

OLTA Legislative Committee - 2009 Bills Enacted

Summary Date	<i>Arranged by Category; * = See Supplement</i>		
18-Sep-09			
Bill	Description	Chapt	Category
HB 2655	Prohibits adv poss of land owned by mass transit or transportation district; eff 1/1/2010	307	Adverse Possession
SB 0356	Revises civil forfeiture statutes; eff 4/28/2009	78	Civil actions
SB 0238	Enacts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act; eff 1/1/2010	179	Conservators
HB 2086	Permits Sec of St to waive requirement that nonprofit corporation apply for reinstatement within five years of administrative dissolution; eff 6/18/2009	339	Corporations
HB 3077*	Establishes new elective share for surviving spouses; eff 1/1/2010	574	Decedents' Estates
SB 0235	Raises small estate limits to \$200,000 for r.p. & \$75,000 for pers.p.; eff 1/1/2010	413	Decedents' Estates
HB 2839	Allows either party to dom ptrshp to retain or change surname; makes other adjustments to dom ptrshp law; eff 9/28/09	561	Domestic Relations
SB 0141*	Real Estate Agency sponsored revisions to escrow statutes; eff 1/1/2010	174	Escrow Agents
HB 2313	Deletes various statut ref to trusts, estates, etc; eff 1/1/2010	294	Estates in Land
HB 2357	Modifies Uniform Disclaimer of Prop Interests Act; eff 1/1/2010	17	Estates in Land
HB 3484*	Requires exchange facilitators to make certain notifications; imposes other restrictions & requirements; eff 1/1/2010; sunsets 1/2/2014	858	Exchange Facilitators
HB 2278	Extends child support judgment from 25 to 35 yrs; eff 1/1/2010	354	Judgments & Statutory Liens
HB 2306	Increases homestead & other exemptions; eff 6/26/2009	612	Judgments & Statutory Liens
HB 2349*	Revises provisions regarding construction lien deposit/bond with county; eff 1/1/2010	513	Judgments & Statutory Liens
SB 0203	Revises requirement for notice to owner of right to claim of constr lien; eff 1/1/2010	408	Judgments & Statutory Liens
SB 0286	Enacts Uniform Foreign-Country Money Judgments Recognition Act; eff 1/1/10	48	Judgments & Statutory Liens
HB 2228	Establishes pilot program for transfer of devel rights; eff 6/29/2009	636	Land Devel, Use & Regul
HB 2255	Establishes limitations regarding manuf dwelling park nonprofit cooperatives; permits recording by cooperative of covenants, leases, etc; addresses dwelling lienholder status; eff 1/1/2010	609	Land Devel, Use & Regul
HB 2822	Establishes way of necessity for private sewer lines; eff 1/1/2010	318	Land Devel, Use & Regul

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Bill	Description	Chapt	Category
HB 2962	Provides for eviction on 24 hr notice to employee whose residence is conditional on employment in and about dwelling; eff 1/1/2010	569	Land Devel, Use & Regul
HB 3450	Requires carbon monoxide detector for resid prop as condition of transfer; eff 6/25/09	591	Land Devel, Use & Regul
SB 0739	Requires seller of real estate to test well for arsenic; eff 1/1/2010	284	Land Devel, Use & Regul
SB 0763	Authorizes system for buying & selling transferable development credits; eff 6/24/2009	504	Land Devel, Use & Regul
SB 0963*	Revises various provisions of Condo & Planned Community Acts; eff 1/1/2010	641	Land Devel, Use & Regul
HB 2188*	Establishes restrictions re mtg bankers, mtg brokers & loan originators; eff 1/1/2010	603	Licensing
HB 2189	Provides for licensing of mtg brokers & mtg bankers; eff 7/30/2009	863	Licensing
HB 2418	Adjusts provisions for persons exempt from real estate licensing law; eff 1/1/2010	136	Licensing
HB 5046	Establishes Real Estate Agency charge for criminal background check at \$47; eff 7/1/209	119	Licensing
SB 0140	Real Estate Agency sponsored revisions to real estate licensing law; eff 1/1/2010	224	Licensing
SB 0640*	Significantly revises continuing education for real estate licensees; eff 1/1/2011	502	Licensing
HB 2084	Removes requirement for Sec of St to send renewal notices for Fin Stmt; eff 1/1/2010	597	Mortgages & Trust Deeds
HB 2759*	Creates form for correction of trust deed; eff 1/1/2010	628	Mortgages & Trust Deeds
HB 3004*	Revises anti-deficiency provisions for purchase money mortgages; revises trust deed anti-deficiency provisions; expands rights of tenants after nonjudicial trust deed foreclosure; eff 8/4/2009	883	Mortgages & Trust Deeds
SB 0239*	Revises provisions of 2008 Ore Laws Ch 19 for "DANGER" notices in nonjdl trust deed foreclosures; eff 6/4/2009	229	Mortgages & Trust Deeds
SB 0241*	Addresses availability of eviction remedies after foreclosure; eff 6/30/2009	638	Mortgages & Trust Deeds
SB 0628*	Makes more changes to 2008 Ore Laws Ch 19 "DANGER" notice in nonjudicial foreclosure of residential trust deed; requires notice regarding & opportunity for foreclosure modification during resid trust deed nonjudicial foreclosure; eff 7/30/2009; applies to notices sent on or after 9/28/2009	864	Mortgages & Trust Deeds

