

# TRUST DEED FORECLOSURE ADVERTISEMENT AND SALE CHECKLIST

## APPLICABLE TO FORECLOSURES COMMENCED ON AND AFTER JANUARY 1, 2019

### INTRODUCTION:

Several minor changes to applicable statutes were made in 2019, which have little or no impact on trustee sale procedures. See HB 2530 (2019 Or Laws c.405 ); .

The only significant changes are found in HB 2530 (2019 Or Laws c. 405), effective January 1, 2020. This bill requires a statement in the notice required under ORS 86.756 (Danger Notice for residential trust deed foreclosure) that if the recipient is a veteran of the armed forces, assistance may be available from a county veterans' service officer or community action agency and contact information for the veterans' service officer or community action agency for the county where the recipient lives or contact information for the statewide 2-1-1 information system.

### A WORD ON TIME LINES:

The principal time constraint for non-judicial foreclosures is service of not less than 120 days before the sale date. This checklist suggests some time lines for compliance. A practitioner should consider setting internal deadlines for completion of specific tasks that will allow for some unexpected delays in meeting that primary objective.

### A WORD ON FORMS:

Some sample forms are included with this checklist. Some forms are available from independent publishers (for example, Stevens Ness, [http://www.stevensness.com/formsdept\\_main.htm](http://www.stevensness.com/formsdept_main.htm)). Practitioners should use care to use forms which comply with current statutory language. The author has not reviewed commercially available forms. Some other forms are included Chapter 23 of the Oregon Real Estate Deskbook (OSB Legal Pubs 2015).

Beyond following statutory language, the practitioner should consider augmenting the language required in the statutes to provide an evidentiary record demonstrating compliance with the foreclosure process. Recent years have seen a number of cases in which courts have held that a given non-judicial foreclosure procedure failed for one reason or another. For example, a number of eviction cases have resulted in the defendant retaining possession where the trustee conducting the sale was not appointed by the true beneficiary, or at least, where the evidence did not show that fact. Thus, it is prudent to put a recital in the Trustee's Deed regarding the appointment of the successor trustee. The passage of SB 381 suggests that it will be beneficial to recite facts concerning which addresses were "on file" at the time a relevant notice was given and to show mailing to all such addresses.

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## Step 1: Client Interview and Intake

- A. Run a conflicts check.
- B. Run a PACER search to determine if a bankruptcy stay applies.
- C. Conduct DMDC Military Verification Website search to determine if grantor(s) are on active military duty or were on active duty within one year before commencing foreclosure. [(www.dmdc.osd.mil/appj/scra/scraHome.do); Servicemembers Civil Relief Act; 50 USC sections 3901 et seq.].
- D. Search death indices to determine whether grantor has died.
- E. Resolution Conference Compliance:
  - 1. A trustee foreclosing a residential trust deed<sup>1</sup> must determine whether the beneficiary is exempt from the resolution conference requirement. (ORS 86.726(1)(b))<sup>√</sup>
  - 2. If exempt: confirm that beneficiary has filed a sworn affidavit with the Oregon Attorney General (DOJ), by January 31 for the year in which you commence a foreclosure. If beneficiary has not filed the affidavit, a sworn affidavit must be filed with the DOJ at the time the Notice of Default (NOD) is recorded. (ORS 86.726(1)(b)(A)(ii); OAR 137-110-0300).<sup>√</sup>
  - 3. If not exempt: Obtain the original Certificate of Compliance which beneficiary received from the Service Provider for the Oregon Foreclosure Avoidance Program (“OFAP”). Note that certificates expire; review the applicable expiration date for a certificate before proceeding. (See OAR 137-110-0010 to 0670)<sup>2√</sup>
- F. DUAL TRACK: Determine whether or not beneficiary has made a determination regarding eligibility for foreclosure avoidance measures, and if so, whether notice was given within 10 days of that decision. If no decision made, advise client on statutory requirements and timing of same. ORS 86.748(1).<sup>√</sup> This issue should be monitored so that an appropriate compliance affidavit can be recorded at least five days before the sale.
- G. Request from client in writing copies of all the following:
  - 1. Notice of any state agency lien against property or other lien not of record.
  - 2. Note, trust deed, any amendments, and all assignments of either one.

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<sup>1</sup> NOTE: See ORS 86.705(6); the recording date of the trust deed determines whether it is a “residential” trust deed.

<sup>2</sup> If beneficiary has completed resolution conference procedures without obtaining certificate of compliance, it will not be possible to conduct a non-judicial foreclosure. This checklist does not address the procedures for compliance with OFAP.

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- 3. Loan payment record and amount of default to date including any prepayment penalty triggered by acceleration. Check client's calculations for errors.
  - 4. Copy of lender's title insurance policy and legal description.
  - 5. A list of non-monetary defaults and cross-defaults to other loans with client.
  - 6. Any lease, subordination, and attornment agreements.
  - 7. A list of other debts owed by grantor to beneficiary.
  - 8. A list of known defenses to loan.
  - 9. Verification that the loan servicer has complied with all steps required by the servicing rules for "federally-related" mortgages. Review 12 CFR 1024.41(f) effective January 1, 2014, and modified effective October 19, 2017 (81 FR 72373).√
- H. Open file:
    - 1. Open file with sample checklists.
    - 2. Letter to client acknowledging receipt of file (sample 1).
    - 3. Confirm with client in writing amount to be covered by foreclosure guarantee (e.g., principal balance only).
    - 4. Order Trustee's Sale Guarantee / Litigation Guaranty from title company by telephone, e-mail, or letter (sample 2). The correspondences should instruct the title company to include the successor trustee as an "assured" in the guarantee since the successor trustee will be relying on the TSG in serving the TNOS and in disbursing any surplus under ORS 86.794. **[SET 10 DAY TICKLE FOR RECEIPT OF TSG]**

### Step 2: Review Deed of Trust Notice Requirements

- A. Required Notices: Review Trust Deed and Promissory Note for requirements for notices to debtor. Confirm that the amount of required notice is not affected by the manner of giving notice. If trust deed requires beneficiary's notice prior to acceleration or default, confirm that notice has been sent in accordance with delivery requirements of loan documents. If notice not sent, send notice letter (sample 3). If beneficiary sent letter, review letter for defects in substance, manner of delivery, and timing. **[SET TICKLE TO RESUME WORK ON FILE AFTER 31 DAYS IF NO RESPONSE TO DEMAND]**
- B. FDCPA: Usually, but not always, a trust deed encumbering residential property will secure consumer debt. Also, it is possible that a non-residential trust deed secures consumer debt. If trust deed secures consumer debt (see 15 USC §1692a(5))√, include

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applicable Fair Debt Collection Practices Act disclosure language in 31-day demand letter and subsequent notices to debtor.<sup>3</sup>

### Step 3: Appointment of Successor Trustee (ORS 86.713<sup>√</sup>) and Exemption Affidavit (ORS 86.726(1)(b)<sup>√</sup>)

- A. Prepare Appointment of Successor Trustee if attorney not already named trustee in recorded trust deed.
  - 1. Consider whether the firm or an individual lawyer should be the trustee. ORS 86.713(1)(b)(A)<sup>√</sup>.
  - 2. Review chain of ownership of the [note!! See, Brandrup and Niday cases!] beneficial interest in the trust deed to confirm that the proper party is appointing the successor trustee.<sup>4</sup> Confirm all written assignments of the beneficial interest have been recorded.
  - 2. Prepare the appointment document. Recite in the appointment document the ultimate facts that establish a valid appointment and send to client (with cover letter to client requesting signature and notarization) **[SET 5 DAY TICKLE FOR RETURN OF SIGNED APPOINTMENT]**.

### Step 4: Trustee's Sale Guarantee and Notice of Default

- A. Review Trustee's Sale Guarantee:
  - 1. Check whether names, dates, addresses, and legal descriptions on Guarantee match the trust deed, and whether the amount of coverage is accurate. Compare with the beneficiary's title policy and original vesting deed to grantor.
  - 2. If the title search or your own PACER search discloses a pending bankruptcy of the grantor or of any other person with an interest in the property prior to the commencement of foreclosure by the trustee, permission of the bankruptcy court must be obtained in order for the trustee to foreclose. (11 USC §362(d)) **[SET 45 DAY TICKLE TO CHECK ON STATUS OF RELIEF FROM STAY]**
  - 3. Check for tax liens or other unusual entries on Guarantee, e.g., ingress/egress issues, changes to property boundaries, etc. Obtain copies of relevant documents from title company.
  - 4. Run a conflicts check on parties who hold an interest in the property to be foreclosed.
  - 5. If foreclosing a "federally related" mortgage, check in with the client to verify sale is still a "go." If a loss mitigation application has been submitted during the

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<sup>3</sup> See *Ho v. ReconTrust Company NA*, 840 F3d 618 (9<sup>th</sup> Cir 2016), regarding applicability of FDCPA to purely foreclosure efforts.

