

OREGON LAND TITLE ASSOCIATION
LEGISLATIVE COMMITTEE
SUMMARY OF 2011 LEGISLATION OF INTEREST TO TITLE COMPANIES
September 23, 2011

The following bills, enacted by the 2011 Oregon legislature, may be of interest to title companies. The table below provides short summaries of the bills, arranged by category. It is followed by additional comments on those bills in the table bearing asterisks (*--*) and bolded bill number.

Bill	Description	Chapter	Eff. Date	Category
HB 3317	Modifies provisions regarding governance of homeowner associations.	532	01/01/12	CCRs & HOAs
SB 0619	Revises statutes regarding repurchase of condemned property not used for public purpose within 10 years.	426	06/17/11	Condemnation
HB 2541	Replaces state inheritance tax with estate tax on different terms.	256	09/29/11	Decedents' Estates
SB 0385	Modifies elective share of surviving spouse or Oregon registered domestic partner.	305	06/09/11	Decedents' Estates
SB 0815	Enacts Uniform Real Property Transfer on Death Act with revisions for Oregon.	212	01/01/12	Decedents' Estates
HB 2687	Expands court's authority to provide temporary support during proceedings for dissolution, separation or annulment.	115	01/01/12	Domestic Relations
HB 2677	Allows assignment of judgment to be signed by creditor's agent.	226	01/01/12	Judgments & Statutory Liens
HB 2692	Establishes conditions for website for legal notices in connection with execution sales; makes changes related to writs of execution.	195	01/01/12	Judgments & Statutory Liens
SB 0740	Requires that real property sold by sheriff pursuant to writ of execution be described by legal and by street address, if any.	429	01/01/12	Judgments & Statutory Liens
HB 2132	Modifies provisions of pilot program for transfer of development rights.	144	05/27/11	Land Use, Dev & Regul

Bill	Description	Chapter	Eff. Date	Category
SB 0294	Revises requirements related to conversion of manufactured dwelling park to subdivision and to a tenant's right to buy lot occupied by tenant.	503	06/23/11	Land Use, Dev & Regul
SB 0600	Modifies provisions related to leases of and easements over submerged and submersible lands.	713	01/01/12	Land Use, Dev & Regul
SB 0877	Modifies requirements for use of Oregon Coordinate System for land surveying.	179	06/01/11	Land Use, Dev & Regul
SB 0156	Delineates affirmative duties owed by real estate property manager to property owner.	158	05/27/11	Licensing
SB 0485	Authorizes Real Estate Agency to issue cease and desist order against person engaged or about to be engaged in professional real estate activity without a license.	557	06/28/11	Licensing
HB 2084	Permits DCBS to appoint advisory committee that represents persons likely to be affected by mortgage lending rules.	351	06/16/11	Mortgages & Trust Deeds
HB 2916	Prohibits lender who receives partial payment in a short sale from seeking payment of residual amount if lender reports to IRS that lender has canceled all or a portion of the debt; prohibition also applies to lender's assignee.	480	06/23/11	Mortgages & Trust Deeds
SB 0382	Requires construction lien claimants to send required notice of lien claim only to mortgagee or trust deed beneficiary whose name <u>and address</u> appear in the recorded mortgage or trust deed; revises ORS 205.234 such that the first page of any recorded instrument must contain names <u>and addresses</u> of grantor and grantee or \$20 surcharge will apply.	505	01/01/12	Mortgages & Trust Deeds

Bill	Description	Chapter	Eff. Date	Category
SB 0491	Modifies requirements for pre- and post-foreclosure notices to a bona fide tenant and provisions for termination of tenancy; applies to property subject to Residential Landlord and Tenant Act.	510	09/21/11	Mortgages & Trust Deeds
SB 0519	Establishes right for affordable housing covenant holder to purchase property at a non-judicial foreclosure, if property is a single residential unit and is subject to affordable housing covenant.	712	01/01/12	Mortgages & Trust Deeds
HB 2321	Authorizes public body to send notice by electronic mail if person provides email address and consents and if public body describes opt out procedure in each email and meets certain other requirements.	242	01/01/12	Public Bodies
HB 2100	Expands provisions by which Dept. of Human Services may record a request for notice of encumbrance or transfer by person who receives public assistance; provisions are expanded to the Oregon Health Authority; affects ORS 93.268, 411.694, 416.350 and other statutes.	720	08/05/11	Recording
HB 2693	Changes various provisions for recording of warrants, thereby shifting obligation for recording from sheriff to state agency.	661	09/29/11	Recording
HB 3195	Revises ORS 93.804 to permit electronic recording. This is an OLTA sponsored bill.	386	06/16/11	Recording
HB 2543	Substantially revises the Dept of Revenue senior & disabled citizen property tax deferral program; among the changes is a prohibition on giving a reverse mortgage when deferral amounts are outstanding.	723	09/29/11	RP Tax & Assessment

