



# AGENDA

## 2013 OLTA Educational Seminar

March 16, 2013

Embassy Suites Hotel – Tigard, Oregon

8:00 - 8:15 am	Welcome	Bob Brandon	OLTA Education Committee Chair
8:15 - 9:00 am	CFPB Rules	Jyl Meier	Fidelity National Title & AEA President
9:00 - 9:45 am	Judicial Foreclosures	Jay Dobson John LaVeille	First American Title & OLTA President Chicago Title
9:45 - 10:00 am	Coffee Break		
10:00 - 10:45 am	Legislative Update	Cleve Abbe Jay Dobson	Lawyers Title
10:45 - 11:45 am	Red Flags for Detecting Signature & Document Falsifications	Jacqueline Joseph	Certified Forensic Document Examiner
11:45 - 12:45 pm	Lunch		
12:45 - 1:45 pm	Jeopardy Game Show	Bob Brandon	
1:45 - 2:05 pm	Closing Protection Letters	Alan Brickley	First American Title
2:05 - 2:25 pm	Endorsement Update	Alan Brickley	
2:25 - 2:45 pm	Reverse Mortgages	Mary Thuemmel	WFG National Title
2:45 - 3:05 pm	Coffee/Snack Break		
3:05 - 3:25 pm	Escrow & the Practice of Law	Pat Ihnat	Fidelity National Title
3:25 - 3:45 pm	Vesting Coverage Issues	Jeff Steffen	Old Republic National Title
3:45 pm	Seminar Adjourns		

## OREGON LAND TITLE ASSOCIATION 2013 EDUCATIONAL SEMINAR SPEAKERS

**Cleve Abbe** is State Counsel for Oregon, Fidelity National Title, Group, Inc. Cleve joined the Fidelity National Title Group in December 2008. He provides state counsel underwriting for Fidelity National Title Insurance Company, Chicago Title Insurance Company and Commonwealth Land Title Insurance Company. He also provides escrow and other assistance to the direct operations of Fidelity family companies in Oregon and underwriting assistance for Oregon agents of the Fidelity family insurers. Cleve is a key contact for relations with the two state regulators, the Insurance Division and the Real Estate Agency. He is chair of the Legislative Committee of the Oregon Land Title Association, the state trade association of title companies. He is a past president of the association. He is the author of the "Recording and Priorities" chapter in PRINCIPLES OF OREGON REAL ESTATE LAW (Oregon CLE 1995 & Supp 2003). Cleve began his title insurance career in Oregon in 1984, when he began working for Oregon Title Insurance Company. In addition to being a member of the Oregon State Bar, he is a graduate of Tufts College (BA, 1971), Harvard Divinity School (M.Div., 1975) and Washington and Lee University School of Law (JD, 1981).

**Alan Brickley** is currently Counsel with First American Title Insurance Company. He has been in title insurance and/or real estate law for over 50 years. He is a 1970 graduate of Northwestern College of Law/Lewis and Clark College JD and an MBA, University of Oregon, 1992. He has been a member of the Oregon State Bar since 1970. In addition to his duties at First American he has taught at Clackamas Community College, Lewis and Clark, Northwestern College of Law, Portland State University, Marylhurst University and Willamette University Law School. Alan was also involved in civic affairs as former Mayor of West Linn (1974-1982) and currently on the City Club of Portland where he has served on the Board of Governors and Chair of the Research Board. He is a frequent lecturer on real estate related issues for the Oregon State Bar, Oregon Law Institute, Mortgage Lending Education Board (2006 Educator of the Year) and other organizations.

**Jay Dobson** is Underwriting Counsel for First American Title Insurance Company. Jay has worked in the title insurance industry over 35 years, being involved in most aspects of the industry, including title, escrow, claims, 1031 exchanges, and as his title infers, underwriting in both the title and escrow portions. He obtained his BA from Willamette University and his JD from the University of Oregon. Jay is currently President of the Oregon Land Title Association.

**Pat Ihnat** is counsel for Fidelity National Title Company of Oregon. She has been with Fidelity for 20 years in various positions including claims litigation, claims management, and underwriting. Until her 2004 move to Portland, Pat was state counsel for Fidelity's Arizona operations. She chaired the legislative committee of the Arizona Land Title Association for 12 years. She currently serves on the Education, Forms & Practices, Trade Practices and Legislative committees for the Oregon Land Title Association. Before joining the title industry, Pat was in private practice in Tucson and Phoenix, as a litigator and appellate attorney with a focus on real estate and commercial issues. She received her J.D. from the University of Arizona College of Law in 1981. Her undergraduate degree in Mathematics is from Franklin College, Franklin, Indiana. She is a member of the State Bar Associations in Oregon, California, and Arizona.

**John LaVeille** is Legal Counsel for Chicago Title Company of Oregon, Inc. John received his Bachelor of Arts from the University of Portland, magna cum laude in 1971, and his Juris Doctor from Northwestern School of Law, Lewis and Clark College, 1974. In 1989, John received an MBA for Portland State University. John has spent the majority of his professional life in the title insurance industry. He has served on the OLTA Educational and Legislation Committees, the Real Estate Section Legislative Committee of the Oregon State Bar, and is the past Chairman of the Corporation Counsel Section of the Oregon State Bar. He currently serves on the Forms and Practices Committee of OLTA. In addition, he is on the Board of Directors of Our House of Portland. When not volunteering at Our House or working, John likes to garden, fancies himself as a bit of a gourmand, is continuously restoring his 1920s storybook house and is a long distance bicyclist.

**Jyl Meier, CSEO SASIP President, American Escrow Association**

Jyl began her career 21 years ago in the accounting department of American Pacific Title & Escrow (now AmeriTitle). Since that time Jyl has worked as a 1031 Exchange Accommodator, Loan Processor, Loan Originator, and Escrow Officer in Oregon and Colorado. Jyl is currently the Training Supervisor in the Oregon Escrow Processing Unit for Fidelity National Title Group. Jyl has been a member of Oregon Escrow Council and the American Escrow Association her entire career, serving at the local, state, and national levels. Jyl has dedicated her career to promoting the escrow/settlement industry by being a public advocate for those who work in the industry. Her advocacy includes participating in workgroups with the Oregon Real Estate Agency on escrow rule revisions and testifying before Oregon Legislative Committees on the effect of pending legislation on the industry as well as speaking to both state and national allied industry associations on common issues. As President of AEA Jyl is currently part of the AEA team working with the Consumer Financial Protection Bureau on the new integrated disclosures and settlement regulations. Jyl has a son, 25, a daughter, 24, a son-in-law, 25, and her first granddaughter on the way. She and her fiancé currently live in a small private petting zoo in Keizer.

**Jeff Steffen** has been an Oregon attorney for over 35 years and presently serves as title counsel for Old Republic National Title Insurance in Oregon. In this capacity, he is involved in almost all facets of the title insurance and escrow business including rates, forms, underwriting and claims. He is a past president of the Oregon Land Title Association and currently serves on several committees for the association.

**Mary Thuemmel** is Pacific Northwest Underwriting Counsel and Vice President for WFG National Title Insurance Company. She came to the title insurance industry in 1977 after graduating from University of Oregon Law School. After a brief stint as a commercial escrow officer for Chicago Title Insurance Company, Mary spent over a decade as Oregon operations underwriter and Oregon claims handler for Chicago Title Insurance Company, Lawyers Title of Oregon, and Fidelity National Title Insurance Company. Mary left the active practice of law to raise a family, and then returned to the profession to spend five years as operations counsel for Sunwest Management, which was, for a time before its implosion, one of the nation largest providers of senior care. Mary joined Williston Financial Group and WFG in 2012. She currently spends roughly half of her time providing underwriting and escrow advisory advice and half of her time in support of mergers and acquisitions. Mary is a past-president of the Oregon Land Title Association.

## STATEMENT OF QUALIFICATIONS

**Board Certified Document Examiner**  
**Court Qualified Testimony ■ Handwriting Examinations & Identifications**  
**Established in 1992**



### SERVICES AND CONSULTATIONS:

- Handwriting authentication including anonymous writings, handwritten numerals
- Forensic examination of signatures, diaries, journals, logs, medical records
- Demonstrating evidence of alterations, deletions or additions to documents
- Consultations for rebuttal of opposing examiner's opinions
- Other aspects of documentary evidence

### CERTIFICATION AND TESTING:

- Awarded accredited board certification by the Board of Forensic Examiners (BFDE), 2011; The BFDE is a Forensic Specialties Accreditation Board (FSAB)
- Board certification by testing by National Association of Document Examiners (NADE) 1998, re-certified 2006, 2011
- Forensic Proficiency Testing administered by approved provider Collaborative Testing Services (CTS) in cooperation with the American Academy of Forensic Sciences (AAFS), 1997, 2003 and 2010
- Forensic Expertise Profiling Laboratory, administered by LaTrobe University of Australia, 2005 and 2006

### COURT QUALIFIED WITNESS:

Testified in federal, state, civil and/or criminal courts in Oregon and Washington; arbitrations and depositions in Oregon, Washington, Alaska and California. List of testimonies available upon request.

**NOTE: Designating Jacqueline A. Joseph as an Expert Witness and/or use of this resume in legal proceedings without specific approval is prohibited.**

### PROFESSIONAL AFFILIATIONS:

National Association of Document Examiners (NADE)  
NADE Journal Editorial Board, 1995-96; Editor-in-Chief, 2010-2012  
NADE Annual Conference Chairperson, 2010  
NADE Professional Development Committee Chairperson, 2005-2010  
NADE Certification Committee Chairperson, 2000-2005  
NADE Certification Test Development Team Leader, 2003-2005  
American Society for Testing & Materials (ASTM) Committee E30-Forensic Sciences  
Northwest Fraud Investigators Association (NWFIA)  
Oregon Association of Certified Fraud Examiners (OACFE), Service Provider  
Oregon Women Lawyers (OWL), Service Provider  
Oregon Criminal Defense Lawyers Association (OCDLA), Service Provider  
Oregon Historical Society, Service Provider  
Oregon State Bar Membership Directory, Service Provider  
Oregon Indigent Defense, Service Provider  
Association of Trial Lawyers of America (ATLA), Service Provider

### EDUCATION AND PROFESSIONAL DEVELOPMENT:

- BA in Secondary Education, University of Arizona
- Inaugural studies included a comprehensive tutorial with Andrew Bradley, a 30-year veteran document examiner with the Denver Police Department and Arapaho County Sheriff's Office
- Continuing education through research, publication/instruction of peer-level advanced studies, and attendance and presentations at seminars for National Association of Document Examiners (NADE), American Academy of Forensic Sciences (AAFS), and others
- Research in motor control and its forensic application

### LABORATORY EQUIPMENT:

Stereomicroscope; electrostatic machine to detect evidence of indentations on paper; light tables; Eschenbach illuminated magnification system; Zarbeco digital handheld 40-140x microscope with infrared; handheld Tispro ultraviolet magnification viewer.

### LIBRARY:

- Maintain a professional library containing over 2500 articles and monographs on the subjects of handwriting identification and document examination
- Read and hold numerous books written by the noted authorities in the field of questioned document examination

- Maintain a computerized database of 4,000 articles from scientific, legal and medical periodicals

#### **PUBLICATIONS:**

- "Signature Forgery: An Uncommon Amalgamated Method Fails," Forensics 2011 Conference, Chongqing, China
- "The Layman's Glossary; Terms Relating to the Forensic Examination of Handwriting, Signatures and Documents," 2011
- "An Annotated Bibliography on the Examination of Chinese Handwriting," 2<sup>nd</sup> edition, February 2009
- "Authenticating Sports Memorabilia – 1909 Honus Wagner baseball trading card," FEWA San Francisco Chapter, October 2008 eNewsletter
- "The Two Pillars of Individuality and Identifiability in Handwriting," an educational DVD, May 2008
- "Annotated Bibliography: Handwriting Disguise and the Question of Forensic Identity," May 2008
- "Book Smarts for the Document Examiner," a DVD featuring the QDE Index, Spring 2007
- "Handwriting Forensics: The secret world of signature disguises," OTLA Trial Lawyer, Fall 2005
- "Extreme Handwriting Caught-on-Tape," a DVD production of uncommon handwriting, Spring 2005
- "Left-Hand and Opposite-Hand Writing Features Useful as a Basis of Forming Expert Opinions of Authorship," NADE Journal, Fall 2004
- "Annotated Bibliography: Left-Hand and Opposite-Hand Writing Features Useful as a Basis of Forming Expert Opinions of Authorship," NADE Journal, Fall 2004
- "Questioned Typewriting: A Compilation of Citations Relating to the Examination of Questioned Typewritten Documents," October 2003
- "Field Examination Performed By Proxy," The Communique, January 2003
- Review of *Principles of Judicial Proof as Given by Logic, Psychology, and General Experience and Illustrated by Judicial Trials*, compiled by John Henry Wigmore. Little, Brown, and Company, Boston, 1913, reprinted 2000. The Communique. March 2002
- "Compiling and Publishing an Annotated Bibliography, A Step-by-Step Guide for the Handwriting & Document Examiner," NADE Journal, Summer 2001
- "Signature Disputes and the Expert Opinion," OTLA Trial Lawyer, Summer 2001
- "Annotated Bibliography: Handwriting and Intoxication," NADE Journal, Fall 2000
- "Genuine Tremor in Handwriting vs. The Tremor of Fraud," February 2000
- "Limited Exemplars and Their Use in Forming Expert Opinions," NADE Journal, Fall 1999
- "Questioned Document Guidelines," The Oregon Defense Attorney, May 1999
- "Red Flags in Evaluating Medical Records," The Oregon Defense Attorney, May 1998
- "Unidentifiable Handwriting: An Anonymous Note Case," NADE Journal, Spring 1997
- "A Case Report of Disguised Signatures," The NADE Journal, December 1996
- "Suspicious Documents: A Foolproof Checklist," The Advance Sheet, Fall 1996
- "Identifying the Maker of Numerals," The NADE Journal, Spring 1996

#### **PRESENTATIONS:**

- AHAF/AAHA 2003 Conference—2003
- American Association of Legal Nurse Consultants—1998
- Association of Forensic Document Examiners (AFDE)—2008
- Institute of Internal Auditors (IIA) / ACFE—2003
- Internal Auditors Association (IAA)—1999
- Metropolitan Public Defenders—1999
- National Association of Document Examiners (NADE) Conferences—1997, 2000, 2002, 2005, 2007, 2008\*, 2011, 2012 (\*approved graduate academic credit at East Tennessee State University)
- National Association of Document Examiners (NADE) Poster Sessions—2003, 2004, 2007, 2008, 2009 and 2010
- Old Timers Investigator Society of Oregon (OTIS)—2007, 2010
- Oregon Association of Certified Fraud Examiners (OACFE)—1999, 2009
- Oregon Association of Legal Investigators (OALI) Annual Meetings—1996, 2002, 2011
- Oregon Criminal Lawyers Association (OCDLA)—1999
- Oregon Land Title Association (OLTA)—Annual Meetings—1996, 2005
- Oregon Legal Assistants Association (OLAA) Annual Meetings—1995, 2003
- Oregon Museum of Science and Industry (OMSI) Crime Solving Exhibit—1998
- Oregon Paralegal Association (OPA/NALS) Annual Meetings—2005, 2009, 2012
- Pacific Northwest Paralegal Association Annual Meeting—2009
- Portland Community College Criminal Justice Club—2010
- Portland State University (PSU) Criminology Dept/Forensic Science—1998, 2005
- Sisters in Crime, Oregon Chapter—2008
- The Law Club, Western College—2003
- Vancouver Women Lawyers—1999

#### **CITED:**

- Forensic Handwriting Examination – A Definitive Guide, Reed Hayes, 2006
- Forensic Handwriting Examination of Motor Disorders & Forgery – Research and Applications, Heidi H. Harralson, 2008



CONSUMER FINANCIAL PROTECTION BUREAU  
1700 G St., NW – Washington, DC 20552

## **Proposed rule to simplify and improve mortgage disclosure forms**

### **DETAILED SUMMARY OF THE PROPOSAL**

The Consumer Financial Protection Bureau (“the Bureau”) invites the public to comment on a proposed rule that will simplify and improve disclosure forms for mortgage transactions. Please submit your comments online at [www.regulations.gov](http://www.regulations.gov). You have until November 6, 2012 to review and provide comments on most of the proposal. However, comments are due for two parts on September 7, 2012: the changes to the calculation of the finance charge and Annual Percentage Rate (APR) and they delay of the effective date for certain disclosures required by the Dodd-Frank Act.

### **Background**

For more than 30 years, federal law has required lenders to provide two different disclosure forms to consumers applying for a mortgage. The law also has generally required two different forms at or shortly before closing on the loan. Two different federal agencies developed these forms separately, under two federal statutes: the Truth in Lending Act (“TILA”) and the Real Estate Settlement Procedures Act (“RESPA”). The information on these forms is overlapping and the language is inconsistent. Not surprisingly, consumers often find the forms confusing. It is also not surprising that lenders and settlement agents find the forms burdensome to provide and explain.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd- Frank Act”) directs the Bureau to combine the forms. To accomplish this, the Bureau has engaged in extensive consumer and industry research and public outreach for more than a year. Based on this input, the Bureau is now proposing a rule with the new, combined forms. The rule also provides a detailed explanation of how the forms should be filled out and used.

The first new form (the **Loan Estimate**) is designed to provide disclosures that will be helpful to consumers in understanding the key features, costs, and risks of the mortgage for which they are applying. This form will be provided to consumers within three business days after they submit a loan application. The second form (the **Closing Disclosure**) is designed to provide disclosures that will be helpful to consumers in understanding all of the costs of the transaction. This form will be provided to consumers three business days before they close on the loan.

The forms use clear language and design to make it easier for consumers to locate key information, such as interest rate, monthly payments, and costs to close the loan. The forms also provide more information to help consumers decide whether they can afford the loan and to compare the cost of different loan offers, including the cost of the loans over time.

In developing the new Loan Estimate form and Closing Disclosure form, the Bureau has reconciled the differences between the existing forms and combined several other mandated disclosures. The Bureau also has responded to industry complaints of uncertainty about how to fill out the existing forms by providing detailed instructions on how to complete the new forms. This should reduce the burden on lenders and others in preparing forms in the future.

# **Summary of the Proposed Rule**

## **SCOPE OF THE PROPOSED RULE**

The proposed rule applies to most consumer mortgages. The proposed rule does not apply to home-equity lines of credit, reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to land. The proposed rule also does not apply to loans made by a creditor who makes five or fewer mortgages in a year.

## **THE LOAN ESTIMATE**

The Loan Estimate form would replace two current federal forms. It would replace the Good Faith Estimate designed by the Department of Housing and Urban Development (“HUD”) under RESPA and the “early” Truth in Lending disclosure designed by the Board of Governors of the Federal Reserve System (“FRB”) under TILA. The proposed rule and the Official Interpretations (on which lenders can rely) contain detailed instructions as to how each line on the Loan Estimate form would be completed. There are sample forms for different types of loan products. The Loan Estimate form also incorporates new disclosures required by Congress under the Dodd-Frank Act.