<sup>4</sup> See, for example, *Bank of America NA v. Payne*, 279 Or App 239 (2016).

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foreclosure process, the foreclosure may not proceed to sale under some circumstances until specified steps are taken. See Step 1G, part 9, *supra*.

- 6. Fix date, time, and place of sale (at least 120 + 14 days for service)<sup>5</sup> **[BE SURE THIS DATE IS ON THE CALENDAR AND COMPLIES WITH ORS 86.771<sup>√</sup> AND 86.782(1)(a)<sup>√</sup>]:**
  - a. DATE:
  - b. TIME:
  - c. PLACE:<sup>6</sup>
- 7. Determine last day to cure. **[SET TICKLE 5 DAYS BEFORE SALE TO REVIEW FOR PAYOFF OR CURE]**
- 8. Letter to client asking if client has actual notice of liens or interests not of record (e.g., possession by a stranger to title).
- B. Prepare Trustee's Notice of Default and Election to Sell (ORS 86.752(3)<sup>√</sup>; ORS 86.771<sup>√</sup>) (Do not date until ready to record, keep notice in file until then.) (sample 4)
  - 1. Confirm that the names of parties listed in Schedule "B" of your TSG match those in the trust deed and assignment documents.
  - 2. Describe the missing payment(s) and describe other defaults if any:
    - a. Consider the need to get updated information from the beneficiary.
  - 3. Note that the NOD must include the tenant language specified in ORS 86.771(10).
- C. Record Documents and Request First Supplemental Guarantee (Date Down endorsement).

Send letter to title company for recording of the following documents and request first supplemental guarantee through date of recording of Notice of Default (sample 5). **[SET 5 DAY TICKLE FOR RECEIPT OF SUPPLEMENTAL REPORT]:**

Record in the following order:

- 1. Appointment of successor trustee.

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<sup>5</sup> Consider (a) fixing the date at least 145 days out to allow for unexpected delays and (b) setting sale on Monday, Tuesday or Wednesday to take advantage of one-time postponement for no more than two calendar days provided by ORS 86.782(2)(a)<sup>√</sup>. Note time and place restrictions in ORS 86.782(1)(a)<sup>√</sup>.

<sup>6</sup> Consider being more specific than merely "at the courthouse."

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- 2. Copy of Exemption Affidavit attached to affidavit of trustee (sample 6) (if exempt from resolution conference requirement), **OR** original Certificate of Compliance from OFAP (if not exempt). (ORS 86.752(4)√)
- 3. Notice of default and election to sell.
- D. Send copies to client.

### Step 5: Trustee's Notice of Sale

(Note: The Notice of Sale must be served on all parties no less than 120 days prior to the date of sale. Service is made personally on all occupants of the property in accordance with ORCP 7(D)(2) and 7(D)(3) (unless the posting procedure in ORS 86.774(1)(b)√ is used) and by mail to all other interested parties. ORS 86.774 could be read to require service only on one occupant. The safer practice is to serve one occupant and follow up with substituted service on all the other occupants.)

- A. Prepare Trustee's Notice of Sale based on information in notice of default and election to sell. Prepare the Notice to Grantor required by ORS 86.756√ if the trust deed is a residential trust deed (see form in statute) (the "Danger Notice").
  - 1. Attach an appropriate Fair Debt Collection Practices Act Notice if the trust deed secures consumer debt: either the long form or short form depending on whether the NOS is the first or a subsequent communication to the debtor. (sample 7).<sup>7</sup>
  - 2. Follow the statutory language in these notices. See contents specified in ORS 86.771(1) through (10), including the tenant notice.
- B. Compare parties named in Schedule "B" of your TSG against parties named on First Supplemental Trustee's Sale Guarantee. If additional parties are named in the supplemental, check conflicts, add parties to Notice of Sale list and serve or mail copies of Notice of Sale to parties.
- C. If foreclosing a "federally related" mortgage, check in with the client to verify sale is still a "go." If a loss mitigation application has been submitted during the foreclosure process, the foreclosure may not proceed to sale under some circumstances until specified steps are taken. See Step 1G, part 9, *supra*.
- D. Serve Trustee's Notice of Sale and Notice of Default and, if a residential trust deed, the "Danger Notice" per ORS 86.756√. Target service to be completed **130 DAYS BEFORE SALE INCLUDING SUBSTITUTE SERVICE**.
  - 1. Prepare a file sheet listing the persons and agencies to be served:
    - a. Grantor;

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<sup>7</sup> See note 3, *supra*, regarding applicability of FDCPA to this step.

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- b. All grantor's successors in interest, if any (Note: This includes successor of record and those of whose interest trustee or beneficiary has actual notice);
  - c. Parties listed as junior lien holders;
  - d. Person(s) requesting notice in writing;
  - e. Department of Revenue, if lien holder of record;
  - f. State agency holding lien of record, if any;
  - g. State agency or other person holding lien of which beneficiary has actual notice;
  - h. Any lessees.
- 2. Confirm addresses (and spellings of street names and individuals) by contacting the following.

**SPECIAL NOTE: 2017 Or. Laws c. 251 (SB 381) requires most notices to be sent to “all addresses on file.”**

- a. Individual: Division of Motor Vehicles (note charge).
- b. Corporation, Partnership or Other Business: Corporation Division for registered agent and date of incorporation (check if corporation dissolved and if dissolution was voluntary). Check assumed names. Online at [www.sos.state.or.us/corporation/bizreg/index.html](http://www.sos.state.or.us/corporation/bizreg/index.html).<sup>8</sup>
- c.: Bank or Credit Union: **Oregon** – Division of Finance & Corporate Securities, 1-866-814-9710 or see the DCBS web site;<sup>9</sup> **National** – Comptroller of the Currency 1-800-613-6743 or [www.occ.treas.gov](http://www.occ.treas.gov); also <http://www.ffiec.gov/nicpubweb/nicweb/SearchForm.aspx>.
- e. Government Agency: A practical approach is to contact agency for the person to serve. Review statute to confirm correct person to serve. See OSB CLE Creditors’ Rights and Remedies (“CRR”), Chapter 13, § 13.5-

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<sup>8</sup> Consider whether a business entity is organized under the laws of another jurisdiction, in which case you should check the appropriate registry for that jurisdiction. Sometimes judgment liens are in the name of a foreign entity which is not registered in Oregon, and sometimes a foreign entity holding the lien may have the same name as or a name similar to an Oregon entity. Serving the wrong entity will not result in foreclosure of the entity’s lien as to that creditor.

<sup>9</sup> Recently the DCBS web site has been undergoing revisions. Start at the DCBS home page: <http://www.oregon.gov/dcbs>. Then click on “DCBS Programs” on the top banner display. Then click on “Division of Financial Regulation” from the available programs list. Then, under the “Consumer” heading, select “Check a license.” From the available options under “Financial Industry” select “Banks and trust companies (state chartered)” or “Credit union directory” as appropriate. This will take you to a portal which will generate a document listing the banks or credit unions, with the information you need.

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5(c)(2) for mention of some statutes relating to service on government entities. See below regarding federal tax liens.