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Bill	Description	Chapt	Category
SB 0952*	Requires special notice to tenants in nonjudicial trust deed foreclosure; strengthens rights of tenants after TD foreclosure; eff 8/23/2009	510	Mortgages & Trust Deeds
HB 2085	Modifies list of documents notary may accept for identification; eff 1/1/2010	338	Notaries
SB 0237	Amends ORS 127.007 & 127.015 to authorize springing POA; eff 1/1/10	46	Powers of Attorney
HB 2339	Expands protections from disclosure under public records laws of certain personal information at request of public safety officers, district attorneys, deputy district attorneys, assistant attorney generals and others; eff 1/1/2010	769	Privacy
HB 2360	Limits identification of a trust settlor's SSN to last four digits in certain court filings; eff 1/1/2010	363	Privacy
SB 0240	Modifies identification information in judgment lien records; limits date of birth to year and SSN to last four digits; eff 6/4/2009	230	Privacy
SB 0268	Privacy - authorizes Sup Ct to make rules; eff 1/1/10	47	Privacy
HB 2436	Establishes \$15 recording fee dedicated to affordable housing; eff 9/28/2009	18	Recording
HB 2560	Revises re-recording statute (ORS 205.244) for re-recording cert copy; changes wording of re-recording statement; eff 1/1/2010	302	Recording
HB 2383	Gives tenants ass'n 14-day right of first refusal on sale of manuf dwelling park or marina; eff 1/1/2012	295	RP Transfers
HB 2481	Prohibits private transfer charges with limited exceptions; eff 6/17/2009	298	RP Transfers

NEW LEGISLATION – 2009
Oregon Land Title Association
Supplement to 2009 Summary of Legislation
Comments on Selected Bills

Decedents Estates

HB 3077 (Or Laws 2009, Ch 574), effective January 1, 2010

House Bill 3077 establishes a new elective share for a surviving spouse, that is, a share of the decedent's estate that the surviving spouse may receive in lieu of what the surviving spouse receives under the decedent's will. The share is based on the decedent's "augmented estate." The augmented estate includes the decedent's probate estate, nonprobate estate and certain property of the surviving spouse. The rules for calculating the augmented estate and the elective share are complex.

Exchange Facilitators

HB 3484 (Or Laws 2009, Ch 858), effective January 1, 2010

House Bill 3484 establishes requirements for exchange facilitators. The bill requires notice to customers when there is a change in control of the exchange facilitator. The bill establishes minimum requirements for fidelity bonds or deposits and for errors and omissions insurance or deposits. The bill establishes standards for depositing and investing exchange funds and for conduct with customers. The bill establishes a private right of action for breach of the standards.

Judgments and Statutory Liens

HB 2349 (Or Laws 2009, Ch 513), effective January 1, 2010

House Bill 2349 revises provisions for a deposit with the county treasurer under ORS 87.076 that moves a construction lien from the affected land and improvements to the deposit. The bill specifies that the county treasurer pay investment income to the person who made the deposit. It specifies that neither the county nor any officer of the county may be named in the lien foreclosure. The bill permits the county to seek additional instructions from the parties when it has doubt about disposition of the funds or to commence an interpleader proceeding. The bill establishes a notice and objection procedure for disposition of the funds.