The lender may rely on a broker to provide the Loan Estimate form. However, the lender also remains responsible for the accuracy of the form.

The lender or broker must give the form to the consumer within three business days after the consumer applies for a mortgage loan. The proposed rule contains a specific definition of what constitutes an “application” for these purposes.

Consistent with current law, the lender generally cannot charge consumers any fees until after the consumers have been given the Loan Estimate form and the consumers have communicated their intent to proceed with the transaction. There is an exception that allows lenders to charge fees to obtain consumers’ credit reports.



Lenders and brokers may provide consumers with written estimates prior to application. The proposed rule requires that any such written estimates contain a disclaimer to prevent confusion with the Loan Estimate form. This disclaimer would not be required for advertisements.

## **THE CLOSING DISCLOSURE**

The Closing Disclosure form would replace the current form used to close a loan, the HUD-1, which was designed by HUD under RESPA. It would also replace the revised Truth in Lending disclosure designed by the FRB under TILA. The proposed rule and the Official Interpretations (on which lenders can rely) contain detailed instructions as to how each line on the Closing Disclosure form would be completed. The Closing Disclosure form contains additional new disclosures required by the Dodd-Frank Act and a detailed accounting of the settlement transaction.

The lender must give consumers this Closing Disclosure form at least three business days before the consumer closes on the loan. Generally, if changes occur between the time the Closing Disclosure form is given and the closing, the consumer must be provided a new form. When that happens, the consumer must be given three additional business days to review that form before closing.

However, the proposed rule contains an exception from the three-day requirement for some common changes. These include changes resulting from negotiations between buyer and seller after the final walk-through. There also is an exception for minor changes which result in less than \$100 in increased costs.

The Bureau seeks comment on whether to permit additional changes without requiring a new three-day period before closing.

Currently, settlement agents are required to provide the HUD-1, while lenders are required to provide the revised Truth in Lending disclosure. The Bureau is proposing two alternatives for who is required to provide consumers with the new Closing Disclosure

form. Under the first option, the lender would be responsible for delivering the Closing Disclosure form to the consumer. Under the second option, the lender may rely on the settlement agent to provide the form. However, under the second option, the lender would also remain responsible for the accuracy of the form. The Bureau seeks comment as to which alternative is preferable.

## **LIMITS ON CLOSING COST INCREASES**

Similar to existing law, the proposed rule would restrict the circumstances in which consumers can be required to pay more for settlement services – the various services required to complete a loan, such as appraisals, inspections, etc. – than the amount stated on their Loan Estimate forms. Unless an exception applies, charges for the following services could not increase: (1) the lender’s charges for its own services; (2) charges for services provided by an affiliate; (3) charges for services for which the lender does not permit the consumer to shop. Also unless an exception applies, charges for other services generally could not increase by more than 10 percent.

The rule would provide exceptions, for example, when: (1) the consumer asks for a change; (2) the consumer chooses a service provider that was not selected by the lender; (3) information provided at application was inaccurate or becomes inaccurate; or (4) the Loan Estimate expires. When an exception applies, the lender generally must provide an updated Loan Estimate form within three business days.



## **APR CHANGES**

The proposed rule redefines the way the Annual Percentage Rate or “APR” is calculated. Under the rule, the APR will encompass almost all of the up-front costs of the loan. This will make it easier for consumers to use the APR to compare loans and easier for industry to calculate the APR.

# Judicial Foreclosures

2013 OLTA Education Seminar  
March 16, 2013

John Laveille  
Jay Dobson


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## Why Foreclose Judicially?

- **Uncertainty with MERS**
- **Requirement to Mediate before non-judicial foreclosure of Residential Trust Deed (SB 1552)**
- **Ability to Cure in a non-judicial foreclosure**
- **Ability to Overwhelm the Court System**


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## Overview of the Judicial Process

- **Filing the Complaint**
- **Service of Process**
  - Concept of Jurisdiction
- **30 Days to Respond**
- **Judicial Proceedings**
  - Answers/ Responses/ Cross & Counter Claims
  - Motions
  - Trial


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### Overview of the Judicial Process

- Decree of Foreclosure
- Appeal(?)
- Scheduling of Sheriff's Sale
- Writ of Execution/ Notice
- Sheriff's Sale/ Certificate of Sale
- Redemption Rights
- Sheriff's Deed



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### Time Factors – How Long does a Judicial Foreclosure Take?

- **It Depends:**
  - How difficult is the Service of the Complaint ? ; then
  - At Least 30 Days to Respond
  - Will any of the parties contest the foreclosure?
    - Borrower? (may be a lot of the same MERS arguments)
    - Subsequent Lien holders argue priority?



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### Time Factors – How Long does a Judicial Foreclosure Take?

- **It Depends:**
  - Will there be an appeal of the foreclosure decree?
  - After foreclosure decree, can take 30-60 days to schedule a sale
  - After the sale, there are redemption rights
    - Owner has 180 days
  - **In short, a whole lot longer than the 120 days of a Non-Judicial Foreclosure**



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**What are the Rights of Subsequent Lien Holders?**

- If a subsequent lien holder is not made a party to the foreclosure, then their lien is not affected by the foreclosure
  - **Unaffected**
- If made a Party, their lien will be foreclosed out by the completed foreclosure
  - **But this 3<sup>rd</sup> Party can also foreclose their lien in the same case**



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**Can a Lender get a Deficiency Judgment ?**

- **Seller Carry Back Purchase Money Mortgage**
  - No – ORS 88.070
- **Purchase Money Mortgage under \$50,000**
  - No – ORS 88.070
- **Trust Deed on Residential Property**
  - No – ORS 86.770



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**BUT.....**



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**What is the Effect of the Sheriff's Sale?**

- **No Change in the Right to Possession**
- **No Change in the Title**
  - **Title only transfers with the Sheriff's Deed**
- **Starts Redemption Rights**
  - 60 Days for Subsequent Lien Holders
  - &/or 60 days from last redemption
  - 180 Days for Owner
  - 1 Year for United States (Mortgage to US or US Agency)



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**What is the Effect of a Redemption?**

- Liens of those encumbrances which got decree of foreclosure and which were paid off by redemption are removed
- Effect of Foreclosure Suit Just Eliminated – no title ever passed from Borrower, since it is Sheriff’s Deed, not Certificate of Sale, which passes title




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**What is the Effect of a Redemption?**

- Since other liens which may have been named in the Suit were not removed by a Sheriff’s deed, they remain on the property \*
- (Unlikely that many underwriters will eliminate all other liens under the Jeremiah v. Call case)




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**Can the Purchaser at the Sale get a Sheriff’s Deed Early?**

- And by “Early”, before 180 days after the Sheriff’s Sale
- Yes, but only if the Purchaser gets all the redemption rights, or gets the parties with redemption rights to waive them




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**Escrow Transaction with the Borrower During a Foreclosure**

- **Prior to the Decree of Foreclosure**
  - Yes, but watch costs and get suit dismissed
- **After the Decree but Prior to the Sale**
  - Yes, but watch costs and get suit dismissed
- **After the Sale but During the Redemption Rights**



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**Escrow Transaction with the Borrower During a Foreclosure**

- **After the Sale but During the Redemption Rights**
  - Statutory Requirements for Notice
  - Tricky Determination of the Proper Amount
  - Instructions Concerning the use of new lender's funds and Redemption
  - Best to Work with Party with the Certificate of Sale and other others, if any, who must be paid in the redemption



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**Escrow Transaction with the Borrower During a Foreclosure**

- **After Redemption Period but prior to a Sheriff's Deed**
  - Nope – TOO LATE!!!



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**Escrow Transaction with Party who has a Certificate of Sale**

- **Will the Certificate Holder be Getting a Sheriff's Deed Prior to Closing?**
  - Must Acquire All Redemption Rights
  - Escrow probably doesn't want to be responsible for getting the Sheriff's Deed
  - But if there is a Deed, then close as usual




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**Escrow Transaction with Party who has a Certificate of Sale**

- **No Sheriff's Deed, just wants to transfer/encumber rights under Certificate of Sale**
  - Transfer? – Treat like Purchaser's Policy
    - Will show all encumbrances and redemption rights, much like a Contract of Sale would show prior encumbrances




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**Escrow Transaction with Party who has a Certificate of Sale**

- **No Sheriff's Deed, just wants to transfer/encumber rights under Certificate of Sale**
  - Loan –
    - Will Lender take the policy subject to all the encumbrances and redemption rights?
    - Is a Certificate of Sale an Interest in Real Property which can be encumbered in the deed records?
      - May want to File UCC Statement




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**OREGON CHECKLIST AND GUIDELINES FOR HANDLING SHORT SALE  
WITH PENDING JUDICIAL FORECLOSURE**

	For Escrow Officer	For Title Officer
<input type="checkbox"/> (1)	<p><b>Identify judicial foreclosure.</b> Identify any escrow file with a pending judicial foreclosure. (There will be a pending proceedings exception in the preliminary title report.) Closing a file with a pending judicial foreclosure will require coordination with the title officer and others. Alert the title officer with the estimated date of closing. Alert the real estate brokers that there is a pending judicial foreclosure and that clearing the foreclosure will involve coordination with lawyers in the case.</p>	<p><b>Assess status of the foreclosure.</b> When alerted to an order with a pending judicial foreclosure, make sure the file has an OJIN print-out and copies of necessary case filings. Do the same upon discovering a pending judicial foreclosure, and initiate contact with the escrow officer to assure timely advice – see below sections in this column.</p>
<input type="checkbox"/> (2)	<p><b>Contacts.</b> Establish contact with the lawyer handling the foreclosure.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Find out from the lawyer if you should communicate jointly with lawyer and lender or if some other arrangement is preferred. <b>KEEP THE LAWYER IN THE LOOP UNLESS EXPRESSLY DIRECTED OTHERWISE.</b></li> <li><input type="checkbox"/> Find out from the lawyer who is the contact person for the lender (the lawyer's client) in addition to the lawyer, if applicable; obtain lender contact information.</li> <li><input type="checkbox"/> Find out who (lawyer or lender) will provide you with the short sale payoff statement; order payoff statement (see next section).</li> <li><input type="checkbox"/> Do the above for all lenders and other lien holders who will be releasing their liens with or without receiving payoffs.</li> </ul>	<p><b>Contacts.</b> Identify the lawyers for all parties to the foreclosure and available contact information; pass along the information to the escrow officer.</p>
<input type="checkbox"/> (3)	<p><b>Questions about the payoff statement.</b> Find out who will answer questions about the short sale conditions and will approve the settlement statement for closing. If not the lawyer, keep the lawyer copied with communications about the payoff unless expressly directed otherwise. This applies to all lien holders receiving less than full payoffs. <b>NOTE: Comply with Escrow Tech Memo 102-2009 – Short Payoffs (amended 5/24/2011).</b></p>	

	For Escrow Officer	For Title Officer
<input type="checkbox"/> (4)	<p><b>Conferring with the title officer.</b> Confer with the title officer about the status of the foreclosure. It is imperative that the foreclosure case be dismissed in its entirety after closing, unless some different disposition is approved in advance by the title officer. You will need to know the lawyer or lawyers that will be filing the necessary court papers, and you will need to tickle the file for post-closing confirmation, if necessary, that the dismissal has occurred. All arrangements regarding the payoff and termination of the foreclosure must be documented by letter, fax or email.</p>	<p><b>Advising the escrow officer.</b> Provide timely advice to the escrow officer about what will be needed to clear the foreclosure.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Review the OJIN print-out and court work for any counterclaim, cross claim or third party claim in the case. These claimants, as well as the foreclosing lender, will have to commit (by letter, email or fax) to a dismissal of the case.</li> <li><input type="checkbox"/> Provide the escrow officer with the identities of all the above claimants and their lawyers.</li> <li><input type="checkbox"/> Review all communications regarding dismissal of the foreclosure after closing to confirm that the arrangements are satisfactory. Dismissal will require a stipulation signed by all parties asserting claims in the case.</li> <li><input type="checkbox"/> If the foreclosing lender's claim is the only claim in the case, the lender's lawyer may dismiss the case unilaterally.</li> </ul>
<input type="checkbox"/> (5)	<p><b>Clearing a notice of pendency.</b> The title report is likely to show a recorded notice of pendency in the exception for the pending foreclosure. Make arrangements to obtain a recordable release of the notice. Prepare a form, obtain the title officer's approval, provide the form to the lender's lawyer and confirm the lawyer's approval by letter, fax or email. Create a tickler to obtain the signed form, if necessary, after closing.</p>	<p><b>Clearing a notice of pendency.</b> Review the draft release of the notice of pendency. Advise the escrow officer if the form is satisfactory or needs changes.</p>
<input type="checkbox"/> (6)	<p><b>Clearing the foreclosure and the trust deed.</b> The foreclosure will be cleared through the dismissal of the court case. See (4) above. This will not clear the trust deed that was the subject of the case. The trust deed will be cleared through a reconveyance. Take appropriate steps to assure that the reconveyance will occur after closing. If the trust deed is a <b>line of credit</b> trust deed, provide the lender with the usual close out form signed by the borrowers. (Comply with National Underwriting Bulletin 2010-RC-01 – Payoff of HELOC Loans.) Charge any appropriate release services and tracking charge.</p>	

	For Escrow Officer	For Title Officer
<input type="checkbox"/> (7)	<b>Clearing other liens.</b> Other liens, whether or not the subject of claims in the foreclosure case, must be cleared through a reconveyance, satisfaction, release of property or other document. Take appropriate steps to assure that this documentation will be in hand at closing or forthcoming after closing. Note that these claimants may be represented by counsel in the foreclosure and that their respective lawyers may (or may not) be the person to provide the release document. Charge any appropriate release services and tracking charge.	<b>Advising escrow officer regarding other liens.</b> Advise the escrow officer as appropriate regarding the forms and communications needed to assure that all liens are cleared through the closing.
<input type="checkbox"/> (8)	<b>Date down.</b> When closing is near, contact the title officer for a date down on the foreclosure case. Obtain clearance to proceed with closing, under whatever conditions are prescribed by the title officer	<b>Date down.</b> When contacted by the escrow officer for a foreclosure case date down, obtain and review an OJIN print out of the case; order additional court work, if appropriate. Advise the escrow officer if closing may proceed and prescribe conditions, if appropriate.
<b>WARNING</b>	<b>Post-judgment closing.</b> If the foreclosure action reaches the stage of a judgment of foreclosure, any closing and title insurance requires approval of a senior title officer/underwriter or local counsel. The above checklist does not address requirements for a post-judgment closing.	
<b>NOTE</b> A short sale with a pending judicial foreclosure will involve the above checklist items AS WELL AS the requirements and dangers of a short sale without a pending judicial foreclosure. The escrow officer and title officer must address the usual short sale requirements, in addition to the items in this checklist. For guidance, see Escrow Tech Memo 102-2009 – Short Payoffs (amended 5/24/2011) and National Underwriting Bulletin 2010-RC-01 – Payoffs of HELOC Loans.		

Order No.

Notes:

**FORECLOSURES IN OREGON:  
NON-JUDICIAL FORECLOSURES VS. JUDICIAL FORECLOSURES**

Courtesy of  
Fidelity National Title Group, Inc.

**A Side-By-Side Comparison of Non-Judicial and Judicial Foreclosures of Trust Deeds**

<b>Non-Judicial Foreclosure of Trust Deed</b>	<b>Judicial Foreclosure of Trust Deed</b>
<p><b>1. Overview.</b> Foreclosure is administered in accordance with the Oregon Trust Deed Act (OTDA), ORS 86.705 to 86.795, by a trustee appointed by the beneficiary. The process culminates with a public auction and a trustee's deed to the high bidder.</p>	<p><b>1. Overview.</b> Foreclosure is a civil action that moves from complaint to judgment, then to public auction under the execution statutes and to a sheriff's deed to the high bidder or its assignee unless redemption occurs. ORS 86.715, 88.010, and 88.080.</p>
<p><b>2. Timeline.</b> Foreclosure requires a minimum of 180 days if it is subject to the mediation requirements of Oregon Laws 2012, Chapter 112 (SB 1552). Otherwise it requires a minimum of 120 days. Uncertainties exist regarding certification of compliance requirements and postponement requirements added by SB 1552.</p>	<p><b>2. Timeline.</b> The judicial timeline depends on such factors and difficulties as service of summons and complaint; presentation of a prima facie case, if the action is not contested; discovery; motion practice; possible trial, if the action is contested; and execution procedures and requirements. The latter include requirements regarding notice and publication, conduct of sale, objections to sale, expiration (or exercise) of redemption rights and a sheriff's deed.</p>

Non-Judicial Foreclosure of Trust Deed	Judicial Foreclosure of Trust Deed
<p><b>3. Deficiency and election of remedy.</b> After a non-judicial trust deed foreclosure, but with certain exceptions, an action for a deficiency may not be brought against the grantor, the grantor's successor in interest or another person obligated on (a) the obligation secured by the foreclosed trust deed or (b) another obligation secured by a "residential" trust deed or mortgage, if the latter obligation was part of the same transaction and is owed to or was originated by the same beneficiary or an affiliate of the beneficiary. ("Residential" is defined in the amendments to ORS 86.705 by Or. Laws 2012, Ch. 112, Sec. 5.) The exceptions permit a beneficiary to foreclose on other property encumbered by the same trust deed or to foreclose another trust deed or security instrument securing the same obligation but encumbering other property. ORS 86.770. A non-judicial trust deed foreclosure may not be completed if the beneficiary has initiated any action to recover the secured debt or any part of it, unless the action is dismissed. This does not preclude the beneficiary from foreclosing the same trust deed as to other property it encumbers or foreclosing any other trust deed, mortgage or other security agreement securing the same debt. ORS 86.735.</p>	<p><b>3. Deficiency and election of remedy.</b> For a judicial foreclosure, the anti-deficiency provisions applicable to a non-judicial foreclosure apply to the judicial foreclosure of a "residential trust deed," as defined in the amendments to ORS 86.705 by Or. Laws 2012, Ch. 112, Sec. 5. The beneficiary may pursue an action against a guarantor for a deficiency that remains after a judicial foreclosure of a residential trust deed. The guarantor of an obligation secured by a residential trust deed may not recover a deficiency against the grantor or a successor in interest of the grantor. "[I]n a judicial foreclosure of a trust deed that is not a residential trust deed the judgment must provide that if the sale proceeds are insufficient to satisfy the judgment, execution may issue for the amount by which the unpaid balance of the obligation secured by the trust deed exceeds the net sale proceeds payable to the beneficiary." ORS 86.770. Except for certain purchase money deeds of trust (see ORS 88.070), a beneficiary may obtain a judgment on the promissory note and, if execution is returned unsatisfied in whole or part, afterwards judicially foreclose the deed of trust securing the debt. ORS 88.040. <i>Note:</i> Some different rules apply to the foreclosure of a mortgage. See, e.g., ORS 88.010, 88.070.</p>
<p><b>4. Appointment of receiver.</b> Appointment of a receiver is subject to ORS 86.010 (see next column) and is prohibited with respect to a single-family residence occupied as the principal residence of the grantor, the grantor's spouse or the grantor's minor or dependent child. ORS 86.735.</p>	<p><b>4. Appointment of receiver.</b> The beneficiary may seek appointment of a receiver to take charge of the property and collect rents and profits, provided that the property is other than farmlands or the homestead of the grantor or grantor's successor in interest. This relief may depend on a pledge of rents and profits by the grantor to the beneficiary. ORS 86.010.</p>