- f. Personal Representative or Conservatorship: Consult court records for name of personal representative or conservator and status of proceeding. For decedent with no personal representative appointed, see ORS 86.764(4)√. If you cannot identify all heirs of the grantor, you should be considering a judicial foreclosure coupled with an order authorizing service by publication.
- 3. Serve Trustee's Notice of Sale and Notice to Grantor.
  - a. Mail true copies of Trustee's Notice of Sale and Notice to Grantor by certified mail, return receipt requested, and by first class mail to all parties listed (staple receipts to list in file). Note that notices must be mailed to "all addresses" on file with the trustee for each person specified in ORS 86.764(2). The notice served by mail is effective when mailed. ORS 86.764(3)√ **[SET 21 DAY TICKLE TO CHECK FOR RETURNED MAIL AND TO CORRECT MAILING ADDRESSES IF NECESSARY]**
  - b. Prepare and execute Affidavit of Mailing showing service of the NOS on grantor, successor, junior lienholders, and persons requesting notice, including Department of Revenue or other state agency. Recite in the affidavit that the addresses are all the addresses on file with the trustee.
  - c. If there are Federal tax liens, check the current procedure for notifying the IRS. See OSB CLE Oregon Real Property Desk Book, Chapter 23, § 23.4-2.
  - d. Also prepare an Affidavit showing compliance with the "Danger Notice" provisions of ORS 86.756√ regarding notice to the Grantor and compliance with the service on occupants requirements of ORS 86.774√. Again, recite facts about "all addresses" on file.
  - e. Both affidavits must be signed by a person with personal knowledge, which may be the trustee or a staff person.
  - f. Personal or Posting service of Trustee's Notice of Sale on Occupant. ORS 86.774√.

**Special Note: If the Trustee has actual knowledge that the grantor is not the occupant of the residential real property, the Trustee shall also give the Danger Notice to the occupant of the property by both first class and certified mail with return receipt requested. See ORS 86.756(5)√.**

**Additional Note: If the grantor is the occupant, the grantor still must be served with the notice of sale in the manner set out in ORS 86.774√ in addition to service by certified mail under ORS 86.764√.**

- 1) Instruction letter and proof of service:



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- a) Prepare Proof of Service of Trustee's Notice of Sale Upon Occupant.
- b) Send letter to sheriff or letter to process server with Proof of Service of Trustee's Notice of Sale Upon Occupant (sample 8) (enclose 5 true copies and highlight last date of service on the instructions, allowing time for completion of notices of substitute service). **[SET TICKLER 3 DAYS TO CONFIRM SERVER'S RECEIPT OF DOCUMENTS]**
- 2) Note date of service. If server used posting procedure in ORS 86.774(1)(b)<sup>√</sup>, verify compliance with the statutory timelines.
- 3) If service is by substituted service:
  - a) Prepare Notice of Substituted Service and send with true copy of Notice of Sale by certified and regular mail.
- 4) If property is vacant, have server prepare affidavit of non-occupancy.
- 5) Be sure substituted service to occupant is mailed at least 120 days before sale date.
- E. Send status report to client and mail Trustee's Notice of Sale to client.
- F. **120 DAYS PRIOR TO SALE**, check to be sure all parties are served and that file contains Affidavits of Service and substituted service. If not all parties have been served, plan on a postponement (discussed below).

### Step 6: Publication of Trustee's Notice of Sale ORS 86.774(2)<sup>√</sup>

- A. 80 DAYS BEFORE SALE, send letter to newspaper for publication of Trustee's Notice of Sale once each week for four consecutive weeks (sample 9). Request tear sheets.
  - 1. Enclose true copy of Notice of Sale, but note that you may omit the tenant notice from the published version. (ORS 86.774(2)(b)<sup>√</sup>)
  - 2. Note: Publication must be in newspapers of general circulation in county in which land is situated. (ORS 193.010 et seq.) Check for newspaper of general circulation in county where land is situated. <http://www.orenews.com/member-directory> .
  - 3. Proofread the first published Notice of Sale against the notice sent to the newspaper. **[SET 40 DAY TICKLE for receipt of Affidavit of Publication]**
  - 4. Note: The last publication must be completed at least 20 days prior to sale.
- B. Report to the client that mail and personal service are complete and that publication has commenced (enclose copy of letter to newspaper). Forward billing for publication to client or cost advance.

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- C. If sale is to be held outside of the local area, arrange for agent to conduct sale (sample 10).

**Step 7: Second Supplemental Guarantee and Federal Tax Lien Notice; Notice of Determination**

- A. **40 DAYS BEFORE SALE**, send letter to title company requesting Second Supplemental Trustee's Sale Guarantee (sample 11). **[SET TICKLE 20 DAYS FOR RECEIPT OF REPORT]**
- B. **30 DAYS BEFORE SALE**, check Second Supplemental and call title company for federal tax lien filings between date of First Supplemental Guarantee and 30 days before sale.
  - 1. If federal tax lien has been filed, advise client and send Notice of Nonjudicial Sale and letter to IRS (see above).
  - 2. Notice of Nonjudicial Sale must be mailed to IRS **AT LEAST 25 DAYS BEFORE DATE OF SALE** by certified mail, return receipt requested. Execute affidavit of mailing and record.
  - 3. If the foreclosure involves a residential trust deed, and if the beneficiary has determined that grantor is not eligible for a foreclosure avoidance agreement or has not complied with a prior agreement, then beneficiary or its agent must mail a notice of that determination (the "dual track" notice") to the grantor not more than 10 days after making the determination. ORS 86.748. Prepare Foreclosure Avoidance Measure Notice (Form 20) and the Affidavit of Compliance (see Form 4a, which is not mandatory, as a sample) Forms found at:  
  
[http://www.doj.state.or.us/consumer/pages/foreclosure\\_mediation\\_forms.aspx](http://www.doj.state.or.us/consumer/pages/foreclosure_mediation_forms.aspx)
- a. If the beneficiary did not make such a determination, it may still be wise to prepare and record an affidavit stating that.

**Step 8: Notify Tenants to Vacate 30 DAYS BEFORE SALE ORS 86.782(6)(b)√**

(Note: Check with beneficiary re: eviction of tenants before proceeding with this step; confirm instructions in writing)

- A. Prepare 30-day Notice to Vacate notifying tenants to vacate the property 10 days after the date of the sale. (sample 12). **NOTE: If the property purchased at the trustee's sale is a dwelling unit subject to ORS chapter 90, a tenant's interest may not be terminated until 30 or 60 days after notice (depending on the term of the tenancy) under state law (ORS 86.782(6)(c) and (d)√) [ NOTE ALSO: The Federal Protecting Tenants at Foreclosure Act was revived on May 24, 2018, and became effective on June 23, 2018, under which bona fide tenants are entitled to a 90-day notice or to remain in possession for the unexpired term of their lease.]**
- B. Mail Notice by first class mail no earlier than 30 days before the date first set for the sale. **[SET TICKLER FOR 14 DAYS FOR RETURNED MAIL]**

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- C. Prepare and execute affidavit of mailing if desired for evidentiary purposes.
- D. Send letter notifying client Notice to Vacate has been served and requesting client to inspect premises 10 days after the date of sale if the client is the purchaser at the sale.

### Step 9: Record All Documents Prior to Sale ORS 86.774(3) and (4)<sup>√</sup>

- A. At least **15 DAYS PRIOR TO SALE**, send letter to title company (sample 13) enclosing the following documents, as applicable, for recording directing title company to record the documents immediately:
  - 1. Affidavit of Mailing of notice of sale (attach original of notice).
  - 2. Proof of Service of Notice of Sale on Occupant (may include Notice of Substituted Service and Proof of Mailing) or Affidavit of Service Attempts and Posting.
  - 4. Affidavit of Non-Occupancy, if unoccupied.
  - 5. Proof of Service of Notice of Sale on parties other than occupants, and Notice of Substituted Service and Proof of Mailing.
  - 6. Affidavit of Publication.
  - 7. Notice to government of nonjudicial sale (tax lien) and proof of mailing.
  - 8. Affidavit of Compliance (Form 4a) stating beneficiary has complied with requirements for beneficiary's notice of determination ("dual track" notice).
  - 9. Affidavit of non-military status.<sup>10</sup>
- B. [**SET 7 DAY TICKLE** to make sure title company acknowledges recording.] Check to make sure sale date is calendared. Conform file copy with date documents are recorded.
- C. [**SET 5 DAY TICKLE** for receipt of recorded documents.]

### Step 10: Prepare for Sale

- A. If there is eligible covenant holder involved (see ORS 86.782(1)(b) and (c)<sup>√</sup>), coordinate the sale process with the holder if it intends to bid for the property.
- B. **15 DAYS PRIOR TO SALE**, make all preparations for sale.
  - 1. Prepare script, leaving amount blank (sample 14). Include both street address and legal description of property.

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<sup>10</sup> The trustee must record all these affidavits **before the sale**, except that the Affidavit of Compliance with ORS 86.748(2)<sup>√</sup> must be recorded **at least 5 days before the sale**.