Land Development, Use and Regulation

SB 963 (Or Laws 2009, Ch 641), effective January 1, 2010

Senate Bill 963 revises provisions of the Planned Community Act and the Condominium Act. The bill specifies who may serve as a director of an owners association. The bill expands provisions for an association to enter into leases, easements, rights of way, licenses and other similar

transactions affecting common property and to consent to road vacations. The bill permits an association to invest assessment funds in obligations of the U.S. government, in addition to using federally insured bank accounts and certificates of deposit. The bill permits an association to enter into longer term contracts regarding renewable energy facilities and performance-based energy or water efficiency. The bill requires the recording of all amendments to association bylaws.

Licensing

SB 141 (Or Laws 2009, Ch 640), effective January 1, 2010

Senate Bill 141 revises provisions of the Oregon Escrow Law. It is the result of a workgroup recruited by the Real Estate Agency that included escrow agent representatives. The bill revises the definition of "principal." The bill calls for rulemaking in such matters as the form and content of license applications and renewals, surety bonds and various changes pertaining to licensees, such as changes in ownership and officers in charge of escrow operations. With respect to grounds for a license suspension or revocation, the bill changes "demonstrated unworthiness" to "demonstrated untrustworthiness or incompetence" to transact the business of an escrow agent. The bill adds to these grounds failure to maintain the escrow bond or other security and fraud or dishonest conduct substantially related to the fitness of the licensee to conduct escrow business.

SB 640 (Or Laws 2009, Ch 502), effective January 1, 2011

Senate Bill 640 revises the educational requirements for real estate brokers. The bill establishes criteria and rulemaking authority for certification by the Real Estate Agency of real estate continuing education providers. A provider may be an office of a real estate broker, a title or escrow company, a real estate related trade association, a private career school, an accredited community college or other institution of higher education, a distance learning provider or other provider approved by the Real Estate Board. A person who teaches a real estate continuing education course under the auspices of a provider must meet certain educational or experience standards. NOTE: It is likely that services of a certified continuing education provider under SB 640 will have monetary value. This, by reason of federal law under RESPA and state insurance regulations, may have the effect of requiring that a title company adopt reasonable charges for approved courses if it obtains certification as a provider. In addition ORS 731.450 may preclude a title insurer from engaging in the business of a continuing education provider.

HB 2188 (Or Laws 2009, Ch 603), effective January 1, 2010

House Bill 2188 bars a mortgage banker, mortgage broker or loan originator from making, negotiating or offering to make or negotiate a negative amortization loan without evaluating and verifying borrower's ability to repay the loan. The bill requires that a mortgage banker, mortgage broker or loan originator who advertises or solicits business and conducts a transaction substantially in a language other than English provide the borrower with certain materials in the other language. The bill bars a negative amortization loan from including a prepayment penalty beyond the first 24 months of the loan. It prohibits the collection of a prepayment penalty on a negative amortization loan that is refinanced. The bill applies to transactions occurring on or after the effective date.

Mortgages and Trust Deeds

SB 239 (Or Laws 2009, Ch 229), effective June 4, 2009

Senate Bill 239 makes two important adjustments to Sections 19, 20 and 21 of Oregon Laws 2008, Chapter 19 (HB 3630), which require a notice, sometimes referred to as a “DANGER” notice, in the non-judicial foreclosure of a “residential trust deed,” as that phrase is defined in the Trust Deed Act. One adjustment requires that the trustee record an affidavit of mailing for the DANGER notice. The affidavit must be recorded on or before the date of the foreclosure sale. The other adjustment limits the time period within which the borrower must assert a defective DANGER notice. In order to exercise a right to redeem based on noncompliance with the DANGER notice requirement, the borrower must inform any one of several parties in writing, not later than 60 days after the purchaser at the foreclosure sale takes possession of the property, that the borrower did not receive the DANGER notice and did not have actual notice of the sale. The borrower’s notice must go to the trustee, the purchaser at the foreclosure sale, the trust deed beneficiary or the loan servicer. (In addition to giving this notice, the borrower must be able to demonstrate that the DANGER notice was not sent to the borrower and that the borrower did not receive a copy of the DANGER notice at least 25 days before the sale.)

SB 241 (Or Laws 2009, Ch 638), effective June 30, 2009

Senate Bill 241 makes the eviction remedy of ORS 105.105 to 105.168 expressly available (1) to a purchaser at a non-judicial trust deed foreclosure sale or a sheriff’s sale after the purchaser is entitled to possession, (2) to a grantee under a deed in lieu of foreclosure after the deed entitles the grantee to possession, or (3) to a person entitled to possession under ORS 93.930(2)(e) following a contract forfeiture or pursuant to a judgment of strict foreclosure of a recorded land sale contract.