Non-Judicial Foreclosure of Trust Deed	Judicial Foreclosure of Trust Deed
<p><b>5. Recording requirements.</b> A non-judicial foreclosure begins with recording a notice of default, the contents of which are prescribed in the OTDA. OTDA notice requirements do not apply to a person who acquires an interest in the property after recording of the notice of default. The OTDA requires the recording of various affidavits related to mailing, service and publication of various notices. Record notice of the sale and transfer occurs with recording of a trustee's deed. ORS 86.735, 86.740, 86.750, 86.770, 86.780.</p>	<p><b>5. Recording requirements.</b> Although a judicial foreclosure commences with the filing of a complaint, it is the recording of a notice of pendency under ORS 93.740 that eliminates the need to join as a defendant a person who acquires an interest in the property after the recording. After entry of the foreclosure judgment and issuance of a writ of execution, the judgment creditor must record a certified copy of the writ or an abstract of the writ. The writ or abstract must include the legal description and street address, if any, of the affected real property. ORS 18.870. The certificate of sale may be recorded. ORS 18.942. An assignment of a certificate of sale should be recorded. ORS 93.530. The holder of the certificate of sale is responsible for obtaining and recording the sheriff's deed. See ORS 18.985.</p>
<p><b>6. Notice of sale.</b> A notice of sale must precede the trustee's sale by at least 120 days. The notice of sale must be served on the property's occupant or posted and mailed at least three times if service is not successful. The notice of sale must be served on, or mailed by first class mail and by certified mail – return receipt requested to, the borrower, the owner (if different) and all parties with liens or other interests junior to the trust deed being foreclosed. ORS 86.740. When a non-judicial foreclosure may resume after lifting of a stay, mailing of an amended notice of sale and possibly publication are required within specified parameters. ORS 86.755(12), (13) and (14).</p>	<p><b>6. Notice of sale.</b> The judgment creditor must provide instructions to the sheriff along with the writ of execution. Those instructions must include the names and addresses of persons entitled to written notice of the sale. For a writ on real property in a foreclosure judgment, the list must include the judgment debtor and the judgment debtor's attorney and those who were parties to the action at the time of the judgment. ORS 18.918. The form, timing and other particulars of notice are prescribed in ORS 18.924. <i>Note:</i> Notice requirements differ for a writ on a judgment of foreclosure or for sale of specific property, as compared to a writ on a general judgment. See ORS 18.904 to 18.912.</p>

Non-Judicial Foreclosure of Trust Deed	Judicial Foreclosure of Trust Deed
<p><b>7. Other notices.</b></p> <p>(a) For a trust deed subject to the mediation requirements of Or. Laws 2012, Ch. 112, the beneficiary or trustee must mail to or serve on the grantor a notice of mediation at least 60 days before mailing or service of the notice of sale. A copy must go to the mediation service provider. Sec. 7.</p> <p>(b) For a residential trust deed (generally a trust deed on an owner-occupied home – see Or. Laws 2012, Ch. 112, Sec. 5), the sender of the notice of sale must send a notice under ORS 86.737 (“danger notice”) at or before sending the notice of sale.</p> <p>(c) When applicable, a beneficiary or beneficiary’s agent must serve on the grantor a notice of determination under Or. Laws 212, Ch. 112, Sec. 4a at least 30 days before the sale, must mail on the same day a copy to the Oregon Dept. of Justice, and must record an affidavit of compliance at least 20 days before the sale.</p> <p>(d) Post-foreclosure, the buyer at the foreclosure sale must comply with certain requirements for notices to tenants. ORS 86.755.</p>	<p><b>7. Other notices.</b> At least 10 days before the date first set for an execution sale, the judgment creditor must provide to the sheriff any report in the creditor’s possession showing interests of record in the property. The sheriff must make the report available to bidders who appear at the sale. ORS 18.930(2).</p>
<p><b>8. Publication.</b> “[A] copy of the notice of sale must be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks. The last publication must be made more than 20 days prior to the date the trustee conducts the sale.” The notice of sale may omit the notice to tenants that is otherwise a part of the notice of sale. ORS 86.750.</p>	<p><b>8. Publication.</b> “The sheriff shall publish a copy of the notice of sale of real property once a week for four successive weeks in a newspaper of general circulation in the county where the real property is located. The sheriff may not conduct the sale until the expiration of the four-week period.” For some counties, the sheriff may publish by Internet posting for not less than 28 days before the sale and through the date of the sale. ORS 18.924.</p>

Non-Judicial Foreclosure of Trust Deed	Judicial Foreclosure of Trust Deed
<p><b>9. Postponements.</b> The trustee, attorney for the trustee or an agent designated by either may postpone the sale for one or more periods that total not more than 180 days from the original sale date. A single postponement for not more than two calendar days may be made by announcement. Otherwise, any postponement must be set both by announcement and by service of written notice of the new time, date and place of sale on all who were or should have been noticed with the original notice of sale. The notice of postponement must be served at least 15 days before the new sale date and must conform to ORCP 7 D(2) or (3). ORS 86.755 as amended by Or. Laws 2012, Ch. 112.</p>	<p><b>9. Postponements.</b> A sheriff may postpone an execution sale to a specified date if (a) the sheriff is unable to conduct the sale at the place and time originally specified, (b) the sheriff considers it appropriate to postpone the sale for want of purchasers, or (c) for other sufficient cause. A sheriff must postpone upon the request of the judgment creditor, but not beyond the final date for return on the writ of execution. If possible, the sheriff shall make a public announcement of the postponement at the place and time the sale was to occur. The sheriff may postpone more than once. Postponement does not require additional notices. ORS 18.932. Return on the writ must occur within 60 days after the sheriff receives the writ, except that the judgment creditor may authorize the sheriff to continue execution and delay return to a date not later than 150 days after the sheriff receives the writ, so long as the execution sale occurs no later than the end of the 150 day period. For good cause shown, the court that issued the writ may extend it beyond the 150 day period. ORS 18.872.</p>
<p><b>10. Conduct of sale.</b> The notice of sale must set the date, time and place of the sale. The time must be after 9 a.m. and before 4 p.m. The place must be in the county or one of the counties in which the property is situated. The sale must be conducted by the trustee, an attorney for the trustee or an agent designated by the trustee or the attorney. The auctioneer may sell the property in one parcel or in separate parcels and shall sell the property at auction to the highest bidder for cash. The purchaser must pay at the time of sale the price bid. Within 10 days following payment, the trustee must execute and deliver the trustee's deed to the purchaser. (Special provisions apply to an affordable housing covenant holder who elects to buy.) ORS 86.755.</p>	<p><b>10. Conduct of sale.</b> The sheriff conducts an execution sale by public oral auction. The sale must be conducted between 9 a.m. and 4 p.m. The time and place must be set in the notice of sale. (See Section 6 above.) All property must be sold in such parcels as are likely to bring the highest price. Any portion of real property belonging to a person other than the judgment debtor must be sold separately if the person requests a separate sale. ORS 18.930. A court may direct that an execution sale under a specific judgment be conducted in a manner different from that specified in ORS 18.860 to 18.993. ORS 18.954.</p>



Non-Judicial Foreclosure of Trust Deed	Judicial Foreclosure of Trust Deed
<p><b>11. Possession after sale.</b> Apart from rights of a bona fide tenant, the purchaser at the trustee's sale is entitled to possession of the property on the 10<sup>th</sup> day after the sale and may obtain possession by any procedure appropriate for removing a tenant at sufferance. A bona fide tenant is entitled to notice of the change in ownership and to rights of possession and termination notice specified in the OTDA. ORS 86.755.</p>	<p><b>11. Possession after sale.</b> The purchaser at the execution sale is entitled to possession of the property from the date of sale until a redemption, if any. A junior lien holder who redeems is entitled to possession from the date of payment until another redemption, if any. If the property is in the possession of a tenant holding the property under an unexpired lease with a priority inferior to the claim of the judgment creditor, the tenant may remain in possession until expiration of the period allowed for redemption if the tenant makes the lease payments to the purchaser (or redeeming junior lien holder) or pays a monthly payment equal to the value of the use and occupancy of the property, whichever amount is greater. ORS 18.946</p>
<p><b>12. Effect of sale on title.</b> The sale forecloses and terminates the interests of the grantor, the grantor's successors in interest and all persons of junior priority, if appropriate notice was given in the foreclosure. A failure to give notice to a person entitled to notice does not affect the validity of the sale as to persons that were notified. ORS 86.770(1).</p>	<p><b>12. Effect of sale on title.</b> The title of a judgment debtor or mortgagor to real property that is subject to redemption is not transferred by the execution sale. If the judgment debtor or mortgagor, or a successor in interest to either, redeems the property, the right to possession is restored, subject to all liens of record, whether arising before, on or after the sale, as though the sale had never occurred. ORS 18.952.</p>
<p><b>13. Redemption.</b> A person's whose interest arises under state law has no statutory right of redemption in a non-judicial foreclosure, if the person's interest is extinguished by the sale. ORS 86.770(1). By federal law, the IRS has a 120 day redemption period if the property became encumbered by a federal tax lien recorded more than 30 days before the foreclosure sale. 26 USC §7425. (Note: A one year right of redemption may apply to a U.S. civil judgment or a federal criminal judgment imposing a fine or restitution. 28 USC §2410.) An omitted junior lien holder, in certain circumstances, may have an equitable right of redemption under ORS 86.742. A borrower who fails to receive a "danger notice" (see Section 7 above) timely and in the proper form, as required by ORS 86.737, may have an equitable right of redemption under ORS 86.739, if certain other conditions are met.</p>	<p><b>13. Redemption.</b> Between the entry of a judgment of foreclosure and a sheriff's sale, the borrower / judgment debtor has an equitable right of redemption for the full amount of the judgment. Statutory rights of redemption arise with the sheriff's sale. A junior lienholder has a 60 day period to redeem. Another junior lienholder has 60 days from the earlier redemption to redeem. The borrower / judgment debtor has a 180 day period following the sheriff's sale to redeem. ORS 18.964. The procedures for and other particulars about redemption are set out in ORS 18.960 to 18.982. By federal law, the IRS has a 120 day redemption period, and the U.S. otherwise has a one year redemption period. 26 USC 7425(d); 28 USC 2410(c).</p>

Non-Judicial Foreclosure of Trust Deed	Judicial Foreclosure of Trust Deed
<p><b>14. Trustee's deed.</b> The trustee's deed conveys to the purchaser the interest in the property that the trust deed grantor had, or had the power to convey, at the time the grantor executed the trust deed, together with any interest the grantor or the grantor's successors in interest acquired after the execution of the trust deed. ORS 86.755(4).</p>	<p><b>14. Sheriff's deed.</b> Unless the property is redeemed by the judgment debtor, the sheriff must convey the property by deed to the holder of the certificate of sale, upon request of the certificate holder, payment of the fee required by ORS 21.300(1)(c) and expiration of the redemption period. The court may direct the sheriff to execute a deed to the certificate holder before expiration of the redemption period, if the certificate holder establishes that it has acquired the rights of all persons entitled to redeem. ORS 18.985.</p>

*Confer with an Oregon lawyer regarding any specific foreclosure, whether it is a non-judicial or a judicial foreclosure.*

**– Cleve Abbe**

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**State Underwriting Counsel for Oregon**

**Fidelity National Title Group, Inc.**

**November 2, 2012**

OREGON GUIDELINES

**TITLE REPORT EXCEPTIONS FOR A JUDICIAL FORECLOSURE OF A TRUST DEED OR MORTGAGE**

A title report or guarantee issued during a judicial foreclosure, that is, after commencement of the foreclosure but before entry of a judgment of foreclosure, should show (a) an exception for the trust deed, mortgage or other lien that is the subject of the foreclosure, (b) an exception for the pending case and (c) an exception for the recorded notice of pendency of the foreclosure action.

For the period beginning with entry of the judgment of foreclosure and ending with the recording of a sheriff's deed, various exceptions may be necessary. The chart below provides guidelines for those exceptions.

Item	Description	Model Exception
1.	<p><b>Vesting.</b> The vesting does not change as a result of entry of the judgment of foreclosure and does not change as a result of the sheriff's sale. When the sheriff's sale occurs, the buyer at the sale receives a certificate of sale and acquires certain rights and interests in the property, but legal title does not pass to the buyer until the sheriff's deed is issued. When the sheriff's deed is recorded, it is then appropriate to show title vested in the deed's grantee.</p>	<p>[Vesting of legal title should track the applicable recorded deed or deeds.]</p>
2.	<p><b>Foreclosure judgment.</b> Upon entry of the foreclosure judgment, the judgment takes the place of the trust deed or mortgage that was foreclosed. Therefore, it is appropriate to replace the exception for the trust deed, mortgage or other lien with an exception for the judgment, including a notation that it arises out of the foreclosure of an identified lien. This exception also replaces the exception for the pending foreclosure action.</p> <p>It is appropriate to show the recording of the notice of pendency of action for the foreclosure, because the foreclosure will be binding on a party acquiring an interest in the property after that recording without that party being made a party to the action.</p>	<p>A judgment in the Circuit Court for _____ County, for the amount(s) herein stated and any other amounts due:</p> <p>Entered :            Case No. :            Against :            In Favor of :            Amount(s) : \$            Attorney for Creditor :</p> <p>Said judgment arises out of foreclosure of that certain _____:</p> <p>Recorded :            As :            And retains the priority thereof.</p> <p>A notice of pendency of the foreclosure was:</p> <p>Recorded :            As :</p>

Item	Description	Model Exception
3.	<p><b>Equitable redemption rights.</b> Before the sheriff's sale, the judgment debtor has an equitable right to redeem the property, that is, to free it from the foreclosure judgment, so an exception for this right is appropriate. The equitable right of redemption expires when the sheriff's sale occurs. At that point statutory rights of redemption commence.</p>	<p>Equitable rights of redemption regarding above judgment of foreclosure. We find no return on a writ of execution filed with the court, showing that sheriff's sale has been held.</p>
4.	<p><b>Writ of execution.</b> The procedures for a sheriff's sale begin with a writ of execution. The creditor applies to the court for a writ of execution directing the sheriff to sell, at a public auction, the property that is the subject of the foreclosure judgment. ORS 18.865, 18.868. The creditor is required to record a certified copy or an abstract of the writ. ORS 18.870.</p>	<p>A certified copy or abstract of a writ of execution, directing the sheriff to sell the subject property was:  Recorded :  As :</p>
5.	<p><b>Notices of sheriff's sale.</b> The sheriff is required to mail a notice of sale to various parties and to publish the notice. Publication may be by newspaper once a week for four successive weeks or, for at least some counties, by Internet posting for not less than 28 days before the sale and through the date of the sale. ORS 18.924.</p>	<p>[There is no recording requirement associated with the notice of sale.]</p>
6.	<p><b>Postponements.</b> The sheriff may postpone a sale for a variety of reasons and may postpone more than once. Generally, the sheriff must file a return on the writ within 60 days of its issuance; however, the judgment creditor may authorize the sheriff to defer return to a date not later than 150 days after issuance. ORS 18.932, 18.872.</p>	<p>[There is no recording requirement associated with postponement of the execution sale.]</p>

Item	Description	Model Exception
7.	<p><b>Sheriff's sale.</b> The sheriff's sells the property at a public auction. ORS 18.930, 18.936, 18.938. The sheriff issues a certificate of sale to the high bidder. This may be recorded, as may an assignment of the certificate of sale. ORS 18.942, 93.530. The sheriff files a return on the writ with the court. The sheriff's return sets out the results of the sale. ORS 18.872.</p>	<p>The right, title and interest of ____, as purchaser at sheriff's sale under execution issued in:</p> <p>Case No. :  Circuit Court for : ____ County  Date of sale :  Return on writ filed :</p> <p>[If applicable:]  Certificate of sale:  Recorded :  As :</p> <p>[If applicable:]  Assignment of certificate of sale:  Recorded :  As :  Assigned to :</p>
8.	<p><b>Objection to the sale.</b> A judgment debtor or other person adversely affected by the sale may file an objection with the court but must do so within 10 days of the sheriff's return. In response to an objection, the court schedules a hearing. If the court finds the sale in order, it will enter an order confirming the sale; otherwise it will enter an order that the property be resold. ORS 18.948.</p>	<p>When applicable, insert a notation that an objection to the sale is pending or that the court has entered an order confirming the sale or an order directing that the property be resold.</p> <p>[If applicable:]  An objection to the sale is pending.</p> <p>[If applicable:]  The court entered an order confirming the sale:  Entered on :</p> <p>[If applicable:]  The court entered an order sustaining an objection to the sale and ordered the property resold:  Entered on :</p>

Item	Description	Model Exception
9.	<p><b>Statutory redemption rights.</b> The judgment debtor and junior lien holders have statutory rights to redeem the property. Those rights require an exception. A junior lien holder has 60 days after the sale to redeem. If a junior lien holder redeems, another junior lien holder may redeem within a second 60 day period, and so forth. A redeeming junior lien holder steps into the position of the buyer at the sale and receives its own certificate of redemption. The judgment debtor has 180 days after the sale to redeem. If the judgment debtor redeems, the debtor's redemption cuts off and supersedes a junior lien holder's redemption. The procedures for redemption are set out in detail in ORS 18.960 to 18.982.</p> <p>Redemption rights of the United States are governed by federal law. The redemption period is one year after the sale, except when the federal lien is one arising under the Internal Revenue Code, in which case the redemption period is 120 days after the sale. 28 USC 2410(c); 26 USC 7425(d). The redemption price also is governed by federal law. 28 USC 2410(d); 26 USC 7425(d).</p>	<p>Redemption rights arising out of a sheriff's sale of this property on &lt;date&gt;:  Case No. :  Circuit Court for : _____ County</p> <p>[If applicable:]  Rights of redemption of the United States of America for one year, or, in the case of a federal lien under the Internal Revenue Code, 120 days, following the sheriff's sale of the subject property on &lt;date&gt;, arising from its lien or liens described as follows: [refer to exceptions and otherwise show US lien(s)]</p>