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- 2. Prepare Trustee's Deed leaving grantee and amount blank (check each item, especially grantor and legal description).
- 3. Copy and assemble original recorded documents; send copies to beneficiary (recording dates must show on copies).
- 4. Check recording dates:
  - a. Notice of Default recorded 120 days before date of sale?
  - b. Was service completed 120 days before sale?
  - c. Is recording complete?
  - d. Federal tax lien check complete?
  - e. Sale date on attorney calendar?
- 5. Compute fees and expenses and prepare Bid Statement (samples 15, 16). Get current costs from bookkeeper and pre-bills. Show beneficiary and attorney expenses separately. Include copying telephone and postage costs (do not overlook costs incurred after sale). Include recording costs for Trustee's Deed if paid by attorney.
- 6. Confirm copy of Affidavit of Compliance mailed to DOJ.
- 7. If foreclosing a "federally related" mortgage, check in with the client to verify sale is still a "go." If a loss mitigation application has been submitted during the foreclosure process, the foreclosure may not proceed to sale under some circumstances until specified steps are taken. See Step 1F, part 9.
- **C. At least 7 days prior to sale**, confirm that responses were sent for all written requests for statements of information under ORS 86.786.<sup>11√</sup>
- **D. Contact client regarding sale.**
  - 1. Confirm that default has not been cured.
  - 2. Request bid instructions in writing (if not already received). Must be received prior to sale. (Call 10 days before sale to confirm bid instructions. Make certain that costs of Sale Guarantee and publication have been included and note date and person you spoke with on computation sheet.)
  - 3. Include the amount due on sale.

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<sup>11</sup> Qualified requests must be made not later than 15 days before the date of sale by any of the following parties: the grantor, an occupant, a holder of a junior lien or any person interested in bidding at the sale. The information should be provided by mail, fax, or e-mail, as requested, at least 7 days before the date of sale. If response is made by mail, use both certified mail, return receipt requested, and first class mail.

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- 4. Include a copy of script for beneficiary's bid.
- E. If Sale is out of the local area, send script, bid statement and Trustee's Notice of Sale to agent who will conduct sale (sample 17). If bid instruction incomplete, send documents with blanks and inform the agent by telephone when instructions are received. **[TICKLE 10 DAYS]**
- F. Last day to cure is 5 days before sale. **[SET TICKLE TO REVIEW FOR CURE]**
- G. Call client **TWO DAYS BEFORE SALE** to confirm bid amount and that someone will be in attendance at sale if necessary to deal with competitive bidding.]
- H. Check PACER the morning of the sale to see if bankruptcy of any party served with NOS has been filed during pendency of foreclosure. If so, advise client and determine how to proceed in bankruptcy action.
- I. Conduct another DMDC Military Verification Website search to verify that grantor(s) are not on active military duty. Include screenshot of the status report for the name submitted. (see sample 18)

### Step 11: Conduct or Postpone Sale

- A. Conduct sale.
  - 1. Read script and accept highest bid for cash. ORS 86.782(1).<sup>12</sup>√
  - 2. Notify client by telephone that sale was conducted and outcome of sale.
- B. Postpone sale (other than due to stay).
  - 1. A postponement must be announced at the time, date and place of the sale and, if the postponement is for more than two calendar days, written notice of the postponement, along with an affidavit of mailing, must also be given to all parties who received the notice of sale and anyone attending the sale, by first class and certified mail. Written notice must be given at least 15 days before the new sale date. No written notice is required for a single postponement for not more than two calendar days made by announcement. (see samples 19, 22, 22A, 22B, 23).
  - 2. Calendar new sale date:
  - 3. **SET TICKLE FOR 30, 10, AND 2 DAYS BEFORE NEW SALE DATE.**
  - 4. **SET TICKLE FOR 150 DAYS AFTER ORIGINALLY SCHEDULED SALE DATE** to be sure sale is conducted within 180 day period.

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<sup>12</sup> Consider pre-qualifying bidders in attendance to ascertain they hold sufficient funds. You may want to postpone to verify funds, if needed. NOTE: You may only postpone the sale one time for no more than 2 days, without providing written notice.

## TRUST DEED FORECLOSURE ADVERTISEMENT AND SALE CHECKLIST

- 5. Request Third Supplemental Trustee's Sale Guarantee if sale is postponed to determine whether new federal tax liens have been filed between last supplemental report and 30 days before new sale date. (Follow Step 7)
- 6. Reinstatement. If loan is to be reinstated send Reinstatement and Payoff letters (samples 20, 21). If sale did not take place because the loan was reinstated, prepare and record a rescission of notice of default.
- C. Postpone Sale (due to bankruptcy or other stay) (samples 19, 22, 22A, 23)
  - 1. In the event of a bankruptcy filing or other stay, the sale must be postponed or rescinded, again by personal appearance at the time and place set for sale. The announcement should be to the effect that the sale has been stayed and will be rescheduled after termination of the stay.
  - 2. The person making the announcement must obtain the names and addresses of those in attendance so that they can receive notice of the new sale date.
  - 3. Unless the beneficiary has participated in obtaining a stay, after release from stay the foreclosure proceedings may continue as if uninterrupted if within 30 days after release the trustee sends amended notice of sale by registered or certified mail to the last known address of persons listed in ORS 86.764 and 86.774, and to the address provided by each person who was present at the time and place set for the sale that was stayed, and to the address provided by each member of the Bar who requests it and meets the requirements of ORS 86.782. Alternatively, if the trustee maintains an Internet website, the trustee may post a true copy or a link to a true copy of the amended notice of sale in lieu of the mailings to the other persons in attendance and members of the Bar.

### Step 12: Post-Sale

- A. **NOT MORE THAN 10 DAYS AFTER SALE**, consider the need to rescind sale.  
  
See ORS 86.86.782(4)√ for the conditions under which a trustee may rescind a sale and the procedures to be followed.
- B. **10 DAYS POST-SALE**, Trustee must execute and deliver Trustee's Deed to purchaser within 10 days following sale. ORS 86.782(3)√.
  - 1. Prepare Trustee's Deed. If client is the purchaser, coordinate recording of the deed. Otherwise, tender the deed to the purchaser. **[SET 10 DAY TICKLE FOR EXECUTION OF DEED]**
    - a. Use care in drafting the Trustee's Deed. See ORS 86.800√ and 86.803√. It may be best to include more recitation of facts than less, and to avoid conclusions in favor of direct statements of fact which demonstrate compliance with each necessary step in the foreclosure process.
  - 2. If your client is the purchaser who desires it, request an owner's policy of title insurance. **[SET 7 DAY TICKLE FOR RECEIPT OF RECORDED DEED AND POLICY]**

## TRUST DEED FORECLOSURE ADVERTISEMENT AND SALE CHECKLIST

- C. If another bid exceeded client's bid:
  - 1. See ORS 86.794√. Disposition of proceeds.
  - 2. Pay amount due to beneficiary, if required;
  - 3. Pay subordinate lien holders by priority if all are in agreement. Otherwise, file interpleader and let the court decide.
  - 4. Pay surplus, if any, to grantor.
- D. Eviction of occupants (if your engagement includes steps to obtain possession).
  - 1. For residential properties occupied by tenants governed by ORS Chapter 90, see ORS 86.782(6)(c) through (h).
    - a. Provide written notice of change of ownership within 30 days. See ORS 86.782(5)√ for contents and manner of service.
    - b. Provide written notice of termination of tenancy. See ORS 86.782(6)(c)√.
  - 2. For other types of properties:
    - a. Grantor occupied property: Call client to determine if grantor has moved. If grantor moved, note in file. If grantor has not moved as of 10th day after sale date and the client wants the grantor out, proceed with eviction proceedings. See ORS 86.782(6)(a)√.
    - b. Non-ORS Ch 90 tenant occupied property: Verify whether or not 30-day notice was given before sale; if not, provide notice. See ORS 86.782(6)(b)√. If occupant not out after expiration of notice period (or after 10th day after sale if later), proceed with eviction.

### Step 13: Closing File

- A. Letter to client (sample 24)
  - 1. Enclose copies of all recorded documents and original trustee's deed.
  - 2. Enclose statement for services and costs.
- B. Cancel Note. Cancel original note or complete affidavit and indemnification if beneficiary has not submitted the original trust deed and note (prevent resale of documents)
- C. Close file

(Thank you to \_\_\_ for reviewing and updating this practice aid.)