SB 628 (Or Laws 2009, Ch 864), effective July 30, 2009

Senate Bill 628 makes more changes to the DANGER notice that is subject to the changes through SB 239, as noted above. Under SB 628, the DANGER notice must include reference to and must be accompanied by a form for requesting a loan modification. The borrower has 30 days from the date of the notice to return the completed form. The lender or its agent must respond not later than 45 days after receiving the form, by approving or denying the request or by asking for more information. A foreclosure sale may not occur until after a timely response. The borrower also may request a meeting. The request must be timely, which appears to mean it must be made before the beneficiary responds to a request for modification, although it appears that the right to request a meeting and the right to request a loan modification are independent rights. The meeting may occur in person or telephonically. The affidavit of giving the DANGER notice must describe the lender’s compliance with the loan modification provisions. The requirements regarding a meeting about and consideration of a loan modification do not apply if the lender determines in good faith after consideration of the borrower’s current financial information that the borrower is not eligible for a loan modification, provided that the lender informs the borrower that the borrower is not eligible. The bill is silent about any recording requirement for a lender’s determination of ineligibility. The bill’s requirements apply to notices of sale sent on or after Sept. 28, 2009. The

requirements run until January 2, 2012. The requirements do not apply to a loan funded and held by a government agency.

SB 952 (Or Laws 2009, Ch 510), effective August 23, 2009

Senate Bill 952 revises the requirements for a notice of sale in a non-judicial trust deed foreclosure. It requires that a notice of sale include a "Notice to Tenants," set apart from the other text of the notice of sale and in substantially the same form specified in the bill. The "Notice to Tenants" must be addressed clearly to any person who occupies the property and who is or may be a tenant. The "Notice to Tenants" requirement is a part of ORS 86.745. Another section of the bill enables a tenant who receives a notice of sale (or other notice that the property is in foreclosure) to apply the tenant's security deposit or prepaid rent to the tenant's lease obligations, but the tenant must notify the landlord in writing that the tenant intends to do this. This provision is added to the Residential Landlord and Tenant Act. A portion of the bill (regarding a tenant's right of occupancy) is superseded by HB 3004.

HB 2759 (Or Laws 2009, Ch 628), effective January 1, 2010

House Bill 2759 establishes a statutory form for correcting an error related to a recorded trust deed. The form addresses the correction of an erroneous reconveyance of a trust deed and the correction of erroneously recorded trustee's deed. The form calls for the signature of the trust deed beneficiary, along with an appropriate acknowledgment.

HB 3004 (Or Laws 2009, Ch 883), effective August 4, 2009

For purposes of terminating a tenant's right of occupancy after a non-judicial trust deed foreclosure, House Bill 3004 establishes a complexity of rules affecting the tenant, the foreclosing lender and trustee, and the buyer at the sale. Attention must be given to the bill, whose provisions in this regard are revisions to ORS 86.755. This part of the bill applies to notices of sale given on or after August 23, 2009 (the effective date of SB 952) and to eviction proceedings that begin on or after that date. By way of an overview, the rules are as follows:

- (1) If (a) the property is a dwelling under ORS 90.100(9), (b) the tenant has a fixed term lease created voluntarily and in good faith, and (c) the tenant provides the trustee with a copy of the lease at least 30 days before the date first set for the foreclosure sale, then the buyer at the sale may use the eviction procedures of ORS 105.105 to 105.168 (FED) only after giving at least 60 days written notice of the termination date. This approach does not apply if the buyer does not intend to terminate the lease before its term ends.
- (2) If the circumstances are the same as (1) except that (a) the tenant occupies the property under a month-to-month or week-to-week tenancy under ORS 90.100 or (b) the tenancy is for a fixed term but the foreclosure buyer intends to occupy the property as the buyer's primary residence, then the minimum period for notice of the termination date is 30 days.
- (3) If the circumstances do not fall within (1) or (2) and if the occupant holds possession granted voluntarily by the trust deed grantor or the grantor's successor, then at any time after the trustee's sale, the foreclosure buyer may use the FED or other judicial procedures to obtain possession, provided that the occupant was served with not less than 30 days

written notice of the requirement to surrender or deliver possession. The 30 day notice may be given no earlier than 30 days before the first date set for the foreclosure sale.

