

Resolving safety & livability problems at REO (bank-owned) properties

December 2010

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Defining the problem, seeking advice

On October 27th, 2010, the third annual Problem-Solving Summit was held. The topic of discussion in the afternoon was foreclosed and vacant properties. As discussed at the Summit, NRT officers and CP staff have had challenges solving problems at these properties. The typical problems are:

- Squatting
- Transients camping in the yard
- Looting of fixtures
- Teens breaking in to party
- Younger kids breaking in to explore
- Buildings falling into disrepair, inside and out

Related concerns include:

- Frustrated neighbors
- Building is an eyesore and an attractive nuisance
- Presence of drugs, prostitution, and theft
- Fire hazard
- Young people at risk
- Uncontrolled liability
- Lost value

NRTs and CPs have found that it can be difficult to find a responsible party for these properties when the building is in foreclosure. There are times of apparent limbo, when it is not clear who owns the property. There are times when the owner (a bank) is identified, but it's difficult to find the right person at the bank. And, there are times when the right person at the bank is identified, but they don't make the requested changes (e.g. signing a trespass agreement, or securing the property).

Additionally, the City's Bureau of Developmental Services has suffered severe budget cuts over the past two years, greatly diminishing their ability to inspect and abate code violations at these properties.

At the October 27th Summit, these problems were discussed at length. A panel of experts in their field joined the NRTs and CP staff, including:

Jeffrey Bennett, an attorney specializing in landlord law
Matthew Hay, Umpqua Bank loss mitigation department
Jane Leo, government relations, Portland Metro Assn. of Realtors
Mike Liefeld, BDS manager of code compliance
Amanda Manning, agent at Gales Creek Insurance
Amber Moser, SE Neighborhood Deputy District Attorney
Margot Murphy, real estate broker specializing in bank-owned properties
David Woboril, Deputy City Attorney assigned to police

This document collects in one place the advice received on the day of the Summit, and the results of follow-up research done to date as a result of the discussion at the Summit.

Finding out who owns the property

Multnomah County Division of Assessment, Recording, and Taxation (referred to more commonly as “County Records”) is the best place to find out who owns a property. Portland Maps is not updated often enough to give you a definitive answer about a property’s ownership. There are numerous documents that would be recorded at County Records in relation to a property, and many of them are listed in Addendum C. Once these documents are submitted to the records office, they are recorded very quickly. There is not much of a lag time.

When a property is going into foreclosure, a “Notice of Default” is sent to the owner/borrower/resident, and is the first document recorded at the county. The Notice of Default includes the date the property will be sold if the owner/borrower/resident does not remedy the default. On the date the property is sold, a “Trustee’s Deed” is issued to the buyer. In between when the Notice of Default is recorded and when the Trustee’s Deed is recorded, there may be a period of limbo when no one will willingly take responsibility for the property.

A visit with manager Cindy Swick and supervisor Ron Weldon at County Records yielded information about how to seek up-to-date information about property ownership.

- Before you call County Records, you will need to go on PortlandMaps.com to find the lot, block, and subdivision for the property. In PortlandMaps, look under the Assessor tab at the “Property Description” section. County Records looks things up more easily with this information than by street address.
- If you simply want to know who the “owner on record” is for a single property, call County Records Customer Service line at 503-988-3326.
- If you want to know if any papers have been filed recently on the property, call the County Records Office at 503-988-3034. You could ask if a Notice of Default has been filed, and if so, the date of sale, name of the trustee, and their phone. Usually, the date of sale and the trustee name are available, but the phone number is not.
- If you want to know anything more than the above, or if you have multiple properties you want to know about, or if you want copies of any of the documents filed, you need to go in person to the County Records Research Room. There you will find self-serve computers where you can look up more detailed information and see the documents that have been recorded. Print outs are 25 cents each. Someone does staff the room in case you need some help with the computers, but they cannot do the research for you.
- If you want to find out if someone is up-to-date on their property taxes, visit www.multcoproptax.org, and use the guest login to do a search. This site is also a good source for up-to-date ownership information.