**TRUST DEED FORECLOSURE  
ADVERTISEMENT AND SALE CHECKLIST**

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# SAMPLE DOCUMENTS TO FOLLOW

**SAMPLE 1 - LETTER TO CLIENT ACKNOWLEDGING RECEIPT OF FILE (step 1)  
TRUST DEED FORECLOSURE CHECKLIST**

[Date]

[Client]

Re: [Matter]

[Client Name]

This will acknowledge that we have received from you your file in the above-captioned matter for non-judicial foreclosure.

I have ordered the appropriate foreclosure report from the title company and will proceed as soon as we review that report. I understand that you wish the policy limits to be in the amount of the outstanding principal since you will order an owner's policy, if necessary, after sale in the amount of the property's fair market value. Please advise if my understanding is incorrect.

Very truly yours,

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**SAMPLE 2 – LETTER (OR E-MAIL) TO TITLE COMPANY (step 1)  
TRUST DEED FORECLOSURE CHECKLIST**

[Date]

[Title Company]

Re: [Matter]

Please refer to the trust deed recorded on \_\_\_\_\_ as [instrument no. / Book & Page no., etc.] in the records of \_\_\_\_\_ County in which [name of beneficiary] is Beneficiary and [name of grantor] is Grantor.

I have been retained to complete a non-judicial foreclosure of this trust deed. The unpaid principal balance is \$[amount]. Please forward me your Trustee's Sale Guarantee indicating [beneficiary] as insured party.

Please search for all liens (including city liens, if appropriate) and provide me with copies of all encumbrances.

Very truly yours,

**NOTE TO PRACTITIONERS: City lien searches may involve additional charges.**

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**SAMPLE 3 - 30-DAY DEMAND LETTER (step 2)**  
**TRUST DEED FORECLOSURE CHECKLIST**

[Date]

CERTIFIED MAIL RETURN RECEIPT REQUESTED

[Name and Address]

Re: [Insert appropriate information]

Dear [Name]:

This firm represents [insert client name(s)] ("creditor"). [Creditor] has requested this firm's assistance in enforcing the terms of your loan agreement. [Creditor's] records indicate that you are in default under the terms of the loan agreement. To bring your loan balance current, you must pay to [creditor], **on or before 31 days after the date you first receive an original or copy of this letter**,<sup>1</sup> the sum of \$[amount], as itemized below:

Payments: \$ [amount]

Late Charges: \$ [amount]

Taxes & Insurance: \$ [amount]

Foreclosure Guarantee: \$ [amount]

Attorney Fees: \$ [amount]

Total: \$ [amount]

If the default described above is not cured on or before the time specified above, then [creditor] will accelerate the balance due without further notice to you and may invoke its power of sale.

If you fail to cure the current default by [date next installment becomes due], the balance due will be \$[amount] because an additional installment will become due, and if paid after [date next late charge incurred], you will also need to pay an additional late charge of \$ .

[IF LOAN DOCUMENTS REQUIRE IT, INCLUDE THIS PARAGRAPH: You have the right to reinstate your loan with the [creditor] after acceleration and you have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and sale.]

[FOR CONSUMER CASES ONLY WHERE THIS IS YOUR FIRST COMMUNICATION]

We are attempting to collect a debt on behalf of the client named above (also referred to as the "creditor") and any information obtained will be used for that purpose. This debt is owed to the creditor in the amount described above. Under some circumstances, you may receive more than one copy of this notice. Unless you dispute the validity of this debt, or any portion thereof, within 30 days after your first receipt of the original or a copy of this notice, we will assume the

---

<sup>1</sup> NOTE: THE 31-DAY LANGUAGE IS APPLICABLE TO CONSUMER DEBT WHICH IS SUBJECT TO THE FDCPA.

**SAMPLE 3 - 30-DAY DEMAND LETTER (step 2)**  
**TRUST DEED FORECLOSURE CHECKLIST**

debt to be valid. If you notify us in writing within 30 days after your first receipt of the original or a copy of this notice that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or (if applicable) a copy of a judgment against you and a copy of the verification or (if applicable) the judgment will be mailed to you. We will provide you with the name and address of the original creditor, if different from the creditor named above, if you notify us in writing within 30 days after your first receipt of the original or a copy of this notice that you request such information.

Please give this matter your immediate attention.

Very truly yours,

[Lawyer's Name]

cc: [client name(s), etc.]

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**SAMPLE 4 – DEFAULT LANGUAGE (step 4)  
TRUST DEED FORECLOSURE CHECKLIST**

I.

Monthly principal and interest installments of \$[*amount*] each beginning [*date*], until paid, plus monthly escrow installments of \$[*amount*] each beginning [*date*], until paid; accrued late charges in the amount of \$[*accrued late charges*] as of [*date*], plus monthly late charges of \$[*monthly late charges*] each beginning [*date*], until paid; delinquent property taxes, if any; cost of foreclosure report; attorney's fees; together with any other sums due or that may become due under the Note or by reason of this foreclosure and any further advances made by Beneficiary as allowed by the Note and Deed of Trust.

II.

The principal sum of \$[*principal sum*] with interest on the principal balance at the rate of [*percent*] percent per annum, from [*date*], until paid; accrued late charges in the amount of \$[*accrued late charges*] as of [*date*], plus monthly late charges of \$[*monthly late charges*] each beginning [*date*], until paid; escrow advances in the amount of \$[*escrow advances*]; prepayment premium, if applicable; cost of foreclosure report; attorney's fees, trustee's fees, together with any other sums due or that may become due under the Note or by reason of this foreclosure and any further advances made by Beneficiary as allowed by the Note and Deed of Trust.

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**SAMPLE 5 - LETTER TO TITLE COMPANY REQUESTING RECORDING (step 4)  
TRUST DEED FORECLOSURE CHECKLIST**

[Date]

[Title Company]

Re: [Matter]

Enclosed are the following documents:

1. Appointment of Successor Trustee
2. [Affidavit of filing exemption affidavit] or [certificate of compliance]
3. Notice of Default and Election to Sell

Please record these documents as soon as possible in the order listed and forward to me a supplemental foreclosure report which includes the recording of these documents.

After recording, please call my office and let us know the date of recording and the recording numbers. Please have the recorder return the recorded documents directly to me.

Very truly yours,

Encs.

cc: [Client] (include copies)

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**SAMPLE 7 – NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES  
ACT (FDCPA) 15 USC SECTION 1692 (step 5)  
TRUST DEED FORECLOSURE CHECKLIST**

Long form (used if the NOS is the initial communication with the borrower):

We are attempting to collect a debt on behalf of the beneficiary named in the attached Trustee's Notice of Sale (also referred to as the "creditor") and any information obtained will be used for that purpose. This debt is owed to the creditor in the amount described in the notice. Under some circumstances, you may receive more than one copy of this notice. Unless you dispute the validity of this debt, or any portion thereof, within 30 days after your first receipt of the original or a copy of this notice, we will assume the debt to be valid. If you notify us in writing within 30 days after your first receipt of the original or a copy of this notice that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or (if applicable) a copy of a judgment against you and a copy of the verification or (if applicable) the judgment will be mailed to you. We will provide you with the name and address of the original creditor, if different from the creditor named above, if you notify us in writing within 30 days after your first receipt of the original or a copy of this notice that you request such information.

Short form (used if the NOS is after the trustee has given an initial notice):

This communication is from a debt collector.

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**SAMPLE 8 - LETTER TO SHERIFF (step 5)  
TRUST DEED FORECLOSURE CHECKLIST**

[Date]

[Sheriff or Process Server]

Re: [Matter]

LAST DAY TO EFFECT SERVICE: [Date]

Dear [Name]:

Enclosed are one original and four true copies of the Trustee's Notice of Sale in the above matter, along with an envelope addressed to "occupant" with postage prepaid.

Please serve the occupant(s) of the following address:

[Property Address] (the "Property")

If you cannot effect personal service on the occupant(s) of the Property on the first attempt, you shall post a copy of the Trustee's Notice of Sale in a conspicuous place on the Property on the date of the first attempt and follow the procedures specified in ORS 86.774. You shall not make a second attempt to effect service until a day that is at least two days after the first attempt.