Item	Description	Model Exception
10.	<p><b>Exercise of redemption rights.</b> Redemption does not necessarily appear in the court case register. A party who intends to redeem must give notice to the holder of the certificate of sale and certain other parties, but the court administrator is not one of these; however, an objection to a notice of redemption or a response to an objection must be filed with the court administrator. In addition, a dispute over redemption must be referred to the court for resolution. As a general rule, the redemption rights exception should not be eliminated except when there is a recorded sheriff's deed and there is no pending appeal.</p> <p>In the event of redemption by the judgment debtor or judgment debtor's assignee, it is necessary to confirm the identity of the redeeming party, that redemption occurred and that any objection is resolved.</p> <p>It is an underwriting requirement that a certificate of redemption be recorded.</p>	<p>[If a judgment debtor (or the debtor's assignee) has redeemed:]  A certificate of redemption by the judgment debtor or the judgment debtor's assignee was:  Recorded :  As :  Issued on :  To :</p> <p>[If a junior lien holder has redeemed:]  A certificate of redemption by a junior lien holder was:  Recorded :  As :  Issued on :  To :</p> <p>[If the sheriff has issued certificate of redemption but it is not recorded:]  The sheriff's records show a certificate of redemption was:  Issued on :  To :  As : [judgment debtor / judgment debtor's assignee / junior lien holder]</p> <p>Note: The company requires recording of the certificate of redemption.</p>
11.	<p><b>Effect of a judgment debtor's redemption.</b> If a judgment debtor or the judgment debtor's assignee redeems, the effect is to leave the property subject to all interests, liens and other encumbrances, except to the extent the redemption payment reduced or extinguished a lien. In this regard, the foreclosed trust deed or other lien would be extinguished by the foreclosure judgment, but if the foreclosure judgment was not satisfied in full by the sheriff's sale and left a deficiency judgment in favor the creditor, that deficiency judgment would continue as a lien (absent unusual circumstances related to the vesting of legal title). ORS 18.952.</p>	<p>[If the judgment debtor or the judgment debtor's assignee redeems, show exceptions for all interests, liens and other encumbrances the same as if the foreclosure had not occurred, except that the exception for the foreclosed trust deed or other security instrument should be replaced with an exception for the foreclosure's money judgment to the extent not satisfied by the redemption payment.]</p>

Item	Description	Model Exception
12.	<p><b>Early sheriff's deed.</b> The purchaser at the sheriff's sale may apply for an early deed, if the purchaser can demonstrate acquisition of all statutory rights of redemption. Generally, a sheriff will expect a court order authorizing the early deed, based on a showing to the court that the purchaser has acquired all statutory rights of redemption. ORS 18.985.</p>	<p>[Unless there is doubt regarding the basis for an early sheriff's deed, such as the absence of a recorded instrument transferring the judgment debtor's redemption rights to the sheriff's sale purchaser, a title report may vest title off the recorded sheriff's deed, and all interests, liens and other encumbrances extinguished by the foreclosure judgment may be eliminated as title report exceptions. But see next section regarding a lien of United States.]</p>
13	<p><b>Sheriff's deed.</b> Upon recording of the sheriff's deed after expiration of all redemption rights, it is appropriate to vest title in the grantee and to eliminate all junior interests, liens and other encumbrances extinguished by the foreclosure.</p>	<p>[A sheriff's deed recorded after expiration of all redemption rights is an acceptable basis for vesting title off the deed and eliminating exceptions for all interests, liens and other encumbrances extinguished by the foreclosure judgment; however, an exception for the applicable redemption period in favor of the United States is necessary until that redemption period expires. See Section 9 above.]</p>
14	<p><b>Defects affecting title.</b> Set up an appropriate exception when finding a material defect in the execution process or related documents, from writ of execution to sheriff's deed.</p>	<p>Any invalidity in the procedures leading up to and in the issuance of the sheriff's deed:</p> <p>Recorded :  As :  To :  Case No. :  Court. :</p>



# Redemption

**18.960 Definitions.** As used in ORS 18.960 to 18.985:

(1) “Certificate holder” means a person who holds a certificate of sale issued under ORS 18.942 or who holds a certificate of redemption issued under ORS 18.975.

(2) “Claimant” means a person who claims to have a right to redeem under ORS 18.960 to 18.985.

(3) “Land sale contract” means a contract for the transfer or conveyance of an interest in real property. “Land sale contract” does not include earnest money agreements, preliminary sales agreements, options or rights of first refusal.

(4) “Redemptioneer” means a person other than a judgment debtor who has redeemed property under ORS 18.960 to 18.985.

(5) “Redemption notice” means a notice described under ORS 18.970. [2005 c.542 §37a]

**18.962 Property that may be redeemed.** (1) All real property sold at an execution sale may be redeemed except for a leasehold interest with an unexpired term of less than two years.

(2) A manufactured dwelling, as defined by ORS 446.003, may be redeemed only if the manufactured dwelling is sold together with the real property on which the manufactured dwelling is located.

(3) The right of a seller to receive payments under a land sale contract that is sold with the real property may be redeemed.

(4) Except as provided in ORS 18.987 (3), a purchaser’s interest in a land sale contract may be redeemed. [2005 c.542 §38]

**18.963 Who may redeem.** (1) Subject to subsection (3) of this section, property that is described in ORS 18.962 and that is sold at an execution sale may be redeemed by:

(a) The judgment debtor;

(b) A mortgagor whose interest in the property was sold at the execution sale;

(c) Any person with a lien against the property that has a priority that is inferior to the claim of the judgment creditor; or

(d) The successor in interest of any person described in paragraph (a), (b) or (c) of this subsection.

(2) Subject to subsection (3) of this section, for the purposes of ORS 18.960 to 18.985:

(a) All references to a judgment debtor include a mortgagor whose interest in the property that was sold at the execution sale and any successor in interest to such a mortgagor;

(b) All references to a judgment debtor include a successor in interest to a judgment debtor; and

(c) A person described in subsection (1)(c) of this section, and any successor in interest of that person, is a lien claimant.

(3) Any person described in subsection (1) of this section who conveys all of the person’s interest in property sold on execution to a successor in interest may not redeem the property. [2005 c.542 §39]

**18.964 Time for redemption.** (1) Except as otherwise provided in ORS 18.960 to 18.985, the ability of a judgment debtor to redeem property sold at an execution sale expires unless the judgment debtor redeems the property within 180 days after the date of sale.

(2) Except as provided in subsection (3) of this section, the ability of a lien claimant to redeem property sold at an execution sale expires unless the lien claimant redeems the property within 60 days after the date of sale.

(3) If any lien claimant redeems property within the time provided by subsection (2) of this section, any other lien claimant may redeem the property from the redemptioner. The subsequent redemption must be made within 60 days after the redemption amount specified in ORS 18.966 or 18.967 is paid to the sheriff. Other lien claimants may thereafter redeem from a preceding redemptioner, in the same manner, as long as each redemption is made within 60 days after the previous redemption. [2005 c.542 §40]

**18.966 Redemption amount payable to purchaser.** Subject to ORS 18.968, a claimant may redeem property from the purchaser at an execution sale by paying to the sheriff:

(1) The amount paid by the purchaser at the execution sale, with interest on that amount at the rate of nine percent per annum from the date of sale;

(2) The amount of any taxes the purchaser has paid on the property, with interest at the rate of nine percent per annum from the date of payment;

(3) Any amounts necessarily expended by the purchaser to prevent waste, with interest at the rate of nine percent per annum from the date of payment; and

(4) Any amounts that the purchaser has paid on liens superior to the interest of the purchaser, with interest at the rate of nine percent per annum from the date of payment. [2005 c.542 §41]

**18.967 Redemption amount payable to redemptioner.** Subject to ORS 18.968, a claimant may redeem property from a redemptioner by paying to the sheriff:

(1) The amount paid by the redemptioner, with interest on that amount at the rate of nine percent per annum from the date of payment;

(2) The amount owing on the lien of the redemptioner, unless the payment is made by a lien claimant and the lien claimant has a lien that has a priority that is superior to the lien of the redemptioner;

(3) The amount of any taxes the redemptioner has paid on the property, with interest at the rate of nine percent per annum from the date of payment;

(4) Any amounts necessarily expended by the redemptioner to prevent waste, with interest at the rate of nine percent per annum from the date of payment; and

(5) Any amounts that the redemptioner has paid on liens superior to the lien of the redemptioner, with interest at the rate of nine percent per annum from the date of payment. [2005 c.542 §42]

**18.968 Setoff for rents, income and profits realized by certificate holder; certificate holder's lien for crops and amounts expended to prevent waste.** (1) A judgment debtor is entitled to a setoff against the amounts required to redeem property sold at an execution sale for all rents, income and profits realized by the certificate holder from the property.

(2) If the real property sold at an execution sale is farmland, the certificate holder has a lien on the first crops sown or grown after the sale and for all sums reasonably expended by the certificate holder in plowing, cultivating or seeding the property. The lien of the certificate

holder is superior to all other liens except the liens provided by law for payment of wages for work in cultivating the land or harvesting the crops grown on the property. If the real property is not farmland, the certificate holder has a lien on the profits accruing from the property during the period that the certificate holder held the land for sums necessarily expended by the certificate holder to prevent waste. [2005 c.542 §43]

**18.970 Redemption notice.** (1) A claimant who wishes to redeem property must serve the certificate holder with a redemption notice. The notice must specify a date and approximate time when the claimant will make payment to the sheriff, the redemption amount calculated by the claimant and the manner in which the redemption amount was calculated. The notice must include a mailing address for the claimant. The date of the redemption must be a weekday that is not a legal holiday. The time of the redemption must be between the hours of 9 a.m. and 4 p.m. The notice must inform the certificate holder if an accounting under ORS 18.980 is required.

(2) If the claimant is a lien claimant, the notice must reflect the nature of the lien claimant's interest and the claimant shall attach to the notice copies of any documents necessary to establish that interest. If the claimant is a successor in interest to another person with redemption rights under ORS 18.963, the claimant shall attach to the notice copies of any documents necessary to establish how the person acquired the interest. If the claimant claims to have an interest with a priority that is superior to the interest of the certificate holder, the claimant shall attach to the notice copies of any documents necessary to establish that priority.

(3) A redemption notice must be served by personal service or by first class mail. If the notice is served by first class mail, service is effective on mailing. A copy of the notice may be filed with the sheriff before the notice is given to the certificate holder, but must be filed with the sheriff no later than seven days before the redemption date specified in the notice. The notice must be served on the certificate holder not more than 30 days before the payment date specified in the redemption notice, and:

(a) Not less than 14 days before the payment date specified in the notice, if service is made by first class mail; or

(b) Not less than seven days before the payment date specified in the notice, if personal service is made.

(4) A claimant shall submit proof of service of the notice required by this section at the time the claimant pays the sheriff under ORS 18.975.

(5) If a certificate holder fails to comply with the requirements of ORS 18.930 (6) or 18.982, the certificate holder may not object to a redemption by reason of failure to receive a redemption notice. [2005 c.542 §44a; 2007 c.580 §3]

**18.971 Objection to redemption notice.** (1) A certificate holder may object to a redemption notice if the certificate holder asserts that the claimant is not eligible to redeem. An objection under this section must be filed with the court administrator, filed with the sheriff and mailed by first class mail to the claimant before the payment date specified in the notice.

(2) The filing of an objection under this section does not affect the requirement of payment of the redemption amount specified in the redemption notice under ORS 18.975. [2005 c.542 §44b]

**18.972 Response to redemption notice.** (1) A certificate holder shall respond to a redemption notice if:

(a) The notice requests an accounting under ORS 18.980; or

(b) The certificate holder objects to the redemption amount specified in the notice.

(2) A response to a redemption notice must be served by personal service or by first class mail. If the response is served by first class mail, service is effective on mailing. A copy of the response may be filed with the sheriff before the response is given to the claimant, but must be filed with the sheriff before the payment date specified in the notice. The response must be served on the claimant before the payment date specified in the notice.

(3) If the redemption notice requests an accounting, the accounting must be attached to the response given under this section.

(4) If the certificate holder objects to the redemption amount specified in the notice because the certificate holder claims additional amounts are owing under ORS 18.966 or 18.967, the response must include all information specified in ORS 18.980 (1)(a) to (d).

(5) A response filed under this section must include a statement of the amount claimed as the proper redemption amount after deductions or additions by reason of any accounting provided with the response or by reason of additional amounts claimed under subsection (4) of this section. [2005 c.542 §44c]

**18.973 Objection to response.** (1) A claimant may object to the amount claimed in the response as the proper redemption amount. An objection under this section must be filed with the court administrator and mailed by first class mail to the certificate holder within seven days after the response is served under ORS 18.972.

(2) The filing of an objection under this section does not affect the requirement of payment of the redemption amount specified in the redemption notice under ORS 18.975. Payment of the amount claimed in the response waives any objection filed under this section unless the claimant delivers a copy of the objection to the sheriff with the payment. [2005 c.542 §44d]

**18.975 Payment of redemption amount.** (1) Except as provided in ORS 18.980 (2) and (4), unless a certificate holder has indicated a lower redemption amount in the certificate holder's response under ORS 18.972, a claimant shall pay the sheriff at least the redemption amount specified in the notice on or before the payment date specified in the redemption notice. If the claimant does not make payment as required by this subsection, the redemption notice is of no effect.

(2) The sheriff shall issue to the claimant who makes payment under this section a certificate of redemption on the payment date specified in the redemption notice unless:

(a) Before the payment date specified in the notice, an objection is filed with the sheriff in the manner required by ORS 18.971;

(b) Before the payment date specified in the notice, a response is filed with the sheriff in the manner required by ORS 18.972, and the claimant fails to pay additional amounts claimed in the response on the payment date specified in the notice;

(c) An objection to a response is delivered to the sheriff with the payment in the manner required by ORS 18.973; or

(d) The calculations or other documentation provided to the sheriff appear irregular to the sheriff.

(3) If the calculations or other documentation provided to the sheriff appear irregular to the sheriff, and the claimant objects to the failure of the sheriff to issue a certificate of redemption pursuant to subsection (2)(d) of this section, the sheriff shall give written notice to the court of the objection pursuant to ORS 18.992.

(4) If a claimant pays the sheriff the redemption amount specified in the redemption notice, but the sheriff does not issue a certificate of redemption pursuant to subsection (2) of this section, the sheriff shall give the claimant a receipt for the funds in lieu of a certificate of redemption.

(5) If a response is filed with the sheriff in the manner required by ORS 18.972 before the payment date specified in the notice, and the claimant makes payment as required by subsection (1) of this section but fails to pay additional amounts claimed in the response, the redemption notice is of no effect and the sheriff shall return the payment to the claimant unless:

(a) The claimant objects to the response in the manner provided by ORS 18.973; or

(b) The claimant pays additional amounts claimed in the response, plus interest, in the manner provided by subsection (6) of this section.

(6) If a response is filed with the sheriff in the manner required by ORS 18.972 before the payment date specified in the notice, and the claimant makes payment as required by subsection (1) of this section but fails to pay additional amounts claimed in the response, the sheriff shall issue a certificate of redemption to the claimant dated as of the date that the receipt was issued under subsection (4) of this section if the claimant pays additional amounts claimed in the response, plus interest, within seven days after the date the receipt was issued. [2005 c.542 §44e]

**18.978 Court proceedings on objections.** (1) If an objection is filed under ORS 18.971 or 18.973, the sheriff shall transmit to the court administrator copies of all records relating to the sale that are within the sheriff's possession.

(2) The court shall schedule a hearing on an objection filed under ORS 18.971 or 18.973 as soon as possible.

(3) If a certificate holder files an objection under ORS 18.971, and the court determines that the claimant is eligible to redeem, the court shall direct the sheriff to issue a certificate of redemption to the claimant, dated as of the date that the receipt was issued under ORS 18.975. If the court determines that the claimant is not eligible to redeem, the court shall direct the sheriff to refund all amounts paid by the claimant to the sheriff.

(4) If an objection is filed by a claimant under ORS 18.973, the court shall determine the proper redemption amount. If the court determines that the proper redemption amount is greater than the amount paid under ORS 18.975, the court shall direct the sheriff to issue a certificate of redemption to the claimant upon payment of the additional amounts plus interest within 10 days after entry of the court's order, dated as of the date that the receipt was issued under ORS 18.975. If the additional amounts and interest are not paid within the time allowed, the redemption is void and the sheriff shall refund to the claimant all amounts paid to the sheriff. If the court determines that the proper redemption amount is less than the amount paid under ORS 18.975, the court shall direct the sheriff to issue a certificate of redemption to the claimant, dated as of the date that the receipt was issued under ORS 18.975, and order a refund to the claimant of the amounts determined by the court to be in excess of the proper redemption amount.

(5) Upon issuance of a certificate of redemption under this section, the sheriff shall deliver to the certificate holder the amount determined to be the proper redemption amount.

(6) If the court determines under subsection (4) of this section that the proper redemption amount is greater than the amount paid under ORS 18.975, and determines that the amount specified in the redemption notice does not represent a good faith attempt to determine the proper redemption amount, the court shall enter judgment against the claimant for all attorney fees incurred by the certificate holder in the proceedings. [2005 c.542 §44f]

**18.980 Accounting.** (1) A judgment debtor may require that a certificate holder provide an accounting under this section by including a request for an accounting in the redemption notice. If a redemption notice includes a request for an accounting, the certificate holder shall attach an accounting to the response given under ORS 18.972. The accounting must reflect:

(a) The amount of any taxes the certificate holder has paid on the property, with interest at the rate of nine percent per annum from the date of payment.

(b) Any amounts necessarily expended by the certificate holder to prevent waste, with interest at the rate of nine percent per annum from the date of payment.

(c) Any amounts that the certificate holder has paid on liens superior to the lien of the certificate holder, with interest at the rate of nine percent per annum from the date of payment.

(d) The amount owing on the lien of the certificate holder, if the certificate holder is a redemptioner.

(e) The net proceeds of rents, income or profits from the property by the certificate holder while the certificate holder has been in possession of the property.

(2) If a redemption notice includes a request for an accounting and the certificate holder fails to respond as required by ORS 18.972, the time for paying the redemption amount is automatically extended to 30 days after the redemption date specified in the redemption notice or until the time specified by subsection (4) of this section if a claimant files a motion under subsection (3) of this section.

(3) If a redemption notice includes a request for an accounting, and the certificate holder fails to respond as required by ORS 18.972, the claimant may file a motion with the court requesting an order requiring the certificate holder to show cause why the certificate holder should not be held in contempt. A motion under this subsection must be made not more than 28 days after the redemption notice is served on the certificate holder. The claimant must deliver a copy of the motion to the sheriff.

(4) If a motion is filed under subsection (3) of this section:

(a) The time for redemption of the property is automatically extended to 30 days after the accounting is provided by the certificate holder; and

(b) The time for paying the redemption amount is automatically extended to 30 days after the accounting is provided by the certificate holder. [2005 c.542 §45]

**18.981 Manner of payment.** (1) Except as provided in this section, a sheriff shall accept as payment from a claimant a cashier's check or cash. Except as provided in this section, a sheriff shall accept any combination of cashier's checks or cash that is adequate to pay the redemption amount.