Finding a responsible party once you find the entity that owns the property

NRTs and CP staff have complained that finding out that a bank owns a property does not mean their search for a responsible party is over. They tell of calling multiple people and departments in a bank, and hitting dead ends repeatedly.

At the Summit, Matthew Hay explained that many banks were caught somewhat unprepared as the recession resulted in a wave of foreclosures. Most did not have adequate staffing or procedures to deal with the volume of work. While most banks have caught up by developing divisions to deal with the work, one may still have difficulty finding the right person who can help you with a problem property. To get to the right person faster, Matthew recommends asking for any of the following divisions when you call a bank: foreclosure, REO, loss mitigation, collections, legal, or compliance.

He also recommended walking into a local branch of a bank and presenting a formal written complaint letter on letterhead. Most banks have a policy of responding to written complaints within a certain number of days. Such a complaint could be presented when one is trying to find the right person to talk to, or when one has found that person and is trying to convince them to act.

Matthew also explained that although a bank may own a property, they may have contracted with a “servicer” to look after the property in a number of ways. A servicer might be another bank. Servicers may process mortgage payments, and they may take care of vacant properties, among other duties as agreed between the owner and the servicer. So, while you may find that a certain bank is the owner of a property, you may have to find the servicer to locate a responsible party who can help you with a problem at the property.

Margot Murphy is often hired by banks to manage and sell foreclosed properties, which in bank- and real estate-speak are called “REO properties” for “real-estate owned.” She said that she and some other realtors will, immediately upon being given responsibility for a property, place a sticker in a front window with their contact information. Look for these types of stickers when addressing issues at a vacant or foreclosed house.

CP staffer Frank Silva is working with City attorney David Woboril to identify a list of major banks that would likely own numerous foreclosed properties in Portland. They plan to approach those banks and find out who would be responsible parties for Portland, creating a list of them, and disseminating it. In addition, they will communicate to those responsible parties the importance of being responsive to City officials when contacted about these properties.

Convincing the responsible party to take action

NRTs and CPCs have a range of techniques that they use to convince property owners and managers to take responsible actions for their properties. Examples include appealing to a sense of neighborliness, or to a desire to protect an asset, or to avoid legal action by the City. All of these techniques can be used once a responsible party is found.

Matthew Hay said at the Summit that banks care a lot about how they are perceived by the local community, especially now that the industry's reputation has taken such a hit with the economic crisis. For this reason it might help to have community members/neighbors of a vacant house to put additional pressure on the bank.

Amanda Manning advised the Summit group that it is difficult and expensive to get insurance on a vacant property due to the higher likelihood of problems there. She said that if an insurer is informed that their insured is not adequately caring for their property, the insurer's likely response is a 30 day cancellation notice. The insurer does not want preventable claims.

The most accurate source for finding out who insures a property is a subscription-based nationwide database run by LexisNexis named CLUE (Comprehensive Loss Underwriting Exchange). PPB has an existing account with LexisNexis. CP manager Stephanie Reynolds is looking into which PPB division has the account and whether it can be utilized by NRTs to look up insurers of problem properties.

Looking at the big picture

State Representative Lew Fredrick has drafted a bill that would better enable municipalities to hold banks responsible for problems at foreclosed properties. The bill, HB 3657, passed the House in February 2010. In the past month since the Summit, several City bureaus have become interested in the bill, including PPB, ONI, BDS. CP manager Stephanie Reynolds and Code Compliance manager with BDS Mike Liefeld are meeting with the City's Office of Government Relations on 12/6 to see how the City can advocate for passage of the bill. CP staffer Mark Wells is working with several community members in North Portland who would provide powerful testimony on how neglected REO properties have impacted their neighborhoods.

See Addendum D for the text of Fredrick's bill. State Rep. Tina Kotek, from the district next to Lew Fredrick's, is also interested in the bill.

