PLF *in*BRIEF

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Malpractice Prevention Education for Oregon Lawyers

2017 LEGISLATION ALERTS

This issue features legislation alerts from the 2017 Oregon Legislature. The alerts begin on page 10.

Anatomy of a Ransomware Attack: One Firm's Story

By Hong Dao

Imagine you post an ad on Craigslist to hire a legal assistant. Someone immediately responds by email and attaches a zip file. Believing the file contains the applicant's resume and cover letter, you click on the attachment and download it to your server. Soon afterward, you can't access any files on your computer.

You have just been infected by ransomware.

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OSB Professional Liability Fund

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Welcome!

By Carol J. Bernick, PLF Chief Executive Officer

I am happy to report that we received many positive comments about our refreshed *in*Brief. We welcome any and all comments and suggestions, including ideas for topics you would like covered.

The transition from 2017 to 2018 is more significant than in previous years. Our longtime Director of Claims, Bruce Schafer, is retiring after 31 years of service with the PLF. I will miss his dedicated service and thoughtful counsel. But I am excited to have PLF Claims Attorney Madeleine Campbell assume the Director role beginning in January 2018. A smart and thoughtful attorney, Madeleine has been with the PLF for 10 years and is committed to the work of the PLF. I am confident she will continue to serve Oregon lawyers well.

We end this year in a very stable financial position, due in large part to fewer claims and fewer severe claims than predicted. The PLF Board of Directors plans to undertake a comprehensive review of the PLF assessment in early 2018 in light of the PLF's current financial condition.

Finally, we have received a tremendous response (almost all positive) about the PLF's transition to a paperless assessment and exemption process. Lawyers are finding the system easy to navigate and check off the "to do" list. We look forward to our continued partnership with you.

The above scenario is not fictional. A small law firm in central Oregon was the victim of this ransomware attack. One of the partners, whom I will call Sam, has graciously allowed us to share his firm's story to help educate lawyers on this type of cyberattack. I will describe the anatomy of this ransomware attack and discuss a few lessons we can learn from it.

The Bait

Before the attorney in Sam's firm clicked on the bait containing the ransomware, he had already opened other applicants' emails. None had a malicious zip file attached. It only took one.

The Infection

Within a short period of downloading the zip file onto the firm's server, tens of thousands of documents – essentially all of the firm's files – were encrypted. No one in the firm could access any files, including email programs and contact lists. Sam told everyone in the office to stop working on his or her computer, and he unplugged the server.

The Ransom Note

After the encryption was completed, a note appeared on the downloading attorney's computer. It said, "Congratulations. Your documents have been protected." The note then demanded that the firm pay $750 in bitcoins to decrypt the files. It contained instructions on how and where to send the bitcoins within four days.

Sam then contacted a private legal ethics counsel and the FBI. Legal ethics counsel advised the firm on its ethical obligation to notify clients. That obligation depends in part on determining whether the attacker had viewed or accessed client data. The firm made this determination by running a packet sniffer. It is a software designed to search the computer system to assess whether the attacker had installed a proxy server to access the firm's files. The firm's IT specialist who ran a packet sniffer confirmed that no third party had accessed the firm's files.

The Payment

The next thing the firm's partners did was to pay the ransom to decrypt the data. They encountered two problems in trying to buy bitcoins. First, no place in central Oregon sells bitcoins, so they drove to Portland to make the purchase. Bitcoins can also be purchased online, but it was difficult for Sam's firm to open an account, so they completed the transaction in person. To be safe, they decided to pay for the bitcoins with anonymous prepaid credit cards. They bought those credit cards at Safeway in an amount sufficient to cover the ransom payment plus a bit more. While they were driving to a bitcoin kiosk to buy the bitcoins with their Safeway credit cards, their IT specialist called to say he was able to open a

bitcoin account online to make the purchase.

The second problem was that the value of bitcoins fluctuated a large amount each day. After transferring the bitcoins to the attacker, the firm got an email saying the bitcoins were insufficient. The $750 bitcoins the firm purchased just one or two days ago were not enough because of the fluctuation. The attacker gave the firm a few more days to send more bitcoins or not get the decryption key. This key consisted of approximately 200 random characters. The attacker gave the firm half of the key (approximately 100 characters). The attacker promised to give the firm the other half when the rest of the payment was received. The firm bought additional bitcoins online. Once the partners transferred the rest of the bitcoins, the attacker provided the other half of the decryption key.