If personal service cannot be effected on an occupant of the Property on the second attempt, you shall post a copy of the Trustee's Notice of Sale in a conspicuous place on the Property on the date of the second attempt, and then shall make a third attempt. You shall not make a third attempt to effect service until a day that is at least two days after the second attempt.

If personal service cannot be effected on the occupant(s) on the third attempt, you should mail a copy of the Trustee's Notice of Sale, bearing the word "occupant" as the addressee, to the Property address by first class mail with postage prepaid. An envelope with postage prepaid is provided.

Please confirm that the Property address is a single address and has no other addresses such as an apartment complex or a multi-tenant shopping center. If the Property has multiple addresses, please note all addresses you find.

Please make your Return of Service to my office and identify the occupant(s) served by name. Indicate any substituted service by calling our office and giving us the date and time of service and the person served. Please confirm that the person you serve is an occupant of the Property and not only at the address temporarily. If you are unable to effect personal service and effected service by posting on the Property, please provide us with an Affidavit of Service Attempts and Posting.

Please call us if you encounter any difficulties. Our check payable to your order in the appropriate amount is enclosed.

Thank you.  
Very truly yours,

Encs.

## **SAMPLE 8 - LETTER TO SHERIFF (step 5) TRUST DEED FORECLOSURE CHECKLIST**

**Note to Practitioners:** Although ORS 86.774 uses the word "occupant," the statute also refers to ORCP 7 D(2) and ORCP 7 D(3). ORCP 7 D(2)(b) requires service on a person over 14 years of age who resides at the dwelling house. See also *Option One Mortgage Corp. v. Wall*, 159 Or App 354 (1999).

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**SAMPLE 9 - LETTER TO NEWSPAPER (step 6)  
TRUST DEED FORECLOSURE CHECKLIST**

[Date]

[Newspaper]

Re: [Matter]

We enclose a true copy of the Trustee's Notice of Sale in the above matter. Please publish this notice once a week for four consecutive weeks in your newspaper. Please email me a proof of publication/ad for my review **prior to** the first publication date. Please thereafter begin publication on or before [insert date] and complete publication before [insert date] (no less than 20 days prior to the sale date). Please also send me the tear sheet from the first publication for review.

When publication is complete, please forward your bill and affidavit of publication to me.

Very truly yours,

Enc.

**Practitioner Note: Many newspapers publish only once a week. This may affect the ability to have the last publication date no less than 20 days prior to the sale date. Scheduling is critical, along with confirmation that the newspaper actually is a newspaper of general circulation in the county in which the land is situated. (See Step 6.)**

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**SAMPLE 10 - LETTER TO ATTORNEY CONDUCTING SALE (step 6)  
TRUST DEED FORECLOSURE CHECKLIST**

[Date]

[Attorney or other Agent to conduct sale]

Re: Trust Deed Foreclosure

[Beneficiary/Grantor]

Date of Sale:

Time of Sale:

Place of Sale:

Dear [Name]:

Thank you for agreeing to conduct the trustee's sale in this foreclosure for me for a fee of \$[amount]. This amount includes your fee to conduct the sale, telephone me immediately afterward with the results, and to mail me a confirming letter.

Please note the above time, date, and place on your calendar. Shortly before the sale, I will mail a script for you to read in conducting the sale, a bid statement showing how we computed the bid you will enter on behalf of the beneficiary, and a copy of the Trustee's Notice of Sale.

If anyone else bids at the sale, it must be for cash or certified funds in an amount greater than our bid statement. You must send me those funds in time for me to send the purchaser my Trustee's Deed within ten (10) days of the sale. This is covered in the material I will send you before the sale.

Very truly yours,

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**SAMPLE 11 - LETTER TO TITLE COMPANY REQUESTING  
SUPPLEMENTAL TITLE REPORT (step 7)  
TRUST DEED FORECLOSURE CHECKLIST**

[Date]

[Title Company]

Re: [Matter]

[Insert Name]:

Please send me a supplemental title report setting forth any change in the status of the title (including any Federal tax liens filed). The report should be as of [30 days before date of sale].

[Insert if applicable] In addition, please name [name] as an additional insured.

If there are Federal tax liens filed, please call my office immediately and leave this information.

Very truly yours,

cc: [Beneficiary]

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**SAMPLE 12 - LETTER TO NON-GRANTOR OCCUPANT (step 8)  
TRUST DEED FORECLOSURE CHECKLIST**

[Date]

FIRST CLASS MAIL ONLY

Occupants

[Property address] (the "Property")

Re: Notice of Intent to Remove Occupants Following Foreclosure

Our File No. [File No.]

Dear Occupant:

[Name of person or entity initiating foreclosure] has initiated a non-judicial foreclosure of a trust deed against the Property which you now occupy.

This letter is notice to you pursuant to ORS 86.782 that if [name of client] purchases the Property at the trustee's sale (that is, the foreclosure sale), now set to occur on [date], [name of client] intends to remove you from possession of the Property under the procedures set in ORS 105.105 to 105.165. The purchaser of the Property at the trustee's sale generally is entitled to possession of the Property on the 10<sup>th</sup> day after the trustee's sale. If you hold possession of the Property as the grantor or a successor of the grantor created voluntarily, you are required to surrender or deliver possession of the Property within 10 days after the trustee's sale. (Note that the trustee's sale periodically may be postponed.)

If you occupy the Property under a bona fide tenancy, you may have additional rights under applicable State or Federal law. If you believe that you are a tenant with rights under State or Federal law to additional notice, please communicate that information in writing to the undersigned. If any member of this household is an active or reserve member of any branch of the military or is a dependent of any active or reserve member of any branch of the military, please contact our office immediately.

This communication is an attempt to collect a debt, and any information obtained will be used for that purpose.

If you have any questions regarding this notice, you should consult with legal counsel.

Very truly yours,

cc: [client]

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**SAMPLE 13 - LETTER TO TITLE COMPANY ENCLOSING  
DOCUMENTS FOR RECORDING (step 9)  
TRUST DEED FORECLOSURE CHECKLIST**

[Date]

[Title Company]

Re: [Matter]

[Name]:

Enclosed are the following documents for recording: Trustee's Notice of Sale; Affidavit of Mailing Notice of Sale; Proof of Service [or Affidavit of Service Attempts and Posting]; Affidavit of Publication; Affidavit of Compliance; [list any other documents i.e., Affidavit of Non-Occupancy]. Please record these documents immediately if no change appears in the status of the record as previously disclosed in your foreclosure guarantee. If any change appears of record, do not record, but call me immediately instead.

After recording, please have all documents returned to my office with your final billing. Please call my office and let us know the date you record and the costs for recording.

Very truly yours,

Encs.

cc: [client]

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**SAMPLE 14 - BID SCRIPT (step 10)**  
**TRUST DEED FORECLOSURE CHECKLIST**

BENEFICIARY:  
DATE:  
TIME:  
GRANTOR:  
CITY:

**TRUST DEED FORECLOSURE SALE**

This is the time and place set for the Trustee's sale in the nonjudicial trust deed foreclosure proceeding in which \_\_\_\_\_ is the Beneficiary and \_\_\_\_\_ are the Grantors. The real property in question is located at [address] in the County of [county], Oregon, and the complete legal description is set forth in the Notice of Default and Election to Sell, which also describes the subject Deed of Trust and the default thereon giving rise to this foreclosure. Does anyone want me to read the legal description? [Read legal if requested.] The Notice of Default and Election to Sell was recorded in the Official Records of this County on [date] as [recording information].

I am the [attorney or agent for the Successor Trustee or Successor Trustee] of the Trust Deed in question and at this time, pursuant to the previously referred to Notice of Default and Election to Sell, I am offering for sale to the highest bidder for cash the interest in the aforescribed real property which the grantor or grantors had power to convey at the time of the execution of the subject Trust Deed.

This property is being sold on an "AS-IS" basis, without representations or warranties of any kind, express or implied. All bids must be unconditional net bids. The purchaser must pay all costs of transfer, including any title insurance and recording fees and will be responsible for all unpaid taxes and prior liens, if any.

The Beneficiary has submitted written bidding instructions to the Trustee. These instructions include an opening or minimum bid and may include instructions to submit additional bids on behalf of the Beneficiary. The Beneficiary may credit bid up to the amount of the indebtedness owing under the Trust Deed. The successful bidder must immediately pay the final bid amount in "cash or certified funds" payable to the Trustee or the Beneficiary.

