grantor entitled to such surplus. [1959 c.625 §11; 1965 c.457 §8]

86.770 Effect of sale. (1) A sale made by a trustee under ORS 86.705 to 86.795 shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under ORS 86.740 and 86.750 and of any other person claiming by, through or under such persons, and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of these persons shall not affect the validity of the sale as to persons so notified.

(2) Except as provided in subsection (4) of this section, no other or further action shall be brought, nor judgment entered for any deficiency, against the grantor or the grantor's surety, guarantor or successor in interest, if any, on the note, bond, or other obligation secured by the trust deed or against any other person obligated on such note, bond or other obligation after a sale is made:

(a) By a trustee under ORS 86.705 to 86.795; or

(b) Under a judicial foreclosure of a residential trust deed.

(3) Under a judicial foreclosure of a trust deed that is not a residential trust deed, notwithstanding the purchase money mortgage provisions of ORS 88.070 and 88.075, the judgment shall provide that if the sale proceeds are insufficient to satisfy the judgment, execution may issue, for any amount by which the unpaid balance of the obligation secured by the trust deed exceeds the net sale proceeds payable to the beneficiary.

(4) Nothing in this section shall preclude an action judicially or nonjudicially foreclosing the same trust deed as to any other property covered thereby, or any other trust deeds, mortgages, security agreements, or other consensual or nonconsensual security interest or liens covering any other real or personal property security for the note, bond or other obligation secured by the trust deed under which a sale has been made. [1959 c.625 §12, 13; 1965 c.457 §9; 1981 c.811 §1; 1983 c.719 §8; 1985 c.817 §7; 1989 c.190 §6]

86.775 Contents of trustee's deed to purchaser. The trustee's deed to the purchaser at the trustee's sale shall contain, in addition to a description of the property conveyed, a recital of the facts concerning the default, the notice given, the conduct of the sale and the receipt of the purchase money from the purchaser. [1959 c.625 §14]

86.780 Recitals in trustee's deed and certain affidavits as prima facie or con-

clusive evidence. When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under ORS 86.750 (3) shall be prima facie evidence in any court of the truth of the matters set forth therein, but the recitals shall be conclusive in favor of a purchaser for value in good faith relying upon them. [1959 c.625 §15; 1983 c.719 §12; 1985 c.565 §8]

86.785 Requests for copies of notice of default or notice of sale. At any time subsequent to the recordation of a trust deed and prior to a recording of notice of default under the deed, any person desiring a copy of any notice of default or any notice of sale under a trust deed as provided in ORS 86.740 (1) may cause to be filed for record in the county clerk's office of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale or default where service is made upon the trustee. The request shall contain the name and address of the person requesting copies of the notice or notices and shall identify the trust deed by stating the names of the parties to the deed, the date of recordation of the deed and the book and page where the deed is recorded. The county clerk shall immediately make a cross reference of the request to the trust deed, either on the margin of the page where the trust deed is recorded or in some other suitable place. No request, statement or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien or charge upon the property referred to in the trust deed. [1959 c.625 §16]

86.790 Qualifications of trustee; appointment of successor trustee. (1) Except as provided in ORS 713.012, the trustee of a trust deed under ORS 86.705 to 86.795 shall not be required to comply with the provisions of ORS chapters 707 and 709 and shall be:

- (a) Any attorney who is an active member of the Oregon State Bar;
- (b) A bank, trust company or savings and loan association authorized to do business under the laws of Oregon or the United States;
- (c) A title insurance company authorized to insure title to real property in this state, its subsidiaries, affiliates, agents or branches;
- (d) The United States or any agency thereof; or

(e) Escrow agents licensed under ORS 696.505 to 696.590.

(2) An attorney who is a trustee under paragraph (a) of subsection (1) of this section may represent the beneficiary in addition to performing the duties of trustee.

(3) At any time after the trust deed is executed, the beneficiary may appoint in writing another qualified trustee. If the appointment of the successor trustee is recorded in the mortgage records of the county or counties in which the trust deed is recorded, the successor trustee shall be vested with all the powers of the original trustee.

(4) A trustee or successor trustee is a necessary and proper party to any proceeding to determine the validity of or enjoin any private or judicial proceeding to foreclose a trust deed, but a trustee or successor trustee is neither a necessary nor a proper party to any proceeding to determine title to the property subject to the trust deed, or to any proceeding to impose, enforce or foreclose any other lien on the subject property.

(5) Nothing in ORS 86.705 to 86.795 imposes a duty on the trustee or successor trustee to notify any person of any proceeding with respect to such person, except a proceeding initiated by the trustee or successor trustee.

(6) A trustee or the attorney for the trustee or any agent designated by the trustee or the attorney may announce and accept a bid from the beneficiary whether or not the beneficiary is present at the sale. [1959 c.625 §3; 1967 c.359 §680; 1975 c.618 §2a; 1979 c.879 §5; 1981 c.192 §1; 1983 c.719 §9; 1989 c.190 §7]

86.795 Compensation of trustee. The charge of a trustee for the performance of powers and duties of foreclosure by advertisement and sale imposed under ORS 86.705 to 86.795 shall not exceed 50 percent of the compensation allowable to an executor or administrator under ORS 116.173 or a minimum charge of \$100. Such compensation shall be based upon the amount due on the obligation, both principal and interest, at the time of the trustee's sale. [1959 c.625 §19; 1961 c.616 §7; 1965 c.457 §10]

PENALTIES

86.990 Penalties. Violation of ORS 86.040 is punishable, upon conviction, by a fine not exceeding \$500 or imprisonment in the county jail not exceeding six months, or both. [Amended by 1961 c.726 §410]

MORTGAGES AND LIENS