Prior to this point, the infected server was already disconnected and isolated from all computers. Sam connected the infected server back to the Internet and waited for the attacker to download the decryption key onto the server to decrypt the files. Sam then permanently discontinued using the server after the download was done. It took almost two days for the files to be decrypted.

The Recovery

About 99 percent of the firm's data was decrypted, but emails and contact lists were not decrypted. The firm had to recover the other one percent from its backup. However, the backup was also infected because the external hard drive was plugged into the server when the ransomware attack occurred. Fortunately, the firm was able to rely on a second uninfected backup drive that Sam kept at his home; unfortunately, that backup was not fully up-to-date and did not contain all emails. In the end, the firm lost about two months' worth of the latest data from 11 people in the firm.

The Aftermath

After being down for five business days plus one weekend, the firm slowly reopened. Sam estimated that the ransomware attack cost the firm about $14,000 in IT support, a new server, other hardware, new software, bitcoins, and attorney fees.

The firm now does many things differently, including:

- **Cloud backup** – The firm now continuously and automatically backs up files to the cloud. Sam admitted that he was originally opposed to using the cloud due to security concerns. The cyberattack helped change his mind.
- **Written policy** – The firm has a written policy on data security, including instructions never to accept and open zip files sent via email regardless of who the sender is. New staff have to sign this written policy.
- **Ongoing meeting and training** – Sam regularly meets with staff to go over the policy and remind staff one-on-one not to open unsolicited emails or click on unexpected attachments.
- **Limited telephone calls and contacts** – Any phone calls asking staff if something could be emailed to them are sent directly to Sam to handle. All suspicious emails are also forwarded to Sam.
- **Thumb drives for large files** – The firm asks clients and others to send large files via thumb drives or CDs that can be scanned by the antivirus program.
- **Updated computer security** – Before the attack, each computer in the firm was running a different antivirus program. The computer of the attorney who downloaded the malicious zip file was running on an older operating system that Microsoft no longer supported. As a result, important security updates and antivirus protection could not be installed on that computer. Now everyone's computer runs on an updated operating system with the same antivirus protection. The password to each computer is changed every six months.
- **Responsive IT support** – The firm now works with an independent contractor IT specialist who is immediately available when needed.
- **Shut down Computer** – Everyone at the firm completely shuts down his or her computer at night.
- **Indeed for job posting** – The firm uses Indeed.com for job postings. It has a more secure job application process.

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The firm has been doing and continues to do the following to limit the possession of client personal data:

- **No credit card numbers on file** – The firm does not keep clients' credit card numbers on file and has clients use a secured portal to make payments. Credit card numbers obtained on the phone are immediately shredded once the transaction is approved.
- **No full Social Security numbers on file** – Clients' Social Security numbers are not kept on the firm's server, except the last four digits when absolutely necessary in certain cases.

The Lessons

It's easy to dismiss the cyberattack on Sam's firm as a rare incident. It's not. According to Citigroup's Cyber Intelligence Center, law firms are at a high risk for data breaches because lawyers are warehouses of valuable data belonging to clients and third parties. Cyberattacks on law firms are usually not reported in the media. This underreporting can lead lawyers to miscalculate their data security risk.

Lawyers can learn two lessons from the cyberattack on Sam's firm.

First, be proactive. Think about how you might avoid an attack like this. You can use the steps that Sam's firm has taken as a guide. Educate and train yourself and your staff on the warning signs of cyberattacks. Take time to identify the weaknesses in your computer security and fix them. If your password is hello123, it's time to change it to something stronger. If your computer is still running on Windows XP or Vista, it's time to upgrade. If your inbox is filled with spam emails, consider using a spam filter. If you're not backing up client files, start doing it now.

More information on how you can better protect client data is available in PLF's Learning The Ropes segment called, "Data Security/Data Breach: Everything You Need to Know to Protect Client Data," available at *www.osbplf.org > CLE > 2017 Learning the Ropes*. My colleague, Sheila Blackford, has written an article called "Beware Ransomware," which covers tips on how to protect against ransomware. It is available at *www.osbplf.org > Practice Management > Publications > In Brief*.