<http://www.leg.state.or.us/frederick/>

Apparently, title companies send lists of REO properties to the Housing Bureau. Phil Willis-Conger and Ben Yeager collate and map the addresses to create a broad view of the number and locations of foreclosed properties in Portland. CP manager Stephanie Reynolds has sent a request to them to see if those lists may be shared.

CP staffer Frank Silva has done research on what other jurisdictions are doing about this issue. Highlights include efforts to prevent foreclosure in the first place, and also to resolve problems at already-foreclosed properties.

- Indio, California passed a registration and maintenance ordinance requiring banks and lenders to maintain and register all vacant foreclosed properties with the City.
- The Village of Bellwood, Illinois has a similar ordinance. Bellwood also retains an attorney who provides free advice and community seminars to residents facing foreclosure.
- Richmond, California has an ordinance that allows them to fine banks \$1,000 a day, up to \$30,000 for failing to maintain foreclosed properties.
- The State of Ohio has recruited 1,300 volunteer attorneys to help homeowners negotiate settlements with lenders in order to avoid foreclosure.
- Dearborn, Michigan requires that board-ups be "decorative."
- Atlanta, St. Louis, Cleveland, and Genesee County, Michigan all have established "land bank" programs, in which a branch of local government purchases abandoned properties and turns them back into usable properties, thereby stimulating economic development and neighborhood revitalization.

Whether or not Lew Fredrick's bill is passed at the state level, the City might want to consider passing an ordinance.

Contacts for REO property issues

Name	Role	Contact info
Janet Arenz	Community member interested in topic	503-339-9076 janet@oregonalliance.org
David Barenberg	City Government Relations	503-823-3011 davidbarenberg@portlandoregon.gov
Jeffrey Bennett	Private attorney- landlord/tenant law	503-255-8795 bennett@warrenallen.com
Chris Duffy	Community member interested in topic- Chair of Arbor Lodge NA	(971) 506-0541 chrisduffy@alna@yahoo.com
Matthew Hay	Umpqua Bank loss mitigation department- advice about working with banks	503-624-4272 matthewhay@umpquabank.com
Jane Leo	Portland Metro Assn. Realtors, government relations- access to hundreds of realtors	503-459-2163 jleo@pmar.org
Mike Liefeld	City, BDS- Code Compliance Manager—oversees housing and nuisance inspections	503-823-7332 michael.liefeld@portlandoregon.gov
Amanda Manning	Gales Creek Insurance- advice about insurance for vacant properties	503-227-0491 x239 amanda@galescreek.com
Amber Moser	SE Neighborhood DA- knows about organized squatting, e.g. Take Back the Land	503-823-5044 amber.moser@portlandoregon.gov
Margot Murphy	Realtor, specializes in REO properties	503-481-9600 reopro@easystreet.net
Martha Pellegrino	City Government Relations- Director	503-823-4130 martha.pellegrino@portlandoregon.gov
Stephanie Reynolds	Crime Prevention Program Manager- interest in issue	503-823-2030 stephanie.reynolds@portlandoregon.gov
Frank Silva	Crime Prevention Coordinator- interested in issue	503-823-4257 frank.silva@portlandoregon.gov
Amy Stephens	Mayor's office volunteer- interest in issue	503-819-1415 amy@stephensmediaandpr.com
Cindy Swick	County Records manager	(503) 988-3326 x22034 cindy.a.swick@co.multnomah.or.us
Mark Wells	Crime Prevention Coordinator- interested in issue	503-823-4098 mark.wells@portlandoregon.gov
David Woboril	City Attorney's Office	503-823-4457 david.woboril@portlandoregon.gov
Joe Young	East NRT Officer- interested in issue	503-823-4811 joseph.young@portlandoregon.gov

Addendum A: 2009 Foreclosure Law Amendments/OR Senate Bill 952

Courtesy of Jeffrey S. Bennett, Attorney at Law, bennett@warrenallen.com

I. Purchaser's Limited Entitlement to Possession (ORS 87.755(5)(a))

A. Ten Days: The purchaser at the trustee's sale is entitled to possession of the property on the 10th day after the sale.