On behalf of the Beneficiary, I now open the bidding with the minimum bid of \$[amount]. Does anyone wish to enter a higher bid?

There being no other bids, the bid of \$[amount] from [client] is declared to be the highest and best bid and is therefore accepted.

Date Signature  
Name

PLEASE NOTE: As [client] has an interest in the Trust Deed as beneficiary, representing unpaid principal, accrued interest, advances, and foreclosure costs and fees, it can enter a bid without having to tender cash. Should anyone else wish to enter a bid, however, it would have to be in

**SAMPLE 14 - BID SCRIPT (step 10)**  
**TRUST DEED FORECLOSURE CHECKLIST**

excess of the bid of [client] and be accompanied by cash or certified funds in the full amount of that bid, tendered to you at the time and place of sale.

Should you have any questions, or run into any problems, you can postpone the sale once for [insert period of time up to 2 days without the need for written notice- See ORS 86.782. Note: Although the statute allows this much time, you may want to limit authority to postpone to a shorter period]. For example, an hour, or "until \_\_\_\_\_ at 1 p.m. at this same place." This can be done by public pronouncement at the time of the sale, so long as the postponement does not exceed two consecutive days, and give me a call for further instructions.

Attorney Name  
Address  
Telephone Number

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**SAMPLE 15 - BID COMPUTATION FORM TRUSTEE'S SALE (step 10)  
TRUST DEED FORECLOSURE CHECKLIST**

PRINCIPAL					
INTEREST ON OBLIGATION					
LATE CHARGES					
TAXES ADVANCED					
RESERVE BALANCE					
TITLE EXPENSE					
RECORDING FEES					
SERVICE FEES					
PUBLICATION EXPENSE					
POSTAGE					
PHOTOCOPY EXPENSE					
LONG DISTANCE TELEPHONE CALLS					
MILEAGE EXPENSE					
DMV INQUIRIES					
TRUSTEE SALE GUARANTEE					
TRUSTEE'S FEE					
ATTORNEY FEES					
OTHER (Specify)					

**SAMPLE 15 - BID COMPUTATION FORM TRUSTEE'S SALE (step 10)  
TRUST DEED FORECLOSURE CHECKLIST**

**IMPORTANT NOTICES**

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**SAMPLE 16 - BID STATEMENT (step 10)  
TRUST DEED FORECLOSURE CHECKLIST**

TRUSTEE'S SALE

Trustee's sale held [date] at [time] on the front steps of the [county] County Courthouse, [city], Oregon.

PRINCIPAL BALANCE	\$	_____
INTEREST		_____
RESERVE BALANCE		_____
ADVANCED COSTS		_____
TOTAL	\$	_____

COSTS ADVANCED:

Attorney Fees	\$	_____
Trustee Fees		_____
Trustee Sale Guarantee		_____
Owner's Title Policy		_____
County Recorder		_____
Process Server		_____
Publication Expense		_____
Postage		_____
Long Distance Telephone		_____
Mileage		_____
Photocopies		_____
Motor Vehicles Division		_____
TOTAL	\$	_____

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**SAMPLE 17 - LETTER TO ATTORNEY [ OR AGENT] CONDUCTING SALE (step 10)  
TRUST DEED FORECLOSURE CHECKLIST**

[Date]

[Attorney]

Re: Trust Deed Foreclosure  
[Beneficiary/Grantor]  
Date of Sale:  
Time of Sale:  
Place of Sale:

Dear [Name]:

Here are the following documents for your use in conducting the above-referenced trustee's sale:

1. A script for you to read.
2. A copy of the bid statement & bid computation form showing how the beneficiary's bid was computed.
3. A copy of the Trustee's Notice of Sale.
4. Sale Checklist.
5. Receipt for Funds.

Immediately following the sale, please inform me by telephone of the result. Then follow up with a brief confirming letter to me. Please enclose the signed and dated Bid Script.

Thank you.

Very truly yours,

Encs.

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**SAMPLE 17 - LETTER TO ATTORNEY [ OR AGENT] CONDUCTING SALE (step 10)  
TRUST DEED FORECLOSURE CHECKLIST**

**SAMPLE 17A - SALE CHECKLIST (step 10)  
TRUST DEED FORECLOSURE CHECKLIST**

SALE DATE :

TIME :

LOCATION :

FILE :

PROPERTY ADDRESS:

CONDUCTED BY :

-----  
1. READING OF NOTICE OF SALE \_\_\_\_\_

2. OPENING BIDS: \$ \_\_\_\_\_

\$ \_\_\_\_\_

FINAL BID: \$ \_\_\_\_\_

FUNDS RECEIVED: Cash / Cashier's Check / Credit Bid

Endorsed: Yes / No      Receipt issued: Yes / No

BUYER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

3. TRUSTEE'S DEED

NAME: \_\_\_\_\_

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**SAMPLE 17A – RECEIPT FOR FUNDS (step 10)  
TRUST DEED FORECLOSURE CHECKLIST**

I, \_\_\_\_\_, as [choose: an employee of \_\_\_\_\_, Trustee, Trustee's Agent/Lawyer], hereby acknowledge receipt of \$\_\_\_\_\_ from \_\_\_\_\_ as payment for the debt and amount bid at the Trust Deed foreclosure sale held on \_\_\_\_\_ regarding the following Trust Deed. Trust deed's original parties, date and recording information are as follows:

Grantor:  
Trustee:  
Beneficiary:  
Dated:  
Recording Date:  
Recording Reference:  
Recording County:

DATED: \_\_\_\_\_

\_\_\_\_\_  
Signature

Comments:

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**SAMPLE 18 – CERTIFICATE OF NON-MILITARY SERVICE (step 10)  
TRUST DEED FORECLOSURE CHECKLIST**

CERTIFICATE OF NON-MILITARY SERVICE

STATE OF OREGON            )  
  ) ss  
County of \_\_\_\_\_ )

THIS IS TO CERTIFY that:

1. I am the Successor Trustee of the Trust Deed described below:

Grantor:  
Trustee:  
Beneficiary:  
Recorded:  
Date:  
[instrument no. / book and page etc.]  
\_\_\_\_\_ County Oregon Records

2. To the best of my knowledge and belief the Grantors of the above Trust Deed are not in the military service, or were not so within 367 days before the recording of the Notice of Default, or a dependent of a service member in military service based on the following facts made known to me by the Beneficiary or based on inquiry made by this office: (1) Grantor(s) address(es) are not part of a military installation; (2) the Beneficiary has not been provided with any information that indicated that Grantor(s) are members of any branch of military service, whether active or reserve, and a search of the Department of Defense Manpower Data Center (“DMDC”) did not indicate Grantors are on active duty (See DMDC printouts attached); and (3) notice was personally served Grantor(s) at an address that is not part of a military installation. [add such other facts as appropriate]

STATE OF OREGON            )  
  ) ss  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
by \_\_\_\_\_ as Successor Trustee.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

**SAMPLE 18 – CERTIFICATE OF NON-MILITARY SERVICE (step 10)  
TRUST DEED FORECLOSURE CHECKLIST**

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**SAMPLE 19 - SETOVER LETTER (step 11)  
TRUST DEED FORECLOSURE CHECKLIST**

[Date]

Re: [Beneficiary Name] / [Grantor Name]

Trust Deed Foreclosure Sale

Date: [Date], [Time]

Place: [Address], the [Name of County] County Courthouse

Dear [Name]:

The above-referenced foreclosure sale, currently scheduled for the date and time shown above, is being postponed. Please postpone the sale to [date], [time] at the same location. \*or\* [Please postpone the sale indefinitely due to the grantor filing for relief under the United States Bankruptcy Code or because of a lawful stay imposed by a court of competent jurisdiction.] Enclosed is a copy of the Trustee's Notice of Sale, the setover script, and the confirmation of postponement. Before beginning the set over, please inquire of anyone around the entrance if they are interested in this sale and obtain their name and address. Announce the postponement by reading the postponement script in a voice loud enough to be heard by any person in the area, even if no one is present.

Please contact me immediately after the postponement to confirm the results and provide me with the name and address of any party who appeared and witnessed the announcement of the postponement.

After the sale has been postponed, please return the confirmation of postponement and your billing statement to my attention.

If you have any questions, please do not hesitate to contact me.

