NEW LEGISLATION – 2017
Oregon Land Title Association
Summary of Bills of Particular Interest to Title Companies

(A)
HB 2855-A (Chapter 164, Oregon Laws 2017)
Effective January 1, 2018

Relates to fulfillment deeds for land sale contracts.

Summary. House Bill 2855 creates a non-judicial procedure for a buyer under a land sale contract to enforce the contract's requirement for a fulfillment deed when the contract is paid and satisfied in full but the seller has failed to deliver to the deed to the buyer.

Background. A land sale contract is an agreement by which the seller delivers possession of real estate to the buyer, but retains the legal title until the buyer pays the contract in full, at which point the seller is obligated to deliver a deed that transfers the legal title. Under existing law, if the seller fails to deliver the deed, the buyer's recourse is filing a legal action against the seller to compel the seller to perform on fulfilling the contract. By contrast, if it is the buyer who defaults on the contract by, for example, failing to pay according to the contract terms, the seller may employ a non-judicial procedure to extinguish the buyer's interest. That remedy is statutory forfeiture, available to a seller if the contract authorizes forfeiture. HB 2855 adds balance to the buyer's remedies for enforcing the contract when it is paid and satisfied.

Nearly all buyers who pay their land sale contracts receive timely fulfillment deeds from their respective sellers. Nevertheless there is the occasional buyer who does not realize the necessity of a fulfillment deed. This may be because the buyer has changed, such as by a family member acquiring the buyer's interest by inheritance. It may be that over the passage of many years of timely payments, the buyer forgets that a fulfillment deed is needed after the last payment. Furthermore, if the buyer fails to press the seller for a fulfillment deed, the passage of time could jeopardize the buyer's record interest in the property.

Procedure. The procedure established by HB 2855 calls for the buyer to give notice to the seller and those claiming an interest through the seller that the buyer is entitled to a fulfillment deed and will enforce that obligation unless the seller delivers a deed or objects. If the seller objects, then the buyer's recourse would be through the courts; however, because the contract must be satisfied in full, an objection is unlikely. What is more likely is no response by the seller. In that event, the procedure calls for the buyer to publish a notice of intent to enforce the deed requirement. If there still is no response, the buyer, after the requisite time has passed, may record an affidavit of fulfillment that has the effect of establishing the buyer's acquisition of title in the same way that would occur by delivery of the fulfillment deed.

(B)
HB 2920-B (Chapter 270, Oregon Laws 2017)
Effective January 1, 2018

Relates to judgments; revises ORS 18.235.

Requires that a judgment creditor, after receiving proceeds of an execution sale, file a satisfaction for the amount credited against the money award portion of a judgment. The judgment debtor or other person with an interest in the real property may request filing of a satisfaction document. Failure to comply within 10 days after receiving the request entitles the requesting person to move the court for a satisfaction. Failure

to comply may result in a judgment for reasonable attorney fees for making the motion, unless the judgment creditor establishes that the failure to file the satisfaction was not the fault of the creditor.

(C)
HB 2986-A (Chapter 169, Oregon Laws 2017)
Effective January 1, 2017

Relates to decedents' estates.

This is an Oregon Law Commission bill that modifies and modernizes statutes relating to the administration of decedents' estates. Among the affected statutes, and of particular interest to title companies, is ORS 18.312. This statute stays execution against property of a decedent, except an execution done pursuant to a foreclosure judgment. The statute requires that the judgment creditor pursue collection through making a claim against the estate. The bill adds to ORS 18.312 text stating (a) that the stay expires when the property is no longer property of the estate and (b) that the stay does not diminish the lien effect of a judgment or bar execution after the property ceases to be property of the estate.

(D)
HB 3056 (Chapter 110, Oregon Laws 2017)
Effective January 1, 2018

Relates to homeowner association liens for unpaid assessments; amends ORS 94.709 and 100.450.

Addresses the lien status of unpaid planned community or condominium assessments. Current law states that an action for a money judgment for an unpaid assessment may be maintained without foreclosing or waving the statutory lien of such an unpaid assessment. Added language establishes that entry of a judgment does not extinguish the lien, but payment on the judgment does operate to satisfy the lien to the extent of the payment received.

(E)
SB 381 (Chapter 251, Oregon Laws 2017)
Effective January 1, 2018

Relates to the mailing of certain notices related to real estate loans.