B. Tenant at Sufferance: A person that remains in possession after the 10th day under any interest, except an interest prior to the trust deed or an interest the grantor or a successor of the grantor created voluntarily is a tenant at sufferance.

C. ORS Chapter 105: The purchaser may obtain possession of the property from a tenant at sufferance by following the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

II. Notice 30 Days Before the Date First Set For The Sale (ORS 86.755(5)(b))

Except as provided in ORS 86.755(5)(c), at any time after the trustee's sale the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure to obtain possession of the property from a person that holds possession under an interest that the grantor or a successor of the grantor created voluntarily if, not earlier than 30 days before the date first set for the sale, the person was served with not less than 30 days' written notice of the requirement to surrender or deliver possession of the property.

III. Terminating the Tenancy After the Sale (ORS 86.755(5)(c))

A. Purchaser Bought Unit Occupied By Residential Tenant

1. Valid Rental Agreement Required: Tenant must hold under a tenancy that the grantor or a successor of the grantor created (a) voluntarily and (b) in good faith

2. Eviction Allowed: If the Tenant meets the foregoing tests, then the Purchaser may follow the eviction procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure to obtain possession.

B. Notice Required: Before the Purchaser can file an eviction action, then, after the sale, the Purchaser must terminate the tenancy in a written notice given to the person:

1. 60 Day Notice (For Fixed Term Tenancy): A 60 day notice of termination is required if the tenancy is a fixed term tenancy, as defined in ORS 90.100. ORS 86.755(5)(c)(A)

2. 30 Day Notice (For Month-to-Month or Week-to-Week Tenancy):

A 30 day notice of termination is required if

a. Type of Tenancy: The tenancy is a month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS 90.100, and

b. Prior Proof Before Sale: At least 30 days before the date first set for the trustee's sale the person provided the trustee with a copy of the rental agreement that established the tenancy or with other written evidence of the existence of a rental agreement, if the person cannot provide the rental agreement.

3. 30 Day Notice (For Fixed Term Tenancy When Purchaser Intends to Occupy Premises):

The tenancy is a fixed term tenancy for which the person has provided notice to the trustee that there is a written rental agreement that

established the tenancy, or other written evidence of the existence of a rental agreement, and the purchaser intends to occupy the property that is subject to the fixed term tenancy as the purchaser's primary residence.

4. Service of Purchaser's Notice to Tenants: A purchaser shall serve the foregoing notice by first class mail and not by certified or registered mail or a form of mail that may delay or hinder actual delivery of mail to the addressee. The notice is effective three days after the notice is mailed.

IV. Time Before Filing the Eviction Action (ORS 86.755(6)(d))

A purchaser may not commence an authorized eviction action before the later of:

- A. The 10th day after the trustee's sale;
- B. The date specified in a written notice of the requirement to surrender or deliver possession of the property if the notice is required by and is given to the person in accordance with the above stated rules;
- C. The date specified in a written notice of the purchaser's intent to terminate a tenancy if the notice is required by and is given to the person in accordance with the above stated rules; or
- D. The date on which the term of a fixed term tenancy ends.

V. Good Faith vs. Bad Faith:

The statutes are not designed to protect tenancies created in bad faith. The good/bad faith determination depends upon when the tenancy was created in relation to when the notice of sale was served. A month-to-month tenancy or a week-to-week tenancy that a grantor or a successor of the grantor first created after a notice of sale was served under ORS 86.750 is presumed not to be a tenancy created in good faith. A fixed term tenancy that a grantor or a successor of the grantor created after a notice of sale was served under ORS 86.750 is not a tenancy created in good faith.

