

NEW LEGISLATION – 2012
Oregon Land Title Association
Comments on Selected Bills

Affordable Housing

SB 1535 (Chapter 6, Oregon Laws 2012)

Effective February 27, 2012

Relates to affordable housing covenants

Authorizes affordable housing covenants contained in recorded master form instrument to be incorporated by reference in short form instrument recorded for real property transactions.

Mortgages and Trust Deeds

SB 1552B

Effective [on 91st day after governor's signature]

Relates to nonjudicial trust foreclosures

Requires that beneficiary or beneficiary's agent under residential trust deed send notice of mediation to grantor, that is, notice of a beneficiary's obligation to enter into mediation with grantor for purpose of agreeing to a foreclosure avoidance measure, such as a change in obligation or payment terms, short sale, deed in lieu of foreclosure or other measure that avoids foreclosure; specifies content for notice of mediation; requires that notice of mediation be given at least 60 days before notice of sale; requires that the Attorney General appoint a mediation service provider, who will assign a mediator when grantor confirms election to mediate; requires that mediation service provider schedule a mediation for no sooner than 45 days and no later than 90 days after the sending of the notice of mediation; requires that beneficiary or beneficiary's agent bring certain documentation to mediation; requires that grantor consult with a HUD-approved housing counselor before the mediation, unless exemption is justified by certain circumstances; requires that mediation service provider issue certification of compliance to beneficiary when beneficiary complies with mediation requirements; requires that mediation service provider's certification of compliance be recorded; limits charges to grantor for the mediation; establishes a \$100 surcharge on recording of a notice of default; provides exemption from surcharge for certain parties based on sworn affidavit; requires rule making by Attorney General for various forms, mediation guidelines, qualifications for mediators and other aspects of the mediation process.

Requires beneficiary or beneficiary's agent to send notice to grantor if beneficiary determines that grantor is not eligible for any foreclosure avoidance measure or has not complied with terms of foreclosure avoidance measure; requires that a copy of the notice be sent to Dept. of Justice on same day; requires recording of beneficiary's certification of compliance with this requirement at least 20 days before the foreclosure sale.

Permits grantor to request mediation before notice of default is recorded, using process that otherwise would apply after a notice of mediation.

Provides exemption from mediation requirement for certain beneficiaries; claim of exemption is limited to an individual, financial institution as defined in ORS 706.008, a mortgage banker as defined in ORS 86A.100, or a licensee as defined in ORS 725.010, if the beneficiary provides to the Attorney General a sworn affidavit stating that the beneficiary and its affiliates did not commence more than 250 nonjudicial and judicial residential foreclosures during the preceding calendar year; provides exemption if a grantor fails to confirm to mediation service provider that the grantor will enter into mediation by date that is at least 30 days before the scheduled date for the mediation.

Requires that a sale be postponed by announcement and by a new written notice that must be served on (not mailed to) all parties to whom a notice of sale was given at least 15 days before the new sale date; however, a sale may be postponed once for not more than two calendar days without written notice being required.

Revises statutory definition of “residential trust deed,” such that qualification depends not on grantor or family member residing in the property on the recording date of the notice of default but on the date “a default that results in an action to foreclose the obligation secured by the trust deed first occurs.”

Real Property Tax and Assessment

HB 4039B

Effective June 4, 2012

Relates to senior and disabled citizen tax deferral program

Requires lender to notify potential borrower of prohibition against pledging tax-deferred homestead as security for reverse mortgage; allows taxpayer to elect to credit payments to deferred taxes payable as result of determination of ineligibility; specifies classification of homesteads for purposes of determining county median real market value; requires Department of Revenue (DOR) to certify eligibility for deferral not less than once every three years; requires DOR to report to interim committee regarding claim form for homestead property tax deferral program for property tax year beginning on July 1, 2012; delays until property tax years beginning on or after July 1, 2013 the prohibition on deferral of homestead property taxes for certain homesteads pledged as security for reverse mortgages.

SB 1529A (Chapter 30, Oregon Laws 2012)

Effective June 4, 2012

Relates to real property taxation of fixtures

Requires Department of Revenue to establish separate classes of taxable property for real property machinery and equipment; eliminates requirement that certain separately owned fixtures be assessed separately; authorizes tax collector to collect delinquent property taxes on machinery and equipment in manner applicable to personal or real property; provides that taxes on machinery and equipment are a lien on real property on which machinery and equipment is located if machinery and equipment and real property are owned by the same person; tax collector may collect delinquent taxes on machinery and equipment as if they were real property and part of property where located; affects tax years beginning on or after July 1, 2012.

Recording

HB 4111A

Effective [upon signing by governor]

Relates to sale of real property to enforce lien for local improvements and to recording

Changes procedures for local government to sell land and improvements to enforce unpaid liens for final assessments for local improvements; specifies how proceeds of sale must be applied; establishes minimum sale price at the greater of (a) amount of assessment or (b) 75% of assessed value.

Section 4 amends ORS 205.234 to remove the requirement for including on the first page of an instrument the addresses of the grantor and grantee; restores this aspect of recording to the status in effect before January 1, 2012.