Bill	Description	Chapter	Eff. Date	Category
HB 2570	Changes provision in ORS 311.405 that protects BFP from lien of tax corrections to prior assessments; requires that BFP's acquisition must occur after tax roll is certified.	113	09/29/11	RP Tax & Assessment

COMMENTS ON SELECTED BILLS

Decedents' Estates

Oregon estate tax

HB 2541 (Or Laws 2011, Ch. 256, effective 9/29//11)

The bill replaces the state inheritance tax with an estate tax. The estate tax mirrors the federal estate tax with some differences that may increase or reduce the estate for tax purposes. The threshold for taxation is a taxable estate of \$1,000,000. The tax rate begins at 10 percent. It increases in nine steps to a maximum of 16 percent for that portion of the taxable estate above \$9,500,000. The tax takes effect on the decedent's death. If the gross estate (for federal estate tax purposes) exceeds \$1,000,000, a state tax return must be filed. The tax is payable, and a return must be filed, on the date that the federal estate tax is payable or, if no federal return is required, not later than nine months after the decedent's death. The tax applies to the estate of a decedent who dies on or after January 1, 2012.

Uniform Real Property Transfer on Death Act

SB 815 (Or Laws 2011, Ch. 212, effective 1/1/12)

The bill enacts the Uniform Real Property Transfer on Death Act with some modest changes. The Act provides, with respect to real property, a will substitute and a means for probate avoidance comparable to the pay-on-death designations that are available for securities (ORS 59.535 to 59.585) and bank accounts (ORS 708A.455 to 708A.515). The Act permits an individual to designate a beneficiary who will acquire title to specified real property upon the individual's death. To make the designation, the individual, referred to as the transferor in the Act, records a deed to the designated beneficiary. The deed may be for all or part of the transferor's interest. The beneficiary may be an individual or any legal or commercial entity. No interest passes until the transferor's death. A designation is revocable at any time before the transferor's death, but a revocation instrument must be recorded before the transferor's death. The Act applies to a transferor who dies on or after January 1, 2012. It applies to a transfer on death deed made before, on or after January 1, 2012.

Land Use, Development and Regulation

Manufactured dwelling park conversions

SB 294 (Or Laws 2011, Ch. 503, effective 6/23/11)

The bill revises requirements that the owner of a manufactured dwelling park containing 200 or more spaces establish a pro rata basis for a water service charge. The bill revises requirements relating to conversion to and installation of submeters in such facilities.

For a manufactured dwelling park that is subdivided, the bill enacts provisions related to the status of a tenant who declines to buy the lot but (with the developer's consent) continues to occupy the lot after tentative plan approval. The bill requires that the developer notify the Office of Manufactured Dwelling Park Community Relations of the Housing and Community Services Department of the tentative plan approval within a specified time period. When the park is being converted to a planned community subdivision, the developer must provide notice to tenants of certain matters related to the conversion. These provisions take effect on January 1, 2012.

Mortgages and Trust Deeds

Short sales

HB 2916 (Or Laws 2011, Ch. 480, effective 6/23/11)

The bill establishes an anti-deficiency provision when certain circumstances exist after a short sale. For an owner-occupied residence (one-to-four family), a lender who in a short sale has canceled all or a portion of a seller's debt may not pursue payment of the residual debt after the sale if the lender reports the debt cancellation to the Internal Revenue Service. The bill requires that the seller have from the lender written evidence of the lender's report to IRS. The prohibition also applies to an assignee of the lender.

Address requirements

SB 382 (Or Laws 2011, Ch. 505, effective 1/1/12)

The bill revises the requirements under the construction lien law regarding notices to a mortgagee or trust deed beneficiary. Notice is required only when the mortgagee's or beneficiary's address appears in the recorded instrument or an assignment. (The bill is silent about whether notice to an out of date address is sufficient when the recorded instrument contains a then-current address.)

By adding a cross reference to ORS 205.234, the bill – perhaps unintentionally – revises the first page requirements to require the addresses, as well as the names, of grantor and grantee for all recorded documents, not only for mortgages, trust deeds and their assignments. When the addresses fail to appear on the first page, the \$20 surcharge will apply. The surcharge may be avoided by using a properly completed recording cover sheet; however, that will generate an additional page charge of \$5.00.

