

NEW LEGISLATION – 2010
Oregon Land Title Association
Comments on Selected Bills

Judgments and Statutory Liens

HB 3689 (Or Laws 2010, Ch. 77, effective 3/18/2010)

The bill revises the Home Buyer Protection Act, an act requiring a seller of a new or significantly remodeled home to provide the buyer with protection against construction liens. The bill removes a provision that permitted the buyer to waive protection under the Act. The change regarding waivers affects ORS 87.007 and 87.091. The latter statute, which established the form of waiver, is repealed. The elimination of waivers applies to sales that occur on or after January 1, 2011.

Land Development, Use and Regulation

SB 1025 (Or Laws 2010, Ch. 83, effective 3/18/2010; action required by 1/01/2011)

The bill requires that the Building Codes Structures Board and the Residential and Manufactured Structures Board adopt design and construction standards for mitigating radon levels in new residential buildings and in new public buildings. The bill requires that the Real Estate Agency provide by January 1, 2011 information to alert potential buyers of one and two family dwellings to issues concerning radon.

Mortgages and Trust Deeds

SB 1013 (Or Laws 2010, Ch. 28, effective 3/04/2010)

The bill modifies requirements for including a notice to tenants in a notice of sale and notice of default. Under the bill, notice of sale must include a statutory notice to tenants only when the property includes one or more dwelling units. The bill's elimination of a notice of tenants for a foreclosure of non-residential property applies to notice of sale given on or after March 4, 2010 and, as a result, to notices of default recorded on or after March 4, 2010.

The bill establishes two variations for the notice to tenants. One is the variation that took effect in 2009 and that appears in ORS 86.745 – 2009 ed. The other is a significantly longer version that became optional on March 4, 2010 and becomes mandatory (replacing the 2009 version) on June 30, 2010.

The notice of sale that is published need not include the notice to tenants. This applies to notices published on or after March 4, 2010.

HB 3610 (Or Laws 2010, Ch. 40, effective 5/27/2010)

Beginning on September 28, 2009, a new requirement commenced for the notice, sometimes called the “danger notice,” required in addition to the notice of sale. The 2009 requirement was that the danger notice include contact information for requesting a loan modification. The 2010 bill requires that, when a trust deed beneficiary denies a borrower’s request for a loan modification, the beneficiary must provide an explanation of how the borrower was determined to be ineligible. The bill also requires that the recorded affidavit of compliance with the provisions for possible loan modification must include a statement that the borrower was given the information regarding a determination of ineligibility. The affidavit must be recorded not later than five days before the date of sale.

The affidavits other than the affidavit of compliance, such as an affidavit of mailing, affidavit of publication or affidavit of service must be recorded at or before the time of the sale (instead of on or before the date of the sale).

The bill takes effect on May 27, 2010. It does not specify how it affects foreclosures commenced before May 27, 2010 but still pending on that date.

HB 3656 (Or Laws 2010, Ch. 48, effective 3/10/2010)

The bill restores terminology that a completed non-judicial foreclosure is effective against persons to whom notice is given, rather than persons that “received” notice.

The bill repairs an inadvertent statutory gap about whether a deficiency could be available after a non-judicial foreclosure of a non-residential trust deed.

The bill revises anti-deficiency provisions of ORS 86.770. A 2009 bill expanded the anti-deficiency provision so it applied to certain concurrent trust deeds. The 2010 bill changes the wording of the 2009 expansion. Under the 2010 bill, the anti-deficiency provision applies not only to the foreclosed trust deed but, when the trust deed is a residential trust deed, to any note or other obligation (1) created on the same day, (2) used as part of the same transaction, and (3) owed to or originated by the same beneficiary or by an affiliate of the beneficiary.

The bill applies to all trust deeds; however, the correction to ORS 86.770(2)(a) (the inadvertent gap) applies as of the effective date of the 2009 change (Aug. 4, 2009), and the changes to 86.770(2)(b) (the expansion of the anti-deficiency provision) apply to an action for deficiency brought on or after March 10, 2010.

Taxes and Assessments

HB 3612 (Or Laws 2010, Ch. 36, effective 5/27/2010)

The bill permits the repayment one year at a time of additional ad valorem property taxes owing as a result of corrections to taxes for previous tax years. Until all years are added back, the county

assessor is required to enter a notation on the tax records of “deferred additional tax liability.” If the property is sold or transferred, all deferred taxes are due the day before the date of transfer. The bill applies to corrections made on or after the effective date (May 27, 2010).

HB 3640 (Or Laws 2010, Ch. 69, effective 5/27/2010)

The bill requires that the county assessor in a county with a population of more than 340,000 cancel property tax assessments for manufactured structures taxable in an assessment year to a particular taxpayer (as personal property) if the total assessed value of the manufactured structures is less than \$12,500. This applies to tax years beginning on or after July 1, 2010 but before July 1, 2014. Based on population estimates of the Population Research Center at Portland State University, this provision applies to Clackamas, Lane, Multnomah and Washington Counties.

—Cleve Abbe, Chair
OLTA Legislative Committee
April 7, 2010