(2) A sheriff shall accept a cashier's check as payment only if the cashier's check is made payable to the sheriff and is drawn on a financial institution that is authorized to do business under the laws of Oregon or the United States. If any part of the redemption amount is paid with a cashier's check, the sheriff shall give the purchaser a receipt for the funds in lieu of a certificate of redemption under ORS 18.975.

(3) If any part of the redemption amount is paid with a cashier's check, the sheriff shall deposit the check in a financial institution not later than the end of the first business day after the day on which the check is received. The check must be deposited in a separate account.

(4) If the sheriff receives verification from a financial institution within 15 days after the date of the redemption that all cashier's checks delivered to the sheriff for the redemption have

received final settlement, and the sheriff is required to give a certificate of redemption under ORS 18.975, the sheriff shall mail to the claimant by first class mail a certificate of redemption and deliver to the certificate holder all amounts paid to the sheriff. If the sheriff is not required to give a certificate of redemption under ORS 18.975, the sheriff shall give the person tendering the amounts a receipt for the funds in lieu of a certificate of redemption, and shall deliver a certificate of redemption and the amounts paid to the sheriff only as provided in ORS 18.978 after a final decision by the court.

(5) If the sheriff does not receive verification from a financial institution within 15 days after the checks are deposited that all cashier's checks delivered to the sheriff have received final settlement, the redemption is void and the sheriff shall return to the claimant any cash tendered by the claimant and any amounts received for cashier's checks for which final settlement was received, less any bank charges incurred for cashier's checks and any other amount allowed by law.

(6) As used in this section:

(a) "Cashier's check" has the meaning given that term in ORS 73.0104.

(b) "Financial institution" has the meaning given that term in ORS 706.008. [2005 c.542 §46]

**18.982 Redemptioner must provide sheriff with address.** A redemptioner must provide the sheriff with an address to which a redemption notice may be sent and must notify the sheriff of any change in address until the redemptioner transfers the redemptioner's interest in the property, the property is redeemed or the expiration of the time allowed for another redemption, whichever occurs first. Any person who acquires the redemptioner's interest in the property must notify the sheriff of the transfer, provide the sheriff with an address to which a redemption notice may be sent, and notify the sheriff of any change in address until there is a another transfer, the property is redeemed or the expiration of the time allowed for another redemption, whichever occurs first. [2005 c.542 §46a]

## Deficiency Judgments

**88.070 Sale of real property after mortgage foreclosure.** (1) When real property is sold pursuant to a judgment foreclosing a mortgage and the proceeds of the sale are not adequate to satisfy the amounts secured by the mortgage, all judgment remedies for collection of the unsatisfied amounts expire when the sale is made if:

(a) The mortgage was given to a seller to secure the unpaid balance of the purchase price of real property; or

(b) The mortgage was given after September 13, 1975, to a person other than a seller to secure not more than \$50,000 of the unpaid balance of the purchase price of real property used by the purchaser as the primary or secondary single family residence of the purchaser.

(2) If a purchaser gives more than one mortgage to a seller or a single lender to finance the purchase of real property that the purchaser uses as the purchaser's primary single family residence and the seller or lender or a subsidiary, affiliate or successor of the seller or lender continues to hold the mortgages at the time of foreclosure, judgment remedies for the collection

of unsatisfied amounts that the grantor owes to the seller or lender or the subsidiary, affiliate or successor of the seller or lender on notes secured by the mortgages expire when the real property is sold in accordance with the foreclosure. [Amended by 2003 c.576 §349; 2007 c.166 §15; 2009 c.883 §3]

**88.075** [1975 c.618 §6; repealed by 2007 c.166 §17]

**88.080 Sale and redemption; effect of sheriff's deed.** A judgment of foreclosure shall order the mortgaged property sold. Property sold on execution issued upon a judgment may be redeemed in like manner and with like effect as property sold at an execution sale pursuant to ORS 18.860 to 18.993, and not otherwise. A sheriff's deed for property sold on execution issued upon a judgment shall have the same force and effect as a sheriff's deed issued for property sold at an execution sale pursuant to ORS 18.860 to 18.993. [Amended by 1979 c.284 §91; 2003 c.576 §350; 2005 c.22 §56; 2005 c.542 §§68a,68b; 2005 c.568 §39]

**86.770 Effect of sale; actions for deficiency; restrictions.** (1) If, under ORS 86.705 to 86.795, a trustee sells property covered by a trust deed, the trustee's sale forecloses and terminates the interest in the property that belongs to a person to which notice of the sale was given under ORS 86.740 and 86.750 or to a person that claims an interest by, through or under the person to which notice was given. A person whose interest the trustee's sale foreclosed and terminated may not redeem the property from the purchaser at the trustee's sale. A failure to give notice to a person entitled to notice does not affect the validity of the sale as to persons that were notified.

(2) Except in accordance with subsection (4) of this section, after a trustee's sale under ORS 86.705 to 86.795, or after a judicial foreclosure of a residential trust deed, an action for a deficiency may not be brought or a judgment entered against the grantor, the grantor's successor in interest or another person obligated on:

(a) The note, bond or other obligation secured by the trust deed for the property that was subject to the trustee's sale or the judicial foreclosure; or

(b) Any other note, bond or other obligation secured by a residential trust deed for, or mortgage on, the property that was subject to the trustee's sale or the judicial foreclosure when the debt, of which the note, bond or other obligation is evidence:

(A) Was created on the same day as, and used as part of the same purchase or repurchase transaction as, the note, bond or other obligation secured by the foreclosed residential trust deed; and

(B) Is owed to or was originated by the beneficiary or an affiliate of the beneficiary in the residential trust deed that was subject to the trustee's sale or the foreclosure.

(3) Notwithstanding ORS 88.070, in a judicial foreclosure of a trust deed that is not a residential trust deed the judgment must provide that if the sale proceeds are insufficient to satisfy the judgment, execution may issue for the amount by which the unpaid balance of the obligation secured by the trust deed exceeds the net sale proceeds payable to the beneficiary.

(4) This section does not preclude:

(a) An action that forecloses, judicially or nonjudicially:



(A) Other property covered by the trust deed that is the subject of the foreclosure; or

(B) Another trust deed, mortgage, security agreement, consensual or nonconsensual security interest or lien that covers other real or personal property that is also used as security for the note, bond or other obligation that is secured by the trust deed for the property that was sold.

(b) An action against a guarantor for a deficiency that remains after a judicial foreclosure.

(5) A guarantor of an obligation secured by a residential trust deed may not recover a deficiency from the grantor or a successor in interest of the grantor. [1959 c.625 §§12,13; 1965 c.457 §9; 1981 c.811 §1; 1983 c.719 §8; 1985 c.817 §7; 1989 c.190 §6; 1997 c.786 §1; 2007 c.166 §16; 2009 c.883 §2; 2010 c.48 §1]

**OLTA Legislative Committee 2013 Watch List - Sorted by Category**

As of	OLTA Pos: Q:Review Pending; S:Support; O:Oppose; A:Amendment Needed; N:Neutral; D:Disregard			
28-Feb-13	Status: PIC:Pending in committee; DIC:Dead in Committee/Chamber; ROC:Referred out of Committee; PH:Passed House; PS:Passed Senate; PB:Passed S&H; SG:Signed by Governor			
	Bill categories: Adverse Possession; Affordable Housing; CCRs & HOAs; Civil Actions; Condemnation; Conservators; Corporations & Bus Entities; Decedents' Estates; Domestic Relations; Escrow Agents; Estates in Land; Exchange Facilitators; Judgments & Statutory Liens; Land Devel, Use & Regul; Licensing; Mortgages & Trust Deeds; Notaries; Powers of Attorney; Public Bodies; Privacy; RP Tax & Assessment; Recording; Taxation; Title Insurance; Trusts			
<b>Bill</b>	<b>Description</b>	<b>OLTA Posit</b>	<b>Category</b>	<b>Notes/Status</b>
HB 2579	Extends real property prescriptive period from 10 yrs. to 12 yrs; also see SB 63.	N	Adverse Possession	CA
HB 2855	Requires person claiming property by adverse possession to hold hostile possession of property with color of title based on written conveyance.	N	Adverse Possession	0
SB 0063	Extends real property prescriptive period from 10 yrs to 12 yrs; also see HB 2579.	N	Adverse Possession	CA
HB 2775	Changes standard of conduct under which person may be liable for unlawful trade practice under UTPA from willful conduct to knowing conduct.	N	Civil Actions	0
HB 2777	Permits defendant in UTPA action to respond with affirmative defense that defendant did not intend the violation and that the violation resulted from a bona fide error.	N	Civil Actions	0
SB 0028	Authorizes publishing notice of criminal forfeiture, civil forfeiture and intent to dispose of unclaimed property on Internet.	N	Civil Actions	Needs review - JL
SB 0046	Requires action against person registered to practice architecture, landscape architecture or engineering arising out of improvement of real property to be commenced within 6 yrs after substantial completion or abandonment of improvement.	N	Civil Actions	CA
SB 0065	Increases statute of limitations from 10 to 12 years from causes of action with no specified statute of limitations.	N	Civil Actions	CA
SB 0686	Includes insurance in definition of real estate, goods & services that are subject to penalties for unlawful trade practices; permits equitable relief in addition to monetary damages in action under UTPA.	O	Civil Actions	0
HB 2089	Specifies that Or Health Authority or Dept of Human Services, as prescribed by rule, should receive small estate affidavit.	N	Decedents' Estates	0

Bill	Description	OLTA Posit	Category	Notes/Status
HB 2559	Modifies law regarding establishment and modification of spousal support; automatically terminates spousal support obligation upon death of either party, upon remarriage or cohabitation, or upon obligor reaching retirement age.	N	Domestic Relations	0
HB 2571	Clarifies that spousal support payments terminate on death of either party.	N	Domestic Relations	0
SB 0406	Expands options for name after marriage or after entering into registered domestic partnership.	N	Domestic Relations	0
HB 2608	Requires IOTA for escrow agents, with interest earnings directed to legal aid.	O	Escrow Agents	CA
HB 2556	Provides that interest on judgment that exceeds \$1 million is lesser of 5% per year or three percentage points more than discount rate in effect at Fed Reserve Bank for district that includes Oregon.	N	Judgments & Statutory Liens	JD
HB 2565	Gives judgment lien awarded to custodian of law practice priority over certain other creditors and security interests.	N	Judgments & Statutory Liens	JS
HB 2822	Disallows publication of notice of sale of real property by Internet posting without additional publication in newspaper of general circulation.	N	Judgments & Statutory Liens	0
HB 3016	Exempts entire value of homestead from sale on execution if debt arises directly from or as result of catastrophic or terminal illness or injury.	N	Judgments & Statutory Liens	0
HB 3090	Provides procedure for judgment creditor to obtain charging order against membership interest of a limited liability company member to satisfy the judgment.	N	Judgments & Statutory Liens	0
SB 0339	Exempts entire value of homestead from sale on execution for debt arising from catastrophic or terminal illness; prescribes qualifications and threshold calculations.	N	Judgments & Statutory Liens	PI
SB 0573	Establishes right of employee for civil action based on unpaid wages; authorizes creation of lien on employer's real and personal property, with some super-priority.	O	Judgments & Statutory Liens	0
HB 2639	Directs Housing and Community Services Dept to develop Housing Choice Landlord Guarantee Program to mitigate damages to dwelling units caused by tenants receiving tenant-based assistance under federal Housing Choice Voucher Program; includes other provisions.	N	Land Devel, Use & Regul	JS
HB 2890	Repeals provision that prevents local governments from imposing conditions on approved permits that effectively establish sales price for residential development or that limit purchase to a class or group of purchasers.	N	Land Devel, Use & Regul	0

Bill	Description	OLTA Posit	Category	Notes/Status
HB 3007	Requires owner of residential facility to offer tenants opportunity to purchase facility; establishes process of tenants considering purchase; applies to manuf dwelling parks and marinas.	N	Land Devel, Use & Regul	0
HB 3085	Modifies provisions authorizing dedication, conveyance or grant of property in subdivision or partition process; provides that non-lot tracts may not be used for residential dwellings or commercial buildings.	N	Land Devel, Use & Regul	0
HB 3089	Allows landowners with common boundary that is uncertain or subject to dispute to locate and fix boundary by agreement; requires that agreement be recorded.	N	Land Devel, Use & Regul	0
HB 3172	Adds to residential disclosure law a requirement for a seller to obtain a septic system evaluation report and to provide copies to DEQ and the buyer; provides for a seven day revocation period.	N	Land Devel, Use & Regul	0
HB 3299	Requires seller of residential property to disclose, if known, whether property is located within one mile of land included in inventory of significant mineral and aggregate resources.	N	Land Devel, Use & Regul	0
SB 0126	Revises smoke alarm requirements; prohibits conveyance of, or land sale contract for, dwelling or lodging house without conforming smoke alarms.	N	Land Devel, Use & Regul	Needs review - MT
SB 0204	Provides that certain limitations regarding real property sales by the state do not apply to certain real property acquired or sold by Housing & Community Services Dept.	N	Land Devel, Use & Regul	Needs review - MT
SB 0338	Limits purchase price paid for statutory conservation easements and highway scenic preservation easements; makes other changes regarding habitat.	N	Land Devel, Use & Regul	0
SB 0465	Permits local government to record a notice of designation of residential improvements with substantial flood damage; creates failure-to-disclose liability for seller with exposure for treble damages.	O	Land Devel, Use & Regul	0
SB 0475	Repeals provision that prevents local government from imposing conditions on approved permits that effectively establish sales price for residential development or limit purchase to class or group of purchasers.	N	Land Devel, Use & Regul	0
HB 2239	Requires certain entities previously exempt from license requirement to obtain mortgage loan licenses from DCBS.	N	Licensing	AB
HB 2524	Limits exemption from construction contractor licensing requirement for financial institutions, real estate personnel and suppliers of workers.	N	Licensing	JD

Bill	Description	OLTA Posit	Category	Notes/Status
HB 2573	Provides that engaging in business of, or acting in capacity of, immigration consultant is unlawful and subject to Unlawful Trade Practices Act, unless federal law authorizes person to act as immigration consultant or person is active member of Or St Bar.	N	Licensing	JS
HB 2046	Addresses claims of Dept of Veterans' Affairs in probate proceedings.	N	Mortgages & Trust Deeds	CA
HB 2399	Requires recording of all trust deed note assignments within 15 calendar days as condition for non-judicial foreclosure; requires certain documentation be included in notices of sale; also see SB 368.	O	Mortgages & Trust Deeds	CA
HB 2400	Removes exemption for certain trust deed beneficiaries from mediation requirements and from recording surcharge exemption; requires beneficiary to enter into mediation in good faith.	O	Mortgages & Trust Deeds	CA
HB 2528	Removes cap on amount if real estate loan agrt that is subject to requirement to pay interest to borrower on funds lender collects for taxes and insurance.	N	Mortgages & Trust Deeds	JD
HB 2568	Provides that, in amended notice of sale, trustee must describe only defaults that existed on date stay was terminated; amends procedure for postponements.	S	Mortgages & Trust Deeds	CA
HB 2569	Allows law practices to serve as trustees of trust deeds.	N	Mortgages & Trust Deeds	CA
HB 2662	Prohibits owner of foreclosed residential real property from neglecting property during vacancy; authorizes civil penalties.	O	Mortgages & Trust Deeds	Needs review - JL
HB 2856	Exempts from mortgage loan originator licensing requirements individual who, as seller during any 12-month period, offers or negotiates terms for not more than three residential mortgage loans as security for purchase money obligations, unless US Dept of HUD determines otherwise.	N	Mortgages & Trust Deeds	0
HB 2929	Provides penalty of \$500 for trustee's failure to give notice of trustee's sale postponement in accordance with requirements; establishes enforcement in Atty General; creates \$500 sanction for untimely delivery of trustee's deed; creates 10 day period for rescinding trustee's sale, with certain requirements; provides that a void sale operates as a postponement of trustee's sale; requires certain trustees to maintain registered agent and registered office.	O	Mortgages & Trust Deeds	0
HB 2935	Requires person that seeks judicial foreclosure of residential trust deed to enter into mediation; requires notice of mediation at least 120 days before initiating foreclosure.	O	Mortgages & Trust Deeds	0
HB 3389	Replaces mediation requirements with resolution conference requirements; makes significant revisions to SB 1552 of 2012; same as SB 558.	A	Mortgages & Trust Deeds	0

Bill	Description	OLTA Posit	Category	Notes/Status
SB 0034	Removes limit on number of loans eligible individual may receive or assume from Dept of Veterans' Affairs.	N	Mortgages & Trust Deeds	Needs review - JL
SB 0035	Modifies limit on amount of home and farm loans made by Dept of Veterans' Affairs.	N	Mortgages & Trust Deeds	Needs review- JL
SB 0073	In statute that allows agricultural producer in danger of foreclosure on agricultural property to request mediation, the minimum indebtedness of producer in order to qualify for mediation is reduced from \$100,000 to \$50,000.	N	Mortgages & Trust Deeds	Needs review - MT
SB 0367	Requires person that initiates judicial residential foreclosure to enter into mediation before bringing suit; requires notice of mediation at least 120 days before filing suit; also see SB 374.	O	Mortgages & Trust Deeds	CA
SB 0368	Requires recording of all trust deed note assignments within 15 calendar days as condition for non-judicial foreclosure; requires certain documentation be included in notices of sale; also see HB 2399.	O	Mortgages & Trust Deeds	CA
SB 0374	Requires person that initiates judicial residential foreclosure to enter into mediation before bringing suit; requires notice of mediation at least 120 days before filing suit; also see SB 367.	O	Mortgages & Trust Deeds	CA
SB 0558	Replaces foreclosure mediation requirements with resolution conference requirements; makes significant revisions to SB 1552 of 2012; same as HB 3389.	A	Mortgages & Trust Deeds	0
HB 2834	Enacts Revised Uniform Law on Notarial Acts.	N	Notaries	0
HB 2031	Designates Dept of State Lands to act for state in transactions concerning mineral and geothermal resource rights in low-potential resource lands.	N	Public Bodies	CA
HB 2402	Restricts use of foreign steel in certain public projects.	O	Public Bodies	CA
SB 0236	Prohibits agencies from adopting rules during regular legis session or effective before sine die adjournment of regular session; specifies exceptions; also see SB 333.	N	Public Bodies	PI
SB 0333	Prohibits agencies from adopting rules between effective date of 2013 bill and July 1, 2014; specifies exceptions; also see SB 236.	N	Public Bodies	PI
SB 0479	Provides that state does not have ownership interest in certain real property (water area filled by government agency more than 50 years ago).	N	Public Bodies	0
HB 2417	Increases recording fees by \$5, with transfer of increased fees to Housing and Community Services Dept.	O	Recording	CA
HB 2527	Modifies definition of "consideration" for purposes of conveyance of real property; requires disclosure of monetary value and description of other property or value offered as concession by seller.	O	Recording	CA