- (4) If the occupant remains in possession after the 10th day after the foreclosure sale and the occupant's interest is neither prior to the trust deed nor created voluntarily by the trust deed grantor or grantor's successor, then the occupant is a tenant at sufferance and subject to eviction as such.
- (5) The foreclosure buyer may not commence eviction proceedings before the later of (a) the 10th day after the foreclosure sale; (b) the date specified in a notice under (1) or (2) above; or (c) the date on which the term of a fixed term lease ends if the property is a dwelling unit and the buyer has not terminated the tenancy under (1) or (2) above.
- (6) A notice to surrender or deliver possession must be served by first class mail (not registered or certified mail) and is effective three days after mailing

Additional changes in this section of the bill address the post-foreclosure legal relationship that pertains between the foreclosure buyer and the occupant.

A different change to ORS 87.755 took effect on August 4, 2009 and applies to sales that occurred or occur on or after that date. This change applies to amended notices of sale when a foreclosure resumes after a stay, usually a stay imposed by a bankruptcy filing. The previous provision called for giving an amended notice of sale by registered or certified mail to each person present at the time and place set for the sale, in addition to those entitled to notice under ORS 86.740 and 86.750(1). For those entitled to notice under ORS 86.740 and 86.750(1), there is no change. Mailing is required; but for those present at the time and place set for the sale, the new provision establishes alternative procedures for giving amended notices. One is by registered or certified mail. The alternative is posting a true copy, or a link to a true copy, of the amended notice on the trustee's Internet website. The requirement for amended notice and the alternatives for giving notice also apply to any Oregon lawyer who, by registered or certified mail with a stamped pre-addressed envelope, requests an amended notice of sale.

Another section of the bill rewrites ORS 86.770, addressing the effect of sale. The previous phrasing states that the foreclosure is effective against "all persons **to whom notice is given** under ORS 86.740 and 86.750" and those "claiming by, through or under such persons." (**Emphasis** added.) The new phrasing states that the foreclosure is effective against "a person **that received notice** of the sale under ORS 86.740 and 86.750 or ... a person that claims an interest by, through or under the person that received notice." (**Emphasis** added.) The bill expands ORS 86.770's anti-deficiency provision for a residential trust deed to apply to any other note or obligation secured by a trust deed or mortgage on the foreclosed property when the debt was created at same time as the debt secured by the foreclosed trust deed and is owed to the beneficiary of the foreclosed trust deed. A separate section of the bill expands the anti-deficiency provisions for mortgages under ORS 88.070. The expansion applies to a single-family, owner-occupied residence when a purchaser gives more than one purchase money mortgage to the seller or a lender. A deficiency judgment is barred for all the mortgages if, at the time of foreclosure, the mortgages are held by the seller, the lender or the subsidiary, affiliate or successor of the seller or lender. The changes to ORS 86.770 and 88.070 apply to all trust deeds and mortgages and their associated notes or other obligations.

INFORMATIONAL NOTE

Protecting Tenants at Foreclosure Act of 2009; Sections 701 to 704, Article VII, Public Law 111-22

The federal act known as the Protecting Tenants at Foreclosure Act of 2009 entitles rent-paying tenants of residential property to at least 90 days notice to vacate before eviction by a person who acquires the property through foreclosure. This protection applies to a bona fide tenant who entered into the lease before notice of the foreclosure. A bona fide tenant excludes the mortgagor or the child, spouse or parent of the mortgagor. The lease must result from an arms-length transaction and must have rent that is not substantially less than fair market rent, except that a federal, state or local subsidy is permitted.

When a lease of the above description has a term extending beyond the 90 day notice period, the tenant is entitled to occupy the premises for the term of the lease and is entitled to at least 90 days notice to vacate; however, an owner (through the foreclosure sale) may terminate the lease effective on the day of sale to a buyer who will occupy the premises as a primary residence, provided that the tenant receives at least 90 days notice to vacate. The earliest that an owner may give notice is after the foreclosure sale, that is, when the owner has succeeded through the foreclosure to the foreclosed borrower's interest.

The Act took effect on May 20, 2009. It applies to any foreclosure on any residential property after May 20, 2009. The Act sunsets on December 31, 2012.

—Comments by Cleve Abbe, OLTA Legislative Committee Chair
September 18, 2009
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