VI. Post-Sale Creation of a Landlord/Tenant Relationship? (ORS 86.755(7)(a))

Notwithstanding the provisions of ORS 86.755(5)(c), and except as provided in ORS 86.755(7)(b), the purchaser is not a landlord subject to the provisions of ORS chapter 90 unless the purchaser:

- A. Accepts rent from the person who possesses the property under a tenancy described in subsection (5)(c) of this section;
- B. Enters into a new rental agreement with the person who possesses the property under a tenancy described in subsection (5)(c) of this section; or
- C. Fails to terminate the tenancy as provided in subsection (5)(c) of this section within 30 days after the date of the sale.

VII. Pseudo-Landlord For Purpose of Terminating Tenancy (ORS 86.755(7)(b))

The purchaser may act as a landlord for purposes of terminating a tenancy in accordance with the provisions of ORS 90.396.

VIII. Limited Liability

A. Non-Landlords Are Not Liable: Except as provided in ORS 86.755(8)(b), the purchaser is not liable to the person who possesses the property under a tenancy described in ORS 86.755(5)(c) for:

- 1. Damage to the property or diminution in rental value; or

2. Returning a security deposit. ORS 86.755(8)(a).

B. Post-Sale Landlords Are Liable: A purchaser that is a landlord under the provisions of ORS 86.755(7)(a) is liable to the person who possesses the property under a tenancy described in ORS 86.755(5)(c) for damage to the property or diminution in rental value that occurs after the date of the trustee's sale; or returning a security deposit the person pays after the date of the trustee's sale. ORS 86.755(8)(b).

IX. New Requirements for Notices of Sale (ORS 86.745)

A. New Notice Must Be Included With Notice of Sale

1. Recipients: The notice of sale must now include a notice addressed clearly to any person who occupies the property and who is or might be a tenant.

2. Required Information: The notice must:

- a. include contact information for the Oregon State Bar and a person or organization that provides legal help to individuals at no charge to the individual;
- b. include information concerning the right the person has to notice under ORS 86.755(5) and state that the person may have additional rights under federal law;
- c. be set apart from other text in the notice of sale; and
- d. be in substantially the following form:

B. Form:

NOTICE TO TENANTS:

If you are a tenant of this property, foreclosure could affect your rental agreement. A purchaser who buys this property at a foreclosure sale has the right to require you to move out after giving you notice of the requirement.

If you do not have a fixed-term lease, the purchaser may require you to move out after giving you a 30-day notice on or after the date of the sale.

If you have a fixed-term lease, you may be entitled to receive after the date of the sale a 60-day notice of the purchaser's requirement that you move out.

To be entitled to either a 30-day or 60-day notice, you must give the trustee of the property written evidence of your rental agreement at least 30 days before the date first set for the sale. If you have a fixed-term lease, you must give the trustee a copy of the rental agreement. If you do not have a fixed-term lease and cannot provide a copy of the rental agreement, you may give the trustee other written evidence of the existence of the rental agreement. The date that is 30 days before the date of the sale is. The name of the trustee and the trustee's mailing address are listed on this notice.

Federal law may grant you additional rights, including a right to a longer notice period. Consult a lawyer for more information about your rights under federal law.

You have the right to apply your security deposit and any rent you prepaid toward your current obligation under your rental agreement. If you want to do so, you must notify your landlord in writing and in advance that you intend to do so.

If you believe you need legal assistance with this matter, you may contact the Oregon State Bar and ask for the lawyer referral service. Contact information for the Oregon State Bar is included with this notice. If you have a low income

and meet federal poverty guidelines, you may be eligible for free legal assistance. Contact information for where you can obtain free legal assistance is included with this notice.

X. Application of Security Deposit or Prepaid Rent (Now Part of ORS Chapter 90):

A tenant who receives actual notice that the property that is the subject of the tenant's rental agreement with a landlord is in foreclosure may apply the tenant's security deposit or prepaid rent to the tenant's obligation to the landlord. The tenant must notify the landlord in writing that the tenant intends to do so.