Bill	Description	OLTA Posit	Category	Notes/Status
HB 2869	Authorizes county to charge fee not to exceed actual costs to county of recordings most instruments; repeals current cap of \$10.	O	Recording	0
HB 2227	Addresses certain property tax exemptions.	N	RP Tax & Assessment	AB
HB 2458	Freezes assessed value of homestead of certain seniors and disabled individuals at assessed value on date claim filed; also see HB 2513.	N	RP Tax & Assessment	AB
HB 2459	Applies bar to tax foreclosure for individual who was, or whose homestead was determined to be, ineligible for homestead property tax deferral program as a result of recent changes in law.	N	RP Tax & Assessment	JD
HB 2489	Delays for add'l two years prohibition on senior & disabled citizen tax deferral for certain homesteads pledged as security for reverse mortgage.	N	RP Tax & Assessment	CA
HB 2493	Grants tax exemption to property of nonprofit occupied exclusively by low income persons or held exclusively for future development as low income housing.	N	RP Tax & Assessment	CA
HB 2510	Makes changes to senior and disabled citizens tax deferral program; transfers responsibility for program from Dept of Revenue to Housing & Community Services Dept.	N	RP Tax & Assessment	CA
HB 2513	Freezes assessed value of homestead of certain seniors and disabled individuals at assessed value on date claim filed; also see HB 2458.	N	RP Tax & Assessment	AB
HB 3368	Eliminates discount for partial or full payment of property taxes on or before Nov 15; applies to tax years beginning July 1, 2013.	O	RP Tax & Assessment	0
SB 0313	Revises maximum assessed value of property.	N	RP Tax & Assessment	Needs review - MT
SB 0447	Reduces monthly interest on delinquent property taxes from 1-1/3% per month to lesser of (a) prime rate plus 1%, multiplied by 1/12, or (b) 2/3rd of 1%.	N	RP Tax & Assessment	PI
HB 2437	Allows credit against income taxes for purchase of energy efficient home.	N	Taxation	CA
HB 2446	Extends sunset for tax exemptions for gain realized by sale of manufactured dwelling park to certain organizations.	N	Taxation	CA
HB 2447	Extends sunset for tax credit for closure of manufactured dwelling park.	N	Taxation	CA
HB 2473	Extends sunset for tax credit for closure of manufactured dwelling park.	N	Taxation	CA
HB 3319	Imposes tax on residential real estate lender when loan amount exceeds real market value of residential property; tax is 50% of interest attributable to difference between property value and loan amount; requires borrower to file report with DOR to initiate tax.	O	Taxation	0

Bill	Description	OLTA Posit	Category	Notes/Status
SB 0322	Extends sunset for tax credit for closure of manufactured dwelling park.	N	Taxation	CA
SB 0414	Permits DCBS to seek restitution on behalf of consumer that suffered actual damages as result of insurer's violation of Insurance Code or breach of insurance contract or policy.	O	Title Insurance	Needs review
SB 0512	Permits private action against insurer or other person that commits unlawful insurance practice; requires insurer or other person to indemnify insurance producer against ins producer's unlawful acts or omissions if ins prod'r acted within scope of ins prod'r's employment; referred to electorate.	O	Title Insurance	0
SB 0513	Permits private action against insurer or other person that commits unlawful insurance practice; requires insurer or other person to indemnify insurance producer against ins producer's unlawful acts or omissions if ins prod'r acted within scope of ins prod'r's employment; same as SB 512 but without referral to electorate.	O	Title Insurance	0
SB 0514	Establishes private right of action for insurer's or another person's alleged unfair claim settlement practice.	O	Title Insurance	0
HB 2629	Provides for automatic termination of revocable trust when settlor is divorced or settlor's marriage is annulled, if trust names settlor and settlor's former spouse as sole cotrustees and primary beneficiaries.	N	Trusts	JS; will require u/w guidelines



# Handwriting & Document Forensics



**Jacqueline A. Joseph, B.A., D-BFDE,\***  
**Board Certified Forensic Examiner**

*\*Fewer than 1% of forensic document examiners worldwide have achieved this noted credential.*

Find the proof and end the suspense. Success starts with an evaluation of your evidence, document, or artifact. Using special equipment when needed, Jacqueline demonstrates evidence of document alterations, deletions, or additions. Learn what to do for a reliable expert opinion based on scientific standards.

**Jacqueline Joseph** has worked with attorneys, police and sheriff departments, local municipalities, and private corporations in the areas of forgery and fraud. As a testifying expert, Ms. Joseph is able to present her conclusions in a clear and convincing manner.

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THE SCIENTIFIC EXAMINATION  
OF HANDWRITING AND  
SUSPICIOUS OR DISPUTED  
DOCUMENTS

Contact [jjhandwriting.com](http://jjhandwriting.com) for assistance with:

## **DISTURBANCE FROM:**

- Anonymous Notes
- Embezzlement
- Altered Records (*Medical/Dental/Legal*)
- Internal Crimes

## **CASES INVOLVING:**

- Handwriting Comparisons
- Denied Signatures (Verification)
- Suspicious Documents (Altered Wills)
- Forgery Detection

## **OUR EXPERT OPINIONS CAN HELP:**

- Avoid False Accusations
- Find the Truth
- Lead to a Confession
- Restore the Peace

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## CHECKLIST FOR HANDLING YOUR EVIDENCE

The guidelines below will help you when working with a forensic document examiner after your suspicions have been aroused involving what you believe to be a case of disguised/denied handwriting or altered documents. The following are accepted practices in forensic document examination. Use them to handle your evidence. My professional opinion is rendered after examining and comparing the suspicious writing with the handwritten samples (exemplars<sup>1</sup>).

- Obtain the originals of each document if possible. Otherwise, obtain best scans or photocopies
- Do not fold, staple, punch or otherwise damage original documents
- Investigate background information concerning the documents' origins
- Keep track of the originals: providing a full history of where they have been stored, who has handled them, what has been done to them
- Find and submit a sufficient amount of exemplars. Ask me about what will be enough and the proper way to obtain them (See footnote below)
- Locate exemplars with the same or similar wording configurations
- Provide valid exemplars with proper proof of genuineness. Ask me for the criteria to meet proof
- Acquire exemplars prepared/written within the same timeframe as the questioned document
- Scan or photocopy three sets of your exemplars being careful not to inadvertently omit any portion of an image from top, bottom or side margins
- Give the first photocopied set to me unmarked
- On the second photocopied set, highlight what you regard as suspicious features and also give this set to me
- Retain the third photocopied set for future use if needed
- Keep the original documents in a safe place and protect them in plastic sleeves  
Submit your evidence (scans, copies and/or originals) via safe carrier or by hand-delivery to me

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<sup>1</sup> **Exemplars:** Provable genuine samples of handwriting or documents which serve as models for comparison with  
**a) Collected Exemplar:** Handwriting or a document that existed prior to and/or is not connected with the dispute.  
**b) Requested Exemplar:** Writing which is specifically requested to be written after the dispute has arisen.

## RED FLAGS IN EVALUATING BUSINESS RECORDS

If you have a suspicious record or suspicious handwriting or typewriting, these clues should alert you to the need for a document examiner/handwriting expert:

**THE EXPANDED RECORD:** Evidence that may lead to an opinion that entries in a record have been altered or enlarged:

- Crowding, squeezing in, or writing words around existing entries.
- Change in slant, pressure, and uniformity of handwriting.
- Presence of erasure, eradication, or obliteration.
- Use of two or more inks to write one entry that normally would be written with one pen/ink.
- Reaction of lines intersecting folds, holes, or paper tears.
- Improper sequence of intersecting inks lines.
- Shadow writing (impressions or lack of impressions/ink on next page).
- Alignment variation on margins.

**THE SUBSTITUTED OR REWRITTEN RECORD:** Evidence that may lead to an opinion that a page or the entire record has been substituted or wholly rewritten:

- Use of medical forms not manufactured or printed until after the date of the entries.
- Use of later year (1997 or 1996), if it appears several times and has been corrected.
- Variation of folds, stains, and tears when comparing one page with another.
- Unnatural order of writing and undue uniformity of margins, ink, arrangement.

A chain of custody is a record that shows the continuous whereabouts of evidence and who was responsible for its care and safekeeping. The chain of custody may become important if opposing parties make an accusation of evidence tampering.

Each transfer of documents becomes a link in the chain of custody. To record the transfers of evidence, prepare a receipt similar to this sample including the information from your case. Keep your signed chain of custody receipt as a permanent part of the case file.

## CHAIN OF CUSTODY

RE: <Case Name or Client Name>

I, \_\_\_\_\_ <your name here> have received the following documents from \_\_\_\_\_ <name of sender of documents>:

*Use this area to list and describe each document as fully as possible, including the following:*

- Name of document(s), page number(s), and date(s)
- Size and type of paper
- Indicate if each document is an original or a copy (black and white or color copy)

By: \_\_\_\_\_  
<Your signature as recipient of the above listed documents>

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_  
<Your name here>

## Test Your Skill: Can You Detect the Common Author?

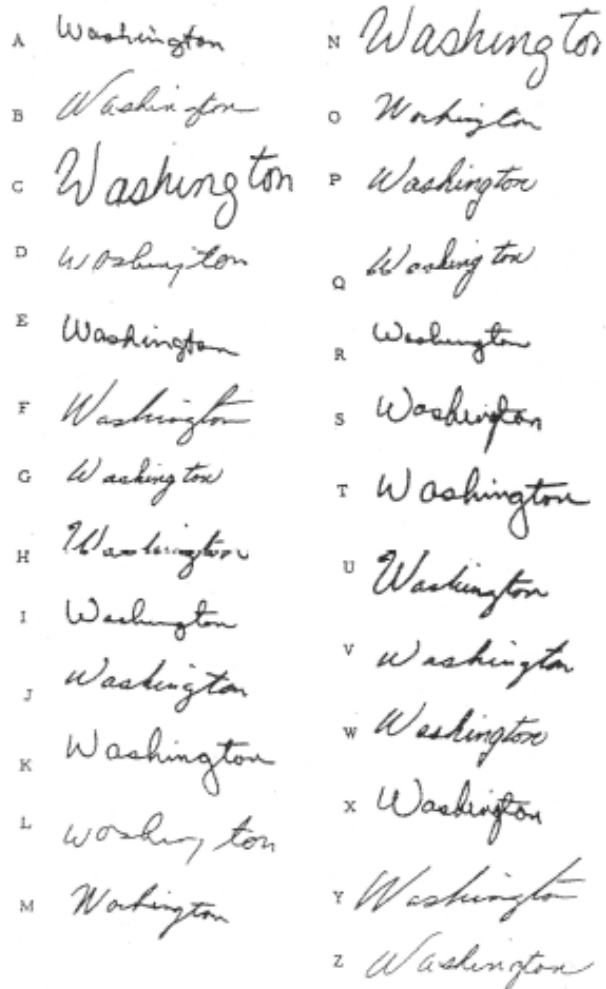
This is a skill test that demonstrates the nuances of handwriting. Even when someone writes the same word twice, there will be naturally occurring variations when comparing the same letter forms, the spacing between letters, the length of the t-bar crossings, overall slant and more.

This skill test can indicate whether or not you have a good eye for detail. Such skill can be useful when examining handwriting and documents for forensic purposes. Forensic document and handwriting professionals form opinions using the significant features observed by carefully examining the evidence. Their opinions may be used to support or refute claims that a signature or document may or may not be authentic. Providing such an opinion may have serious and significant consequences in the workplace and/or the justice system. Therefore, forensic professionals depend on many more factors than an "eye for detail" when conducting examinations.

This skill test shows the handwriting of 13 people who were asked to write the word "Washington" twice. Their writings were mixed up on this page and the pair may or may not be in the same column. Your challenge is to find the pair written by the same person. The answers are given at the bottom of the page. Try not to peek before you complete the test.

By taking this simple test, we hope you will see that there is more to identifying the handwriting's common author than originally meets the eye!

### SKILL TEST:



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A-E; B-Z; C-N; D-L; F-Y; G-Q; H-U; I-R; J-V; K-T; M-O; P-W; S-X  
Answer Key:

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## SUGGESTED SOURCES FOR FINDING SIGNATURE AND HANDWRITING SAMPLES/EXEMPLARS FOR FORENSIC EXAMINATION

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### PERSONAL

Birth certificates  
Baptismal records  
Family bible and diaries  
Personal notebooks  
Telephone notebooks  
Marriage/Divorce records  
Greeting cards and letters  
Postcards  
Hospital and medical records  
Rent receipts  
Boat/Trailer registrations

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### EDUCATION

High school records  
College applications  
Housing applications  
Examination papers  
Athletic records

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### VOCATIONAL

Employment applications  
Personnel records  
License applications  
Public examinations  
Civil service records  
Labor union documents  
Time cards  
Reports and Surveys  
Payroll checks/endorsements  
Client's checks/endorsements  
Interoffice memos

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### FINANCIAL DOCUMENTS

Bank checks  
Deposit slips  
Signature cards  
Contracts  
Insurance records  
Loan documents  
Wills  
Titles and Deeds

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### SOCIAL

Club memberships  
Civic organizations  
Political groups  
Religious organizations  
Sports league teams  
Convention registrations

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### CORPORATE

Gas, light, water forms  
Telephone records  
Refuse disposal records  
Incorporation papers  
Invoices  
Credit card slips  
Real estate transactions  
Corporate minutes  
Books of account

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### MOTOR VEHICLE

Sales slips and receipts  
Registration forms  
Operator license  
Insurance papers  
Accident reports  
Theft or loss reports  
Service orders  
Auto credit card forms  
Titles  
Traffic violations

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### MILITARY DOCUMENTS

Selective service records  
National Guard records  
Tax exemption filings  
GI Loan application  
Real estate papers  
Pension records  
Medical records  
Educational records

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### GOVERNMENT/PUBLIC

Archives  
VA records  
Tax documents  
Immigration/naturalization records  
Patent applications  
Civil suit documents  
Bail bonds  
Affidavits  
Waivers  
Power of attorney  
Social security documents  
Bankruptcies  
Death certificates  
Voter's registration  
Workers' Compensation forms  
Library cards  
Probate records  
Postal documents  
Passport application

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### CRIMINAL

Arrest records  
Parole / Probation  
Jail records  
Prior agencies  
Complaints to police  
Booking documents

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### MISCELLANEOUS

Friends and relatives  
Neighbors  
Delivery records  
Return receipts  
Motel and hotel slips  
Airplane logs and tickets  
Shipping and purchase orders  
Trashcans and wastebaskets  
Addressed envelopes  
Autographs and yearbooks  
Vet records  
Fishing/hunting licenses  
Cooking recipe

*For best results, submit originals of the documents.*

**CLOSING PROTECTION LETTER - SINGLE TRANSACTION**

**BLANK TITLE INSURANCE COMPANY**

Name and Address of Addressee:

Date:

Name of Issuing Agent or Approved Attorney ("Issuing Agent" or "Approved Attorney", as the case may require):

*[Name of Issuing Agent or Approved Attorney appears here.]*

Transaction ("Real Estate Transaction"):

Re: Closing Protection Letter

Dear

Blank Title Insurance Company (the "Company"), in consideration of your acceptance of this letter, agrees, subject to the Conditions and Exclusions set forth below, to indemnify you for actual loss of settlement funds incurred by you in connection with the closing of the Real Estate Transaction conducted by the Issuing Agent or Approved Attorney on or after the date of this letter, provided:

- (A) the Company issues or is contractually obligated to issue title insurance for your protection in connection with the closing of the Real Estate Transaction;
- (B) you are to be the (i) lender secured by an Insured Mortgage, as defined in the ALTA Loan Policy (6-17-06), its assignee or a warehouse lender, (ii) purchaser of an interest in land, or (iii) lessee of an interest in land; and
- (C) the aggregate of all funds you transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed \$ \_\_\_\_\_; and

further provided the loss arises out of:

- 1. Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain the other document affects the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document, or
- 2. Fraud, theft, dishonesty or negligence of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with the closing to the extent that fraud, theft, dishonesty or negligence relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land.

If you are a lender protected by this letter, your borrower, your assignee and your warehouse lender in connection with an Insured Mortgage shall be protected as if it was addressed to



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them.

### Conditions and Exclusions

1. The Company shall have no liability for loss arising out of:
  - a. Failure of the Issuing Agent or Approved Attorney to comply with closing instructions that require title insurance protection inconsistent with that set forth in the Company's title insurance binder or commitment.
  - b. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.
  - c. Defects, liens, encumbrances or other matters in connection with the Real Estate Transaction. This Exclusion does not affect the coverage afforded in the Company's title insurance policy issued in connection with the Real Estate Transaction.
  - d. Fraud, theft, dishonesty or negligence of your employee, agent, attorney or broker.
  - e. Your settlement or release of any claim without the Company's written consent.
  - f. Any matters created, suffered, assumed or agreed to by you or known to you.
2. If the closing is conducted by an Approved Attorney, a title insurance binder or commitment for the issuance of the Company's title insurance policy must have been received by you prior to the transmission of your final closing instructions to the Approved Attorney.
3. When the Company shall have indemnified you pursuant to this letter, it shall be subrogated to all rights and remedies you have against any person or property had you not been indemnified. The Company's liability for indemnification shall be reduced to the extent that you have impaired the value of this right of subrogation.
4. The Company's liability for loss under this letter shall not exceed the least of:
  - a. the amount of your settlement funds;
  - b. the Company's liability under its title insurance policy at the time written notice of a claim is made under this letter; or
  - c. the value of the lien of the Insured Mortgage, or the interest in the land insured or to be insured under the Company's title insurance policy at the time written notice of a claim is made under this letter.
5. Payment to you or to the owner of the Indebtedness under the Company's title insurance policy or policies or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to Section 10 of the Conditions of the policy.

AMERICAN  
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ASSOCIATION



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6. The Issuing Agent is the Company's agent only for the limited purpose of issuing title insurance policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing closing or settlement services. The Company's liability for your losses arising from those closing or settlement services is strictly limited to the protection expressly provided in this letter. The Company shall have no liability for loss resulting from the fraud, theft, dishonesty or negligence of any party to the Real Estate Transaction other than an Issuing Agent or Approved Attorney, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.
7. You must promptly send written notice of a claim under this letter to the Company at its principal office at \_\_\_\_\_ . If the Company is prejudiced by your failure to provide prompt notice, the Company's liability to you under this letter shall be reduced to the extent of the prejudice. In no event shall the Company be liable for a loss if the written notice is not received by the Company within one year from the date of the closing.
8. This letter will cover the Real Estate Transaction if it closes within one year after the date of this letter. The Company may terminate its obligation to cover the Real Estate Transaction if it has not closed by sending written notice to the Addressee.
9. The protection of this letter extends only to real estate in [State].
- [10. Either the Company or you may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless you have a title insurance policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000. If you have a policy of title insurance for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and you.]

No previous letter, endorsement or similar agreement for closing protection applies to the Real Estate Transaction.