Very truly your,

Encs.

cc: [Client]

**NOTE: If the sale is postponed for more than 2 calendar days, or is postponed more than once, written notice of the postponement must be given pursuant to ORS 86.782. Be sure to allow for adequate time for giving the required notice in choosing a postponement date.**

**SAMPLE 19 - SETOVER LETTER (step 11)  
TRUST DEED FORECLOSURE CHECKLIST**

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**SAMPLE 20 - REINSTATEMENT LETTER (step 11)  
TRUST DEED FORECLOSURE CHECKLIST**

[Date]

[Grantor]

Re: [Matter] [Loan No.]

Dear [Name]:

You have requested information regarding reinstatement of the above loan from [client] to you. Under ORS 86.778, a reinstatement must be made "prior to five days before the date last set" for the foreclosure sale. The foreclosure sale is now set for [date].

The amount necessary to reinstate the loan as of the date of this letter is \$[amount], itemized as follows:

[number] monthly installments of \$[amount] each (includes payments due through [date])	\$ _____
[number] late charges of \$[amount] each (includes late charge due for [date] payment)	\$ _____
Service fee(s)	\$ _____
Publication fee	\$ _____
Trustee's Sale Guarantee fee	\$ _____
Additional foreclosure costs	\$ _____
Anticipated cost to record Notice of Rescission	\$ _____
Trustee and Attorney fees	\$ _____
TOTAL	\$ _____

The above amount must be paid to the beneficiary in cash, or by money order, cashier check, certified check, or other form of certified funds. Please make a check payable to [beneficiary] and send it to:

[Address]

[Address]

[Address]

The amount set out above is good through and including [date]. Fees and costs will continue to be charged throughout the foreclosure process and the foreclosure will not be stopped until the loan has either been reinstated or paid off. You must contact this office to obtain an updated reinstatement amount after [date].

[Client] has instructed us to continue with the foreclosure proceedings until you have paid the amount necessary to reinstate the loan. If the reinstatement payment is made after [date], an additional monthly payment of [\$amount] should be included with your payment. If the reinstatement payment is made after [date], an additional late charge of [\$amount] should be included with your payment.

Please contact this office if you have questions regarding this letter. If you have questions of a legal nature, I suggest you contact an attorney of your choice.

Very truly yours,

cc: [Client]

**SAMPLE 20 - REINSTATEMENT LETTER (step 11)  
TRUST DEED FORECLOSURE CHECKLIST**

**NOTE TO PRACTITIONERS:**

**Include an appropriate FDCPA (Fair Debt Collections Practices Act) notice in this letter.**

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**SAMPLE 21 - PAY OFF LETTER (step 11)  
TRUST DEED FORECLOSURE CHECKLIST**

[Date]

[Name/Address]

Re: [Matter]

Dear [Name]:

We represent [client] in regards to the above-referenced secured loan executed by [borrower]. Pursuant to the written authorization of [borrower], the total amount due to payoff the secured loan through [date] is as follows:

Unpaid principal balance	\$	_____
Interest at [percent]% from [date] to [date]*		_____
Late charges		_____
Reserve balance		_____
Service fee		_____
Publication fee		_____
Trustee's Sale Gurantee fee		_____
Additional foreclosure costs		_____
Fee for recording Reconveyance		_____
Trustee and Attorney fees		_____
TOTAL	\$	_____

\*Interest continues to accrue at the rate of \$[amount] per day from [date] until paid in full. Fees and costs will continue to be charged throughout the foreclosure process and the foreclosure will not be stopped until the loan has either been reinstated or paid off. You must contact this office to obtain a final accounting before processing the payoff. The foreclosure sale is currently scheduled for [date].

The above amount must be paid in cash, or by money order, cashier check, certified check, or other form of certified funds. Please make your check payable to [name of law firm] and send it to us at the above address.

If we receive the above amount, this office will prepare and record a Deed of Reconveyance.

Please contact this office if you have questions regarding this letter.

Very truly yours,

cc: [Client]

**NOTE TO PRACTITIONERS:  
Include an appropriate FD CPA (Fair Debt Collections Practices Act) notice in this letter.**



**SAMPLE 21 - PAY OFF LETTER (step 11)  
TRUST DEED FORECLOSURE CHECKLIST**

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**SAMPLE 22 – SETOVER SCRIPT FOR SALE POSTPONEMENT (step 11)  
TRUST DEED FORECLOSURE CHECKLIST**

Reference is made to a certain trust deed ("Trust Deed") made, executed and delivered by \_\_\_\_\_, as grantor, to \_\_\_\_\_, as trustee, in favor of \_\_\_\_\_, as beneficiary, dated \_\_\_\_\_, and recorded on \_\_\_\_\_, as Recording No. \_\_\_\_\_, in the mortgage records of \_\_\_\_\_, County, Oregon.

The Trust Deed covers the following described real property situated in said county and state, to-wit:

*[legal description]*.

I am here to announce that this foreclosure sale is setover [to *[date]* at *[time]* at the same location] \*or\* [indefinitely due to the grantor filing for relief under the United States Bankruptcy Code or because of a lawful stay imposed by a court of competent jurisdiction]

If this foreclosure was postponed indefinitely, and in the event that the property is released from the stay, the trustee may give amended notice of sale pursuant to ORS 86.782(12).

YOU SHOULD OBTAIN THE NAME AND ADDRESS OF EACH PERSON WHO APPEARED AND WITNESSED THE ANNOUNCEMENT OF THE STAY.

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**SAMPLE 22A – WRITTEN NOTICE OF POSTPONEMENT (step 11)  
TRUST DEED FORECLOSURE CHECKLIST**

**NOTICE OF POSTPONEMENT OF THE SALE DATE  
OF THE TRUSTEE'S SALE  
PURSUANT TO ORS 86.782(2)(b)**

NOTICE IS HEREBY GIVEN that the foreclosure sale previously scheduled for [date], at the hour of [time], [place of sale], will now be sold on [date], **at the same time and place**, at public auction to the highest and best bidder, payable at the time of sale, the following-described real property, situated in the County of [county], State of Oregon, to-wit:

[legal description],

which is subject to that certain Deed of Trust dated \_\_\_\_\_, recorded \_\_\_\_\_, as Recording No. \_\_\_\_\_, records of \_\_\_\_\_ County, Oregon, from \_\_\_\_\_ **as Grantor**, to \_\_\_\_\_ as Trustee, to secure an obligation in favor of \_\_\_\_\_ **as Beneficiary**.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Successor Trustee  
Address:  
Telephone:

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**SAMPLE 22B – AFFIDAVIT OF MAILING NOTICE OF POSTPONEMENT  
(step 11)  
TRUST DEED FORECLOSURE CHECKLIST**

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**SAMPLE 23 – CONFIRMATION OF TRUSTEE'S SALE POSTPONEMENT (step 11)  
TRUST DEED FORECLOSURE CHECKLIST**

[Name of Attorney or Agent conducting sale]

Re: [Beneficiary Name] / [Grantor Name]

Date/Time of Sale:

Place of Sale:

On [date], I postponed the trustee's sale in connection with the above proceedings at the [place of sale].

The following persons were present:

\_\_\_\_\_, Agent for Successor Trustee

\_\_\_\_\_, Phone No. and Address: \_\_\_\_\_

\_\_\_\_\_, Phone No. and Address: \_\_\_\_\_

Attach additional pages if necessary.

At [time], I verified the time. I read the postponement script postponing the sale [to [date] at the same time and location] \*or\* [indefinitely due to the grantor filing for relief under the United States Bankruptcy Code or because of a lawful stay imposed by a court of competent jurisdiction].

\_\_\_\_\_  
[Name of Attorney or Agent]

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**SAMPLE 24 - LETTER TO CLIENT CONFIRMING SALE (step 13)  
TRUST DEED FORECLOSURE CHECKLIST**

*[Date]*

*[Client]*

Re: *[Matter]*

*[Client's Name]:*

This will confirm that the foreclosure sale took place as scheduled. As we have previously confirmed with you, the property reverted to the beneficiary. Enclosed is the Trustee's Deed which has been recorded in *[county]* County, Oregon. We have previously provided you with copies of other documents recorded or served during the foreclosure and will be happy to provide you with any additional copies or information regarding this foreclosure upon your request.

Enclosed is my statement for fees and costs. At this point, I will close my file, unless you notify me that you require additional assistance with this matter.

Thank you for the opportunity to have been of service.

Very truly yours,

Encs.

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