XI. Effective Date

A. SECTION 6. "Section 4 of this 2009 Act and the amendments to ORS 86.745 and 86.755 by sections 1 and 2 of this 2009 Act apply to notices given under ORS 86.740 on or after the effective date of this 2009 Act and to proceedings or actions under ORS 105.105 to 105.168 that begin on or after the effective date of this 2009 Act.:

B. SECTION 7. "This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect 60 days after its passage."

Addendum B: Protecting Tenants at Foreclosure Act of 2009 (Federal)

Courtesy of Jeffrey S. Bennett, Attorney at Law, bennett@warrenallen.com

I. Section 702. Effect of Foreclosure on Preexisting Tenancy

Purchaser Assumes Property Interest Subject To Certain Limitations:

In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to...

A. 90 Day Notice: “The provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and”

B. Right to Remain For Full Term vs. 90 Day Notice Right When

Purchaser Will Occupy Unit: “The rights of any bona fide tenant, as of the date of such notice of foreclosure...

a. under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or b. without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1), except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.”

II. Definition of Bona Fide Lease or Tenancy

For purposes of this section, a lease or tenancy shall be considered bona fide only if—

A. Prohibited Persons: the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

B. Arms Length Transaction: the lease or tenancy was the result of an armslength transaction; and

C. Fair Amount For Rent: The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit’s rent is reduced or subsidized due to a Federal, State, or local subsidy.

(NOTE: (c) DEFINITION.—For purposes of this section, the term “federally-related mortgage loan” has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).)

III. Section 703. Effect of Foreclosure on Section 8 Tenancies

A. Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended—

(1) by inserting before the semicolon in subparagraph (C) the following: “and in the case of an owner who is an immediate successor in interest pursuant to

foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner–

“(i) will occupy the unit as a primary residence; and

“(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.” ; and

(2) by inserting at the end of subparagraph (F) the following: “In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not affect any State or local law that provides longer time periods or other additional protections for tenants.” .

IV. Section 704. Sunset

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2012.

V. Link

See: http://thomas.loc.gov/home/gpoxmlc111/s896_enr.xml

Addendum C: Definitions “in Plain English”

Courtesy of Jeffrey S. Bennett, Attorney at Law, bennett@warrenallen.com

Deed: This is the document that states who owns the property. Think of it like a title to a car.

Promissory Note: When you borrow money from a lender to buy property, this document memorializes your promise to pay that money back to the lender. The “lender” is usually, but not always, a banking institution.

Trust Deed: Also known as a “Deed of Trust.” This document gives the lender a security interest in the property. If the borrower doesn’t pay off the Promissory Note, or otherwise defaults in any of the borrower’s obligations (e.g., fails to pay insurance or taxes, fails to maintain the property, etc.), the lender can rely upon the Trust Deed as its basis for exercising its foreclosure rights.

Trustee: This is the person who has the right to foreclose if the borrower doesn’t comply with the payment obligations set forth in the promissory note and/or otherwise defaults.

Beneficiary: This is the person or entity who has the right to receive payments from the borrower.

Assignment of Beneficial Interest in Trust Deed: If the first lender assigns its right to collect money from the borrower to someone else, this document memorializes this assignment. So, if bank #1 assigns its right to collect the borrower’s payments to bank #2, then bank #1 will sign this document.

Appointment of Successor Trustee (if applicable): This document is used to appoint a new trustee.

Notice of Default and Election to Sell: This informs the buyer that the buyer is in default and that the property will be sold (via foreclosure) if the buyer doesn’t cure the default.

Affidavit of Mailing of Trustee's Notice of Sale: This will say that the Notice of Default and Election to Sell was sent via both first class and certified mail, that it was personally served, and that it was published for four consecutive weekly publications.

Trustee's Deed: Similar to the deed a home buyer obtains when he/she buys a house in a conventional manner, this is the deed that a buyer receives when the buyer purchases the property at a foreclosure sale.

Addendum D: Oregon House Bill 3657

75th OREGON LEGISLATIVE ASSEMBLY--2010 Special Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 137

A-Engrossed

House Bill 3657

Ordered by the House February 12
Including House Amendments dated February 12

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT
ACCOUNTABILITY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Prohibits owner of foreclosed residential real property from neglecting real property during periods of vacancy. Permits local government to assess civil penalty for each day during which owner fails to remedy conditions of neglect.