Current law regarding real estate loans calls for the mailing of various notices, such as requests for resolution conferences, notices of noncompliance with, or ineligibility for, foreclosure avoidance measures, notices of default and notices of trustee's sale. Such notices are to be mailed to the address on file. SB 381 expands the mailing requirement by requiring that various particular notices be mailed to all addresses on file for the recipient, including post office boxes.

(F)
SB 899-A (Chapter 358, Oregon Laws 2017)

Effective January 1, 2017

Relates to procedures for receiverships.

SB 899 is the product of the Oregon Law Commission (OLC). The workgroup drew in important respects on Washington State's receivership code and on the Uniform Commercial Real Estate Receivership Act, the latter having been adopted by the Uniform Law Commission in 2015. The next three paragraphs were provided by **Felicia Canfield**, Underwriting Counsel for First American Title Insurance Company.

Summary. SB 899 creates the Oregon Receivership Code (the "Code"). It applies to receiverships commenced on or after January 1, 2018 and provides a comprehensive scheme for a court appointed receiver to manage the real and/or personal property of a person or business. The court can appoint a receiver at the request of the property owner's creditors to administer, collect, liquidate and distribute property when the owner is insolvent, when the subject property, or rents or profits derived from the property, are in danger of being lost or materially injured or impaired, or when the debtor has abandoned the property, among other things. The Code grants broad powers to court appointed receivers.

Comments on sections. There are 58 sections in the proposed Code, fifteen of which amend a variety of existing statutes to incorporate or refer to the Code or make clear which provisions control if in conflict with the Code. Other sections of the Code establish the nature of the receivership, carve out property not subject to the Code (such as "[p]ersonal property of an individual that is used primarily for personal, family or household purposes" or property held in trust), provide for the appointment of the receiver, establish eligibility to serve as a receiver (e.g., no crimes of moral turpitude), confer court authority and jurisdiction, provide for a possible bond, and delineate the receiver's powers and duties. The Code includes sections regarding the turning over of estate property, collection of debts owed, duties of an owner to assist and cooperate with the receiver, a mandate that the receiver keep two mailing lists of parties, creditors and interested persons, and specific notice procedures whenever notice is required. The Code enumerates actions by the receiver that require specific court authorization and an order, such as the sale or other disposition of real property. The Code requires the receiver to file a schedule of creditors and inventory within 60 days of appointment, to file monthly reports detailing the receiver's operations and financial affairs, allows the receiver to set a claims bar date, and automatically stays certain proceedings. The receiver has the ability to accept or reject executory contracts, to obtain credit and incur debt, and to abandon burdensome property or property of inconsequential value or benefit. The Code places limits on a person's ability to sue a receiver personally or to seek personal liability for loss or diminution in value of or damage to estate property. Receivers can employ professionals, such as attorneys, appraisers, and brokers to assist a receiver in carrying out the receiver's duties. Receivers must give initial notice of the receivership to all known creditors and interested persons within 30 days after their appointment. Receivers can establish a claims process if the estate assets are sufficient to provide distributions to creditors, and the Code further sets forth the order of priority of distributions to creditors. A receiver can, with a court order, apply to a court in another state for appointment as receiver with respect to estate property located in that state and vice versa. The court can remove a receiver for cause, in the court's discretion. The Code also provides for the termination of the receivership once the receiver has filed a final report and accounting in compliance with the Code.

Sections of particular interest to title companies. The notice and court approval requirements of the Code will be of particular interest to title insurance companies who may, for example, be asked to insure the sale of property by the receiver. It is likely that a title insurer would look to confirm that the receiver recorded the order of appointment pursuant to Section 12 and would require compliance with the notice requirements of Sections 17 (detailing the methods for providing notice and for filing proofs of notice with the court) and 33 (requiring initial notice of receivership to all known creditors and interested persons within 30 days after appointment), as well as compliance with the requirement in Section 18 that there must be a court order specifically permitting the sale. [Also see Section 25, which, among other things, provides for a sale free of certain liens.] There may be situations in which the title insurer would be concerned with the receiver's compliance with Section 21 in setting a deadline, after providing notice to all known creditors, for submission of creditors' claims – i.e., the claims bar date.