Pre- and post-foreclosure notices to residential tenants

SB 491 (Or Laws 2011, Ch. 510, effective 9/21/11)

The bill revises the notice to residential tenants that must be included in a notice of sale for a nonjudicial trust deed foreclosure when the property is subject to the Landlord Tenant Act. This section of the bill takes effect on September 21, 2011, so it appears that a notice of sale served or mailed on or after that date should contain the revised form of notice, when the notice is required.

The bill revises the notice to residential tenants of change of ownership that must be given after the foreclosure sale by the buyer at the sale, when the property is subject to the Landlord Tenant Act and eviction is necessary to obtain possession. The notice must be given within 30 days after the foreclosure sale date and before or concurrently with service of a written termination notice when that is authorized. This section of the bill also takes effect on September 21, 2011, so it may apply to a sale that occurs within the preceding 30 days, that is, a sale that occurs on or after August 22, 2011. The bill also revises provisions for when the foreclosure buyer may seek to evict a tenant. Eviction is barred for a fixed term lease, unless the buyer intends to occupy the property as his or her principal residence. In that event or if the lease is a month-to-month or week-to-week lease, a 90 day termination notice is required. These provisions will change (to a 60 day or 30 day termination notice, depending on circumstances) effective January 1, 2015, so the bill contains revised pre- and post-foreclosure notices for use on and after that date.

Affordable housing covenant holder right to purchase at foreclosure sale

SB 519 (Or Laws 2011, Ch. 712, effective 1/1/12)

The bill establishes a right for an affordable housing covenant holder (under ORS 456.270) to purchase property at a non-judicial foreclosure, if the property is a single residential unit and is subject to an affordable housing covenant. The covenant holder may purchase at the foreclosure sale for the lesser of (A) the highest bid received other than a bid from the covenant holder, or (B) the sum of the amounts payable under ORS 86.765(1) and (2). The latter amounts are (1) the expenses of the sale, including the compensation of the trustee and a reasonable charge by the attorney, and (2) the obligation secured by the trust deed. If the covenant holder purchases the property, the sale extinguishes all interests as provided in ORS 86.770(1), except it will not extinguish an interest that, before the foreclosure, had priority over the covenant holder's interest.

The bill has no notice requirement, so it is not clear when the covenant holder should receive notice of the sale when its priority position is superior to the trust deed being foreclosed. (The usual 120 day notice requirement would apply if the covenant holder's interest is junior to the trust deed.)

Recording

State agency request for notice of transfer or encumbrance

HB 2100 (Or Laws 2011, Ch. 720, effective 8/5/11)

For some years the Department of Human Services has had authority to record a request for notice of transfer or encumbrance. A recorded request obligates a title company that discovers the request in a title

examination to notify DHS of a transfer or encumbrance for which the title company issues title insurance. The bill expands the authority for recording such a request to the Oregon Health Authority. The bill affects ORS 93.268, 411.694 and 416.350, among other statutes.

Electronic recording

HB 3195 (Or Laws 2011, Ch. 386, effective 6/16/11)

This bill facilitates electronic recording, that is, the submission of a digital image of a document, rather than the paper original, for recording in the county records. The bill authorizes a county to enter into an agreement with a third party who (1) creates a secure and restricted portal (electronic connection) for e-recording, (2) enrolls submitters for using the portal, (3) obtains assurances from them about submitting only images of documents with the requisite original signatures, and (4) establishes a submission protocol that meets the bill's requirement for the submitter to certify that the submitted document bears the requisite original signatures of signer and notary. OLTA sponsored this bill.

Taxes and Assessments

Senior and disabled citizen tax deferral program

HB 2543 (Or Laws 2011, Ch. 723, effective 9/29/11)

The bill revises substantially the Department of Revenue program for county property tax deferral for qualified senior and disabled citizens. All current participants will have to reapply to remain in the program and will have to meet new requirements. Revised requirements pertain to such circumstances as net worth, household income, years of occupancy and market value of the property. For those in the program, re-application is required every other year. When the taxpayer dies, there is no five year extension for the heirs to repay the deferral. Payment is due by August 15 of the calendar year after the property owner died (or upon sale, if that occurs sooner).

A property subject to a reverse mortgage is not eligible for the program. In fact, the bill states that a property for which deferral amounts are outstanding "may not be pledged as security for a reverse mortgage by any person." This prohibits a reverse mortgage even if it holds a position junior to the DOR lien for deferral amounts.