Sunsets January 2, 2014.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to the neglect of foreclosed real property; and
declaring an emergency.

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

SECTION 1. { + (1) As used in this section:

(a) 'Foreclosed residential real property' means residential property, as defined in ORS 18.901, that an owner obtains as a result of:

(A) Foreclosing a trust deed on the residential property;

(B) Receiving a judgment that forecloses a lien on the residential property; or

(C) Purchasing the residential property at a trustee's sale or a sheriff's sale.

(b) 'Neglect' means to fail or a failure to maintain the buildings, grounds or appurtenances or monitor the condition of foreclosed residential real property in such a way as to allow:

(A) Excessive growth of foliage that diminishes the value of adjacent property;

(B) Trespassers or squatters to remain on the foreclosed residential real property or in a structure located on the foreclosed residential real property;

(C) Mosquito larvae or pupae to grow in standing water on the

foreclosed residential real property; or

(D) Other conditions on the foreclosed residential real property that cause or contribute to causing a public nuisance.

(c) 'Owner' means a person, other than a local government, named in a trust deed or other instrument as the legal owner of foreclosed residential real property.

(2) An owner may not neglect the owner's foreclosed residential real property during any period in which the foreclosed residential real property is vacant.

(3) Subject to subsection (4) of this section, a local government may assess a civil penalty against an owner if the local government finds that the owner's foreclosed residential real property is located within the local government's jurisdiction and that the owner has violated subsection (2) of this section.

(4) A local government may assess a civil penalty under subsection (3) of this section only after the local government:

(a) Notifies the owner in writing that the local government has determined that the owner has neglected foreclosed residential real property located within the local government's jurisdiction, and in the notice:

(A) Describes the conditions of neglect that formed the basis for the determination;

(B) States that the local government may assess a civil penalty against the owner in an amount the local government specifies in the written notice and;

(C) Identifies the date by which the owner must begin to remedy the conditions of neglect that formed the basis for the determination and the date by which the owner must complete the remediation; and

(b) Mails the notice to the address provided for the owner in the trust deed or other instrument that is evidence of legal ownership of the foreclosed residential real property or, if the address is not current, posts the notice in a conspicuous location on the foreclosed residential real property.

(5)(a) Before assessing a civil penalty under this section, a local government shall:

(A) Allow an owner not less than 30 days to remedy the conditions of neglect that formed the basis of the determination, unless the local government makes a determination under paragraph (b) of this subsection; and

(B) Provide the owner with an opportunity to contest the assessment at a hearing. The owner must contest the assessment within 10 days after the date on which the local government notifies the owner of the assessment.

(b) If the local government determines that a specific condition of the foreclosed residential real property constitutes a threat to public health or safety, the local government may require an owner to remedy the specific condition in less than 30 days, provided that the local government specifies in the written notice the date by which the owner must remedy the specific condition.

(c) Subject to the provisions of this section, a local government may specify in the written notice a different date by which an owner must remedy separate conditions of neglect on the foreclosed residential real property.

(6)(a) A local government may not assess a civil penalty under

this section on or before the date specified in the written notice for the owner to complete the remediation. A civil penalty under this section may not exceed \$150 for each day during which the owner fails to remedy the conditions that formed the basis of the determination.

(b) In determining the amount of a civil penalty assessed under this section, a local government shall take into account an owner's timely and good faith efforts to remedy the conditions that formed the basis of the determination.

(c) A local government may not assess a civil penalty under both the provisions of this section and the provisions of a local ordinance or regulation.

(7) A local government shall direct moneys received from civil penalties assessed under this section for the purpose of establishing or continuing a nuisance abatement program.

(8) Except as provided in subsection (6)(c) of this section, this section does not preempt local government ordinances or regulations. + }

SECTION 2. { + Section 1 of this 2010 Act is repealed January 2, 2014. + }

SECTION 3. { + This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage. + }