OLC explanation of Section 25, Use or transfer of estate property outside ordinary course of business. [The following commentary on Section 25 is taken from the OLC's Report of the Receivership

Work Group on SB 899-A, pages 12 to 14.] This section permits the receiver to use and/or transfer estate property, outside the ordinary course of the owner's business, and provides substantial guidance on the carrying out and results of the transfer.

Using the estate property outside the ordinary course of the owner's business may be a fruitful source of income for the receivership; for example, the receiver of a vineyard and winery operation might decide to permit the occasional rental of the property for weddings or receptions.

[Reasons for transfers outside of ordinary course.] The power of a receiver to sell estate property outside the ordinary course of the owner's business has not always been clear, particularly when the receivership applied only to certain assets of the owner (for example, one parcel of land among many), in which case the receiver has sometimes been viewed as having only a custodial role. The recent real estate crisis, however, has spotlighted the idea that receivership sales may help to realize better value for all concerned as compared to foreclosure sales. Foreclosure sales do not consistently produce prices that approximate the market value that might be obtained in an arms-length, non-distress sale. By contrast, a receiver of mortgaged commercial real property could readily market that property to potential buyers in the context of operating the property during the receivership. Such marketing could permit potential buyers to perform more meaningful and complete due diligence.

[Liens.] Analogous to a foreclosure sale, the sale by the receiver under subsection (2) is free of the lien of the person that obtained appointment of the receiver, and of subordinate liens, but not free of liens having priority. This is because the nature of subordinate property interests is that they get extinguished by those having priority, and the nature of property interests having priority is that they ride through the process. (Under subsection (3), the subordinate liens attach to the proceeds of the transfer by the receiver.)

[Methods of transfer.] The transfer may be by public auction; or the transfer may be by other methods such as a privately negotiated agreement. Public auction procedures are generally thought to ensure a fair price more or less as a matter of course, because unduly low bidders will not prevail. Although privately negotiated agreements do not carry the same matter-of-course safeguard, the fact that the sale is only "upon court order" and is also subject to court-prescribed "standards or procedures calculated to maximize the proceeds of the transfer" under subsection (2) should provide similar assurances. In fact, because private negotiations provide buyers with the flexibility to investigate the property before buying or bidding, they may often result in higher proceeds for the benefit of all concerned.

[Credit-bidding.] Under subsection (4), a creditor who wishes to purchase may "credit-bid," i.e., buy by setoff. Because the debtor owes the creditor, the creditor may in effect pay the purchase price by forgiving the debt owed by the debtor (in whole or in part, depending on the amount the creditor wishes to bid and/or ultimately pay). However, if this credit-bidding creditor is junior to another creditor, the credit-bidding creditor must tender in cash the amount owed to the senior creditor. This is because forgiveness of the debt owed by the debtor does not benefit the senior creditor.

[No redemption rights; effect of appeal.] There are two provisions designed to provide finality to the purchaser and thereby help enable the securing of a workable purchase price. First, the sale is free of any right of redemption that the owner may have (just as it is free of certain liens as noted above), so that the purchaser does not risk an upset of the transaction. And second, under subsection (5) the transfer to the purchaser remains valid (and the liens noted above remain extinguished) even if, after the transfer, the order authorizing the transfer is reversed or modified for some sufficient reason, such as the demonstration that the order was procured through fraud on the court. This second protection is subject to a requirement that the purchaser have been acting in good faith, which is defined in subsection (9) as having both a subjective component ("honesty in fact") and an objective one ("the observance of reasonable commercial standards of fair dealing").

[Co-owners.] The rights of co-owners of property are protected in a balancing test that takes into account the need for receivers to carry out a transfer of the property. The interest of a co-owner that is not estate property may be transferred (along with the interest that is estate property) if the court makes a three-part determination: that partition is impracticable; that the sale without the co-owner's interest would realize significantly less for the estate; and that the benefit to the estate of the sale outweighs the detriment to the co-owner. Though not expressly stated in the statute, the portion of the proceeds that is attributable to the interest of the co-owner that is not estate property would go to that co-owner.

The ordinary course of an owner's business is a fact-sensitive inquiry not defined in this Code and is accordingly left to judicial development in particular cases.

[End of excerpt from OLC commentary on Sec. 25.]

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Last revised Sept 15, 2017