**BLANK TITLE INSURANCE COMPANY**

By: \_\_\_\_\_  
Authorized Signatory

(The name of a particular issuing agent or approved attorney may be inserted in lieu of reference to Issuing Agent or Approved Attorney contained in this letter and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent.)

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**CLOSING PROTECTION LETTER – MULTIPLE TRANSACTIONS**  
**BLANK TITLE INSURANCE COMPANY**

Name and Address of Addressee:

Date:

Name of Issuing Agent or Approved Attorney ("Issuing Agent" or "Approved Attorney", as the case may require):

*[Name of Issuing Agent or Approved Attorney appears here.]*

Re: Closing Protection Letter

Dear

Blank Title Insurance Company (the "Company"), in consideration of your acceptance of this letter, agrees, subject to the Conditions and Exclusions set forth below, to indemnify you for actual loss of settlement funds incurred by you in connection with the closing of any real estate transaction ("Real Estate Transaction") conducted by the Issuing Agent or Approved Attorney on or after the date of this letter, provided:

- (A) the Company issues or is contractually obligated to issue title insurance for your protection in connection with the closing of the Real Estate Transaction;
- (B) you are to be the lender secured by an Insured Mortgage, as defined in the ALTA Loan Policy (6-17-06), its assignee or a warehouse lender; and
- (C) the aggregate of all funds you transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed \$ \_\_\_\_\_; and

further provided the loss arises out of:

1. Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain the other document affects the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document, or
2. Fraud, theft, dishonesty or negligence of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with the closings to the extent that fraud, theft, dishonesty or negligence relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land.

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If you are a lender protected by this letter, your borrower, your assignee and your warehouse lender in connection with an Insured Mortgage shall be protected as if it was addressed to them.

Conditions and Exclusions

1. The Company shall have no liability for loss arising out of:
  - a. Failure of the Issuing Agent or Approved Attorney to comply with closing instructions that require title insurance protection inconsistent with that set forth in the Company's title insurance binder or commitment.
  - b. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.
  - c. Defects, liens, encumbrances or other matters in connection with the Real Estate Transaction. This Exclusion does not affect the coverage afforded in the Company's title insurance policy issued in connection with the Real Estate Transaction.
  - d. Fraud, theft, dishonesty or negligence of your employee, agent, attorney or broker.
  - e. Your settlement or release of any claim without the Company's written consent.
  - f. Any matters created, suffered, assumed or agreed to by you or known to you.
2. If the closing is to be conducted by an Approved Attorney, a title insurance binder or commitment for the issuance of the Company's title insurance policy must have been received by you prior to the transmission of your final closing instructions to the Approved Attorney.
3. When the Company shall have indemnified you pursuant to this letter, it shall be subrogated to all rights and remedies you have against any person or property had you not been indemnified. The Company's liability for indemnification shall be reduced to the extent that you have impaired the value of this right of subrogation.
4. The Company's liability for loss under this letter shall not exceed the least of:
  - a. the amount of your settlement funds;
  - b. the Company's liability under its title insurance policy at the time written notice of a claim is made under this letter; or
  - c. the value of the lien of the Insured Mortgage or the interest in the land insured or to be insured under the Company's title insurance policy at the time written notice of a claim is made under this letter.
5. Payment to you or to the owner of the Indebtedness under the Company's title insurance policy or policies or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to Section 10 of the Conditions of the policy.
6. The Issuing Agent is the Company's agent only for the limited purpose of issuing title insurance policies. Neither the Issuing Agent nor the Approved Attorney is the

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Company's agent for the purpose of providing closing or settlement services. The Company's liability for your losses arising from those closing or settlement services is strictly limited to the protection expressly provided in this letter. The Company shall have no liability for loss resulting from the fraud, theft, dishonesty or negligence of any party to the Real Estate Transaction other than an Issuing Agent or Approved Attorney, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.

- 7. You must promptly send written notice of a claim under this letter to the Company at its principal office at \_\_\_\_\_ . If the Company is prejudiced by your failure to provide prompt notice, the Company's liability to you under this letter shall be reduced to the extent of the prejudice. In no event shall the Company be liable for a loss if the written notice is not received by the Company within one year from the date of the closing.
- 8. This letter will cover each Real Estate Transaction that closes within one year after the date of this letter. The Company may terminate its obligation to cover Real Estate Transactions that have not closed by sending written notice to the Addressee.
- 9. The protection of this letter extends only to real estate in [State].
- [10. Either the Company or you may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless you have a title insurance policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000. If you have a policy of title insurance for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and you.]

No previous letter, endorsement or similar agreement for closing protection applies to the Real Estate Transaction.

**BLANK TITLE INSURANCE COMPANY**

By: \_\_\_\_\_  
Authorized Signatory

(The name of a particular issuing agent or approved attorney may be inserted in lieu of reference to Issuing Agent or Approved Attorney contained in this letter and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent.)

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## OLTA 2013 ENDORSEMENTS

FORM #	NAME	POLICY TYPE
3.2-06	Zoning - Land Under Development	
9-06	Restrictions, Encroachments & Minerals	Loan
9.1-06	Covenants, Conditions & Restrictions - Unimproved Land	Owners
9.3-06	Covenants, Conditions & Restrictions	Loan
9.6-06	Private Rights	Loan
9.7-06	Restrictions, Encroachments & Minerals-Land Under Development	Loan
9.8-06	Covenants, Conditions & Restrictions - Land Under Development	Owners
13.06	Leasehold	Owners
13.1-06	Leasehold	Loan
20-06	First Loss - Multiple Parcel Transactions	
28.1-06	Encroachments, Boundaries & Easements	
34-06	Identified Risk Coverage	
35-06	Minerals & Other Subsurface Substances - Buildings	
35.1-06	Minerals & Other Subsurface Substances - Improvements	
35.2-06	Minerals & Other Subsurface Substances - Described Improvements	
35.3-06	Minerals & Other Subsurface Substances -Land Under Development	
36-06	Energy Project-Leasehold/Easements	Owners
36.1-06	Energy Project-Leasehold/Easements	Loan
36.2-06	Energy Project - Leasehold	Owners
36.3-06	Energy Project - Leasehold	Loan
36.4-06	Energy Project-Covenants, Conditions & Restrictions - Land Development	Owners
36.5-06	Energy Project-Covenants, Conditions & Restrictions - Land Under Development	Loan
36.6-06	Energy Project-Covenants, Conditions & Restrictions -Encroachments	

# REVERSE MORTGAGES –What’s Up Today and What’s Around the Corner

“This is the reverse mortgage industry, where the one true constant is change (and usually the sweeping massive, completely surprising type of change).” Dan Stumberger, The Reverse Review.

## I. INTRODUCTION

Reverse mortgages were actively offered in the 1980s by private companies who offered propriety (non-insured) reverse mortgages of various types. The aim was to allow older homeowners to tap the accrued equity in their residential properties but to defer payment of the loan until the borrowers die, sell, or move out of the home. Currently all but a handful of reverse mortgages are Home Equity Conversion Mortgages (HECM’s)

## II. HECM FUNDAMENTALS:

### A. Summary of Essential Features and Requirements

	Features & Requirements
<b>Eligibility age</b>	Borrower (or youngest co-borrower) must be at least 62 years old.
<b>Home value</b>	All homes are eligible, but FHA loan limits cap the amount of authorized loan proceeds on homes valued more than \$625,500.
<b>Authorized loan proceeds</b>	At today’s interest rates, borrowers receive between 51% and 77% of the appraised home value (or FHA loan limit, whichever is less) depending on age and product choice.
<b>Mortgage Insurance Premium (MIP)</b>	<i>Upfront:</i> 2% or 0.01% of home value (or FHA loan limit, whichever is less), depending on product choice. <i>Ongoing:</i> 1.25% per year on outstanding loan balance, assessed monthly.
<b>Guarantee to borrowers</b>	FHA guarantees borrowers that if the lender fails to make payments to the borrower as agreed, the FHA will make those payments on behalf of the lender.
<b>Consumer protections</b>	Mandatory pre-loan counseling; limits on costs and fees; right to remain in the home (subject to certain conditions); nonrecourse loan.
<b>Protection for lenders/investors</b>	FHA insurance guarantees that lenders/investors will be repaid in full, subject to certain conditions.

### B. Ongoing Borrower Obligations:

1. Principal residence: The borrower must occupy the property as a principal residence. For co-borrowers, at least one borrower must continue to occupy the property as a principal residence. If the borrower, or last remaining co-borrower, moves out for 12 months + foreclosure may be initiated
2. Taxes & insurance: Property taxes and homeowner’s insurance are to be kept current
3. Maintenance: The home in must be kept good repair.

### C. Repayment Triggers & Repayment Obligations

1. Death: The borrower (or last co-borrower) dies.
2. Move-out: The borrower (or last co-borrower) moves out of the home permanently.
3. Extended absence: The borrower (or last co-borrower) does not physically reside in the property for more than 12 months due to illness or other reasons.
4. Sale or gift of the property: The borrower (or last co-borrower) sells the property or otherwise transfers the title to a third party.

5. Failure to fulfill obligations: The borrower fails to pay taxes and insurance or to keep the home in good repair. The lender will give the borrower the opportunity to correct the problem prior to declaring a loan due and payable.

Once declared due and payable, borrower or borrower estate has 6 months to repay the loan, typically by selling the home. If the balance of the loan is greater than sales proceeds (subject to FHA procedures to ensure that the proceeds reflect the value of the home), the borrower or the estate does not have to pay the balance.

#### **D. Consumer Protections:**

1. Right to remain in the home: Borrower may live in the home indefinitely, regardless of how large the loan balance becomes, so long as he complies with residency, maintenance & pays T & I. For co-borrowers, if one borrower dies, the surviving co-borrower has the same right to live in the home indefinitely.
2. FHA-approved lender: Only FHA-approved lenders may make HECM loans Non-recourse: If the loan balance is greater than the value of the home at the borrower's death, move-out, or foreclosure, the lender cannot seek the additional loan balance from the borrower's (or the estate's) other assets; FHA insurance is to cover the deficiency.
3. No prepayment penalty.
4. Counseling: Borrower must receive counseling from a FHA-approved, independent third-party counseling agency . (NOTE: Sequestration challenges funding.)
5. Disclosures: FHA requires an extensive array of disclosures.

#### **E. FAQ's (& Not-So FAQ's)**

1. What is "reversed" about a reverse mortgage?

They function "in reverse" to the traditional "forward" mortgages. With a traditional mortgage, borrowers make payments to the lender. With a reverse mortgage, borrowers' home equity *decreases* and the loan balance *increases* over time as borrowers receive cash payments from the lender and interest accrues on the loan.
2. Is every reverse mortgage a Home Equity Conversion Mortgage?

No. In the 1980s private companies began offering proprietary (non-government insured) reverse mortgages of various types. The HECM program was initiated as a small pilot program in the 1990's and but grew during the housing boom when even a range of proprietary reverse mortgages products could draw only 8-10% of the market. Since 2008, almost all reverse mortgages have been HECMs.
3. Why ARE there two sets of notes and trust deeds for a HECM?

There is a note and TD which runs in favor of the lender to secure its advances to the borrower and an additional note and TD which runs in favor of HUD to secure any advances it might make as the insurer in the transaction. (HUD insures the borrower will receive all promised advances; it also insures investors that it will take assignment of a loan once disbursements total 98% of allowed maximums.
4. What is Controversial about Reverse Mortgages for Borrowers?

They are more expensive than traditional loans, especially as MIP, interest, and service fees and charges are added to the loan balance and interest compounds on those sums as well as cash drawn out by the borrower; elderly borrowers may be confused by the atypical "equity

converting” nature of the loans or by the complex options available within the HECM program, and lump sum HECM’s can draw predators or trigger short-term thinking rather than more cautious retirement planning. Counseling has its limitations.

5. What is Controversial about Reverse Mortgages for the Lender Group?

HECM’s, & particularly fixed rate standard HECM’s, offered recently at attractively low origination fees, have quickly shown up as having a high rate of default due to non-payment of property taxes and insurance. The major originators B of A, Wells Fargo, and Met Life have stopped making HECM loans citing discomfort with foreclosing on elderly borrowers. In some states, foreclosing on property once borrowers are deceased has led to headaches over serving unknown heirs. If reverses hurt consumers, the lender group is tarnished.

NOTE on Oregon Tax Deferrals: Oregon continued to offer property tax deferrals to seniors who took out reverse mortgages longer than many other states, but barred participation in the program for seniors with deferral in legislation passed in 2011. Intense lobbying delayed the effect of this legislation for 2 years, but that grace period is over as of this year. Going forward, taxes will not be deferred for years when a reverse mortgage is in place (and eating equity which was to secure the eventual payment of deferred taxes).

**III. HECM LOAN OPTIONS (as of 03, 2013)**

**A. Adjustable rate HECMs v Fixed Rate HECMs**

Features	Interest rate type	
	Adjustable	Fixed
Available payment options	All: Line of credit, Term, Tenure, Modified Term, Modified Tenure, Lump-sum	Lump-sum only
Interest rate	<ul style="list-style-type: none"> <li>Averaged 2.5% in FY 2011</li> <li>Lower at origination than fixed rate, but can change over the life of the loan.</li> </ul>	<ul style="list-style-type: none"> <li>Averaged 5.1% in FY 2011</li> <li>Higher at origination, but will not change.</li> </ul>
Loan structure/prepayment	Open-end loan.* Can prepay all or some of the loan at any time and re-use credit line.	Closed-end loan.** Can prepay all or some of the loan at any time, but re-use of the credit line is not permitted.
Credit line growth	Unused credit line grows over time at the same rate as the interest plus mortgage insurance premium assessed on the loan balance.	No credit line growth.

Note: \*HECM regulations do not specifically permit nor prohibit closed-end, adjustable-rate loans, though in practice the CFPB is not aware of any lenders making these loans. \*\*According to FHA Mortgagee Letter 2008-08, fixed-rate reverse mortgages can be open-end or closed-end, though in practice the CFPB is not aware of any lenders making open-end, fixed-rate HECMs.



**B. HECM Standard v HECM Saver**

Features	Loan type	
	HECM Standard	HECM Saver
<b>Upfront Mortgage Insurance Premium (MIP)</b>	<ul style="list-style-type: none"> <li>• 2.0% of appraised value*</li> <li>• <i>Example: \$4000</i></li> </ul>	<ul style="list-style-type: none"> <li>• 0.01 of appraised value*</li> <li>• <i>Example: \$200</i></li> </ul>
<b>Loan proceeds</b>	<ul style="list-style-type: none"> <li>• Larger.</li> <li>• Maximum loan proceeds range from 62% to 77% of appraised value*, depending on age, at today's interest rates.**</li> <li>• <i>Example: \$130,400</i></li> </ul>	<ul style="list-style-type: none"> <li>• Smaller.</li> <li>• Maximum loan proceeds range from 51% to 61% of appraised value*, depending on age, at today's interest rates.**</li> <li>• Proceeds are 12.6 percentage points lower on average across all ages and interest rates</li> <li>• <i>Example: \$108,600</i></li> </ul>

\* Or applicable FHA loan limit, whichever is less. \*\*Using a 5% interest rate (see footnote i).

*Example uses a \$200,000 home, a 68-year-old borrower, and a 5% interest rate.*

**IV. The Market for Reverse Mortgages**

**A. Borrower-Side**

1. Who's Been Borrowing on HECMs Lately?

Since approved by FHA in 2008 70 % of loan apps have been for Standard fixed rate HECM's and disproportionately submitted by borrower is at the low-end of the eligible age pool.

2. Demographics: The Expanding Need & Target Market

It's about the Boomers who as of 2009 had half of net worth tied up in their home. The first of the group hit age 62 in 2008. The bursting of the real estate bubble may have triggered SOS borrowing.

**B. Lender-Side**

1. Key lenders who left the field in 2011 & 2012

B of A & Wells stopped offering HECM's in 2011. They, and MetLife, which left in 2012, at one time wrote over 40 % of HECMs. Now loan originations come from many sources, fragmenting the market, while loan issuance is narrowly concentrated.

2. Liquidity and HMBS's-The Secondary Market for HECM's

Neither Fannie Mae nor Freddie Mac, is involved in purchasing HECMs. Today, HECMs move into the secondary market through Ginnie Mae, a special-purpose government-sponsored secondary market entity that facilitates the securitization FHA-insured mortgages. Unlike the GSEs, Ginnie Mae does not purchase and securitize loans itself. Instead, it provides a government guarantee for securities packaged by individual securities issuers through its HECM Mortgage Backed Securities (HMBS) program. Ginnie Mae issuers are required to be the servicer of record for all the loans in their securities, which means that the issuer is responsible for servicing the loans in the future & advancing funds. There are therefore high-capitalization standards for FHA-approved issuers which some fear makes the marketing vehicle for HMBS's too small.

**C. Continuing Change is in the Forecast**

Starting April 1, 2013 the HECM Standard program fixed rate program will be modified, and applications for (once-market-mandated) lump-sum draws will no longer be allowed. Loan proceeds offered under the HECM standard program will only be available in the form of a line of credit or monthly payments at an adjustable interest rate. Fixed-rate, lump-sum loans will still be available under the HECM Saver program, which pays out a smaller percentage of a home's appraised value than a Standard loan. Additional adjustments to the program *might* come later and include T & I impounds or some level of "credit-underwriting" to assess a borrower's likelihood of defaulting on T & I.

**V. Taking Care of Title & Escrow Business- Day-to Day Issues:**

**A. Issues *Going into* HECMs:**

1. HECM's & Powers of Attorney:

HUD permits HECMs to be taken out by an attorney-in-fact, but lenders may have their own requirements, especially when dealing with a durable POA and a debilitated borrower. (e.g.. HUD regs allow counseling requirement to be met by attorney-in-fact alone, but lenders may require direct participation by borrower who is only physically debilitated.)

TITLE CONCERNS: Reverse mortgage, given borrower demographics will naturally include a fair number of transactions involving POA's. A somewhat heightened level of scrutiny is wise given potential scams, borrower vulnerability, & unique nature of reverse mortgages. 1) Why is the POA being utilized? 2) Does the language of POA authorize the actions to be taken? 3) Have any conditions for activating the agency authority been documented? 4) Is there any indication of self-dealing or family discord? NOTE: ORS 127.025 proves as follows: "A person may not refuse to recognize the authority of an agent under a power of attorney based solely on the passage of time since the power of attorney was executed. "

2. HECM's & Trusts:

- (a) To qualify for a HECM (i) All trust beneficiaries, except contingent beneficiaries, must be over age 62 and meet occupancy requirements, (ii) Counseling: The borrower/beneficiaries must attend counseling but the trustee need not, (iii) The trustee will sign the TD (as well as the beneficiary borrowers, because the lender requires it); borrower/beneficiary must sign the loan agreement and note.
- (b) Transfer of HECM'd Property to & from a Trust i) With lender consent, a borrower may transfer HECM'd property to trust which meets all HECM qualifications; ii) Termination of a trust which has a HECM loan will not cause the HECM to become due and payable so long as one or more of original borrower beneficiaries who signed the noted & loan agreement continue to reside in property as principal residence and hold title.

ESCROW CAUTION: Step away from the scrivener's pen. It would be easy to derail an estate plan.

3. Co-borrowers and the Younger Spouse:

Spouses of reverse mortgage borrowers who are not themselves named as co-borrowers are often unaware that they are at risk of losing their homes. If the borrowing spouse dies or needs to move, the non-borrowing spouse must then sell the home or otherwise pay off the reverse mortgage.

ESCROW CAUTION: Preparing a deed that takes one spouse out of title can bring escrow into a zone of substantial potential liability.

4. Over-arching Concerns for Borrower:

Fraud in the inducement by false or misleading advertising, cross-selling, intra-family or caregiver appropriation of HECM Funds, confusion over a complex program & ineffectual counseling are among concern for elderly borrowers.

**B. Issues as HECM's *Wrap Up***

1. Payoffs:

Remember to arrange for reconveyance of both the lender TD and the HUD TD

2. Death or Protracted Absence from Home as Default Events:

When the last co-borrower has not occupied the home for 12 month or dies, the HECM becomes due and payable; HUD allows a 6 month grace period so the property can be refi'd or sold, with two 3-month extensions available on approval. If the HECM's property is under deep water there may be disappointed heirs.

3. Reverse Mortgage Short Sales:

These will likely be rare. For most borrowers, performing a short sale with a reverse mortgage is unnecessary. Reverse mortgages allow homeowners to remain in the home until the loan becomes due. Heirs who inherit reverse-mortgaged property do not have any particular motivation to perform a short sale, because they cannot be held responsible for any additional debt beyond the value of the home.

4. Reverse Mortgage Foreclosures:

Loan originators expect that a certain number of reverse mortgages will be foreclosed since the property may well be "under-water" when a borrower dies or moves out of the mortgaged property. A borrower's heirs will have a year to deal with property that has equity to support a refi or sale, but may not attempt lender contact when there is no equity.

TITLE CAUTION: Stay alert to notice requirements applicable in both judicial and nonjudicial foreclosure when the borrower is deceased; obtain verification that a foreclosed property is not occupied by parties opposing the foreclosure.

***SOURCE OF CHARTS & a substantial reference tool: Consumer Financial Protection Bureau, Reverse Mortgages; Report to Congress, June 2012.***

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Prepared by:

Mary Thuemmel, VP Northwest Underwriting Counsel

Williston Financial Group

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# ESCROW AGENT – Neutral Third Party, Scrivener

Through several factual scenarios, this session will elicit discussion of issues that may arise under the statutes and rules included below.

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**ORS 696.505 Definitions for ORS 696.505 to 696.590.** As used in ORS 696.505 to 696.590:

(1) "Close an escrow" means the final disbursement of all funds, property and documents in an escrow as directed by written escrow instructions from the principals.

(2) "Collection escrow" means an escrow in which the escrow agent:

(a) Receives:

(A) Installment payments;

(B) Instruments evidencing or securing an obligation; or

(C) Instruments discharging the security interest; and

(b) Disburses the payments or delivers the instruments upon specified conditions pursuant to the written instructions of an obligor and obligee.

(3) "Compensation" means a fee, commission, salary, money or valuable consideration for services rendered or to be rendered as well as the promise thereof and whether contingent or otherwise.

(4) "Escrow" means a transaction in which any written instrument, money, evidence of title to real or personal property or other thing of value is delivered, for the purpose of paying an obligation or effecting the sale, transfer, encumbrance or lease of real or personal property, to a person not otherwise having any right, title or interest therein, to be held by that person as a neutral third party until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by the neutral third party to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor or any agent or employee of any of them pursuant to the written instructions of the principals to the transaction.

(5) "Escrow agent" means a person who engages in the business of receiving escrows for deposit or delivery and who receives or is promised compensation, whether contingent or otherwise, for or in anticipation of performance.

(6) "Escrow trust account" means a bank account that meets all of the following requirements:

(a) Is kept separate, distinct and apart from funds belonging to the escrow agent;

(b) Is designated as an escrow trust account; and

(c) Is used to deposit trust funds received by an escrow agent on behalf of a principal.

(7) "Principal" means:

(a) The buyer, seller, lessor, lessee or exchanging party in an escrow transaction involving the sale, lease, lease-option or exchange of real property or personal property;

(b) The borrower in an escrow transaction involving the refinancing of real property or personal property, including but not limited to the refinancing of an obligation secured by a land sale contract requiring a deed to be delivered as part of the refinancing;

(c) The buyer, seller, lender, borrower, vendor or vendee in a collection escrow;

(d) A person directing the escrow agent to hold back funds from a closing escrow for payment of obligations related to the closing or the financing of real property or personal property;

(e) A person who deposits funds, property or documents in a one-sided escrow, as defined by rule of the Real Estate Commissioner; or

(f) A subservicer.

(8) "Real estate closing escrow" means an escrow in which:

(a) The escrow fee is paid in whole or in part by the principals to a real estate transaction; and

(b) The unpaid purchase price is delivered to an escrow agent for disbursement pursuant to the written instructions of the principals to the transaction simultaneously on the transfer of specified title to the real property.

(9) "Subservicer" means an escrow agent, a financial institution or a trust company, as those terms are defined in ORS 706.008, or a collection agency registered under ORS 697.015 when providing, pursuant to written instructions, a portion of the escrow services for an escrow to an escrow agent, or a person in the business of receiving escrows under the laws of another state, that would otherwise provide the escrow services directly to the principals.

(10) "Trust funds" means funds held by an escrow agent on behalf of a principal. [1963 c.440 §1; 1977 c.351 §4; 1981 c.617 §20; 1991 c.874 §1; 1993 c.18 §150; 2003 c.427 §4; 2005 c.116 §23; 2007 c.337 §2; 2009 c.174 §1]

**ORS 9.160 Bar membership required to practice law; exceptions.** (1) Except as provided in this section, a person may not practice law in this state, or represent that the person is qualified to practice law in this state, unless the person is an active member of the Oregon State Bar.

(2) Subsection (1) of this section does not affect the right to prosecute or defend a cause in person as provided in ORS 9.320.

(3) An individual licensed under ORS 696.022 acting in the scope of the individual's license to arrange a real estate transaction, including the sale, purchase, exchange, option or lease coupled with an option to purchase, lease for a term of one year or longer or rental of real property, is not engaged in the practice of law in this state in violation of subsection (1) of this section.

(4) A title insurer authorized to do business in this state, a title insurance agent licensed under the laws of this state or an escrow agent licensed under the laws of this state is not engaged in the practice of law in this state in violation of subsection (1) of this section if, for the purposes of a transaction in which the insurer or agent provides title insurance or escrow services, the insurer or agent:

(a) Prepares any satisfaction, reconveyance, release, discharge, termination or cancellation of a lien, encumbrance or obligation;

(b) Acts pursuant to the instructions of the principals to the transaction as scrivener to fill in blanks in any document selected by the principals;

(c) Presents to the principals to the transaction for their selection any blank form prescribed by statute, rule, ordinance or other law; or

(d) Presents to the principals to the transaction for their selection a blank form prepared or approved by a lawyer licensed to practice law in this state for one or more of the following:

(A) A mortgage.

(B) A trust deed.

(C) A promissory note.

(D) An assignment of a mortgagee's interest under a mortgage.

(E) An assignment of a beneficial interest under a trust deed.

(F) An assignment of a seller's or buyer's interest under a land sale contract.

(G) A power of attorney.

(H) A subordination agreement.

(I) A memorandum of an instrument that is to be recorded in place of the instrument that is the subject of the memorandum.

(5) In performing the services permitted in subsection (4) of this section, a title insurer, a title insurance agent or an escrow agent may not draft, select or give advice regarding any real estate document if those activities require the exercise of informed or trained discretion.

(6) The exemption provided by subsection (4) of this section does not apply to any acts relating to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of this section unless the escrow agent provides to the principals to the transaction a notice in at least 12-point type as follows:

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YOU WILL BE REVIEWING, APPROVING AND SIGNING IMPORTANT DOCUMENTS AT CLOSING. LEGAL CONSEQUENCES FOLLOW FROM THE SELECTION AND USE OF THESE DOCUMENTS. THESE CONSEQUENCES AFFECT YOUR RIGHTS AND OBLIGATIONS. YOU MAY CONSULT AN ATTORNEY ABOUT THESE DOCUMENTS. YOU SHOULD CONSULT AN ATTORNEY IF YOU HAVE QUESTIONS OR CONCERNS ABOUT THE TRANSACTION OR ABOUT THE DOCUMENTS. IF YOU WISH TO REVIEW TRANSACTION DOCUMENTS THAT YOU HAVE NOT YET SEEN, PLEASE CONTACT THE ESCROW AGENT.

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(7) The exemption provided by subsection (4) of this section does not apply to any acts relating to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of this section for a real estate sale and purchase transaction in which all or part of the purchase price consists of deferred payments by the buyer to the seller unless the escrow agent provides to the principals to the transaction:

(a) A copy of any proposed instrument of conveyance between the buyer and seller to be used in the transaction;

(b) A copy of any proposed deferred payment security instrument between the buyer and seller to be used in the transaction; and

(c) A copy of any proposed promissory note or other evidence of indebtedness between the buyer and seller to be used in the transaction.

(8) The notice and copies of documents that must be provided under subsections (6) and (7) of this section must be delivered in the manner most likely to ensure receipt by the principals to the transaction at least three days before completion of the transaction. If copies of documents have been provided under subsection (7) of this section and are subsequently amended, copies of the amended documents must be provided before completion of the transaction.

(9) Failure of any person to comply with the requirements of subsections (3) to (8) of this section does not affect the validity of any transaction and may not be used as a basis to challenge any transaction. [Amended by 2003 c.260 §1; 2007 c.319 §24; 2009 c.218 §4]

**ORS 9.164 Investigation of alleged violation of ORS 9.160.** Upon written complaint of any person or upon its own initiative, the Board of Governors of the Oregon State Bar shall investigate any alleged violation of ORS 9.160. [1987 c.860 §3]

**ORS 9.166 Enjoining practicing law without a license; restitution to victim.** If the board has reason to believe that a person is practicing law without a license, the board may maintain a suit for injunctive relief in the name of the Oregon State Bar against any person violating ORS 9.160. The court shall enjoin any person violating ORS 9.160 from practicing law without a license. Any person who has been so enjoined may be punished for contempt by the court issuing the injunction. An injunction may be issued without proof of actual damage sustained by any person. The court shall order restitution to any victim of any person violating ORS 9.160. The prevailing party may recover its costs and attorney fees in any suit for injunctive relief brought under this section in which the board is the plaintiff. [1987 c.860 §4; 2001 c.300 §57; 2003 c.260 §3; 2003 c.670 §6]

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#### **OAR 863-050-0000 Definitions**

As used in OAR chapter 863, division 50, unless the context requires otherwise, the following definitions apply:

- (1) "Agency" means the Oregon Real Estate Agency.
- (2) "Bank" has the meaning given that term in ORS 706.008. As used in ORS 696.578, "a bank authorized to do business within this state" means a banking business, as that term is defined in 706.005, that has either a bank charter or a certificate of authority issued by the Oregon Department of Consumer and Business Services pursuant to Chapters 706 to 716.
- (3) "Banking Day" means each day a bank is required to be open for the normal conduct of its business but does not include Saturday, Sunday, or any legal holiday under ORS 187.010.
- (4) "Bank services" are any monetary benefits received directly or indirectly from an escrow agent's bank as services to the escrow agent in consideration for the escrow agent's depositing and maintaining its clients' trust funds in such bank.
- (5) "Closed Escrow" means that all property titles have been transferred and all monies and documents have been disbursed or distributed in accordance with the instructions of the principals to the escrow transaction.
- (6) "Escrow" is defined in ORS 696.505.
- (7) "Escrow Activity" means any activity subject to regulation under ORS 696.505 to 696.590.
- (8) "Escrow Agent" is defined in ORS 696.505.
- (9) "Escrow Number" means a unique identifying number assigned to each escrow in logical sequence.
- (10) "Escrow Trust Account" means a bank account established pursuant to ORS 696.578.
- (11) "Holdback escrow" means a separate escrow, derived from a closing escrow, wherein funds are held after closing for the purpose of paying obligations related to the closing or to the financing of real or personal property therein after the closing has occurred.
- (12) "Net worth," as used in ORS 696.535, means is the remaining balance after subtracting total liabilities from total assets.
- (13) "One-sided escrow" as used in ORS 696.581 means an escrow that is opened by, or on behalf of, one party to a written, proposed agreement between two or more parties, for the purpose of depositing any written instrument, money, evidence of title to real or personal property, or other thing of value into the escrow account before execution of the agreement by the other party(s).

(14) "Owner" means an individual who has more than five percent ownership interest in the escrow agent.

(15) "Principal" is defined in ORS 696.505 and

(a) In a collection escrow, means the seller or buyer, lender or borrower, vendor or vendee.

(b) In a holdback escrow, means those parties directing the holdback.

(c) In a one sided escrow, means the depositing party.

(16) "Required Records" means all records required by OAR 863-050-0000 to 863-050-0150 and the Oregon Escrow Law, ORS 696.505 to 696.590.

(17) "Subservicer" is defined in ORS 696.505.

Stat. Auth.: ORS 696.385, 696.541

Stats. Implemented: ORS 696.505 & 696.590

Hist.: REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

#### **OAR 863-050-0015 Documents or Property Held in Escrow**

Except as otherwise provided in ORS 696.581, an escrow agent must use documents or other property deposited in escrow only in accordance with the dated written instructions of the principals to the escrow transactions or pursuant to court order.

Stat. Auth.: ORS 696.385, 696.541

Stats. Implemented: ORS 696.581

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 2-1981, f. 10-30-81, ef. 11-1-81; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 1-1993, f. 12-1-93, cert. ef. 1-1-94; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

#### **OAR 863-050-0020 Disclosure of Interest**

(1) An escrow agent must act as a disinterested, neutral third party with regard to any of the principals to an escrow transaction.

(2) An escrow agent must provide the disclosure required by this rule if the escrow agent, its owners, officers, management staff in the office of the escrow agent handling the escrow transaction, or the escrow officer handling the escrow transaction knows of any interest or relationship described in section (5) of this rule.

(3) An escrow agent must disclose to the principals in an escrow transaction, in a separate written notice:

(a) The specific interest the agent or the agent's employees have in the transaction described in section (5) of this rule; and

(b) The statement described in section (6) of this rule.

(4) An escrow agent must deliver the notice required by this rule to the principals:

(a) When the escrow agent accepts the escrow and before any of the principals becomes liable for any costs or signs any written escrow instruction; or

(b) If the interest is discovered after any of the principals becomes liable for costs or signs written escrow instructions, upon discovery of the interest.

(5) An escrow agent must disclose any interest that the agent or the agent's employees have in the escrow transaction, other than as escrow agent, title insurer, or title insurance agent. Such interests include but are not limited to the following:

(a) A family relationship by blood, domestic partnership, or marriage with the escrow officer or such other staff member who may be assigned responsibility for the administration of the escrow agent's transaction file, with respect to any principal in the transaction, real estate licensee, lender, mortgage or loan broker, builder, or subdivider with an interest in the transaction;

(b) Any pecuniary business interest in the transaction other than as escrow agent, title insurer, or title insurance agent; and

(c) Any financial interest of the escrow agent, escrow officer or such other staff member assigned responsibility for the administration of the escrow agent's file when that interest is more than five percent ownership interest in:

(A) A principal in the transaction; or

(B) A real estate licensee, lender, mortgage or loan broker, developer, builder or subdivider interest in the transaction.

(6) An escrow agent must include the following statement in a disclosure made under this rule:

"We call this interest to your attention in order to be open and fair with you. In our opinion this interest will not prevent us from being a fair and impartial escrow agent in this transaction. Nevertheless, you may request that this transaction be closed by some other licensed escrow agent if you so desire."

(7) An escrow agent making any disclosure required by this rule must take a written receipt for the disclosure statement or document the disclosure and its delivery to a principal. The escrow agent must maintain such receipts or documentation as a required record.

(8) For the purposes of this rule, if an escrow agent gives any services, property, or anything of value as a marketing tool to induce the recipient to bring or refer escrow business to the escrow agent, such giving is not a pecuniary business interest or financial interest for which disclosure must be made under this rule.

(9) The receipt by an escrow agent of bank services and interest earned on clients' trust funds under ORS 696.578(2) are not subject to the disclosure requirements of this rule.

Stat. Auth.: ORS 696.385, 696.541

Stats. Implemented: ORS 696.581

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA



## **Vesting Coverage Issues**

### **1. The Small Estate (ORS 114.505-114.560)**

A small estate filing is an alternative to a formal probate proceeding. It can only be used where the fair market value of the entire estate is \$275,000 or less of which not more than \$75,000 is attributable to personal property and not more than \$200,000 is attributable to real property. It is initiated by the filing of an affidavit with the clerk of the probate court. The claiming successor provides the information required by ORS 114.525 and states that a copy will be sent to all known heirs, devisees, creditors of the estate and to the Estate Administration Unit of the Department of Human Resources. Thereafter for a period of four months, the claiming successor can sell and convey real property of the deceased only if the heirs and devisees also sign the deed. Any sale proceeds are to be held and distributed at the conclusion of the four month period. After the four month period, any property not sold off by the affiant is transferred to the heirs or devisees. ORS 144.540 requires the affiant to record in deeds records, an affiant's deed.

Title Practice--Since the affidavit of the claiming successor is self-serving, and since there is no judicial oversight, proceed with caution. Make sure that the statutory requirements have been complied with exactly as written.

### **2. The Trust**

A trust is a fiduciary relationship with respect to property which subjects the person by whom the legal title to property is held (trustee) to equitable duties to deal with the property for the benefit of another (beneficiary). A trust requires the separation of the legal and equitable title. The legal title is vested in the trustee and the equitable title is vested in the beneficiary. *Allen v. Hendrick*, 104 OR. 202, 206 P 733 (1922)

### **3. Who is Entitled to Coverage?**

Until the adoption of the 2006 ALTA policy, the insured's act of deeding out to solely owned affiliated entities had the effect of terminating the policy coverage. Now, under the definition of insured as used in the 2006 form policy, this would not be the case.

"Insured": The insured named in Schedule A.

**(1)** The term "insured" also includes

**(A)** successors to the Title of the Insured by operation of law as distinguished

from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

- (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
- (C) successors to an Insured by its conversion to another kind of entity.
- (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
  - (1) if the stock, shares, memberships, or other equity interest of the grantee are wholly owned by the named Insured.
  - (2) if the grantee wholly owns the named Insured.
  - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
  - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

Policy Coverage under the 2006 ALTA policy ceases when the Insured deeds out by quitclaim deed or by bargain and sale deed.

## **CONTINUATION OF INSURANCE**

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land or (ii) an obligation secured by a purchase money Mortgage given to the Insured.