Have a plan to respond to a cyber attack. Know whom to call when you are hit with ransomware. On your list should be the Oregon State Bar General Counsel or a private legal ethics counsel, the FBI, and an IT specialist. Use the data breach checklist, "What to Do After a Data Breach," to help you plan. The checklist is available at *www.osbplf.org > Practice Management > Publications > In Brief*.

Second, be very vigilant. Don't put your guard down just because your computer is running on the latest operating system or has the most updated antivirus or anti-malware protection. An antivirus program won't stop you from clicking on a malicious zip file; only staying vigilant can do that. Always be careful when opening emails, surfing the web, clicking on links, and downloading applications and software.

Additional Resources

ARTICLE

- What's Backing Up Your Data, www.osbplf.org > Practice Management > Publications > In Brief https://www.osbplf.org/assets/in_briefs_issues/Whats%20Backing%20Up%20Your%20Data.pdf

PRACTICE AID

- How to Back Up Your Computer, www.osbplf.org > Practice Management > Forms https://www.osbplf.org/assets/forms/pdfs//How%20to%20Back%20Up%20Your%20Computer.pdf

Hong Dao is a Practice Management Advisor with the Professional Liability Fund.

2018 PLF Assessment

For plan year 2018, the PLF assessment will remain at $3,500 for the eighth consecutive year.

As in prior years, the actuaries predict that a $3,500 assessment in 2018 will provide sufficient income during the year to cover the costs of projected new claims and existing open claims and a portion of operating expenses.

If you have any questions about the PLF's basic assessment for 2018, please call Jeff Crawford or Emilee Preble at the PLF at 503.639.6911 or 1.800.452.1639.

Longtime PLF Director of Claims Retires

After more than 30 years with the PLF, Bruce Schafer is retiring at the end of 2017.

Bruce joined the PLF as a claims attorney in 1986 and was appointed Director of Claims in 1991. In addition to overseeing the resolution of more than 20,000 claims during his tenure, Bruce has been instrumental in shaping the field of lawyer professional liability in Oregon. Under his leadership, PLF claims handling became highly valued and respected by Oregon lawyers.

Bruce built his reputation as a strong, confident advocate for Oregon lawyers by following a simple formula of expertise, integrity, and good judgment – values that he imparted to the PLF claims staff and defense attorneys. He will be remembered for his deep understanding of malpractice law and Oregon's legal culture and for his innate compassion for lawyers facing claims. Bruce put into action the original vision of the PLF: Through consistent and thoughtful claims handling, the quality and tone of the practice of law could be improved. This is a legacy Bruce and the lawyers of Oregon can be proud of.

Bruce leaves the PLF to pursue other interests, professionally and personally. He plans to continue his volunteer work and spend more time with his family and on his bike and in his woodshop.

The PLF Welcomes New Director of Claims

The OSB Professional Liability Fund is very pleased to announce that PLF Claims Attorney Madeleine Campbell is the new Director of Claims as of January 1, 2018, succeeding Bruce Schafer, who is retiring at the end of this year.

Campbell joined the PLF staff as a claims attorney 10 years ago. Prior to joining the PLF, she worked for 20 years in private practice, most recently as a partner at Dunn Carney. She has extensive experience in coverage litigation, professional liability litigation, and complex litigation.

In 2016, Campbell was the lead author in a comprehensive revision of the PLF Primary Plan. She indicates that the PLF will continue its efforts to make the Plans clear and accessible and express PLF intent.

Campbell is looking forward to the opportunity to serve as Director of Claims, saying that she is grateful for a dedicated, talented group of claims attorneys and an excellent defense panel who, together, serve Oregon lawyers. ■

PLF Directors

The Oregon State Bar Board of Governors has appointed one new member to the PLF Board of Directors. Attorney Susan Marmaduke from Portland begins her term in 2018. She joins current PLF board members Dennis H. Black (Chair, Medford), Robert S. Raschio (Vice Chair, Canyon City), Tom Newhouse (Secretary-Treasurer, Portland – Public Member), Tim Martinez (Salem – Public Member), Saville W. Easley (Portland), Molly Jo Mullen (Portland), Holly N. Mitchell (Portland), and Megan I. Livermore (Eugene).

The Board reappointed Tim Martinez from Salem for one more year.

We extend our warmest thanks to outgoing board member Teresa Statler of Portland for her years of excellent service. ■

ABA Techshow 2018

On March 7-10, 2018, the ABA will sponsor its annual legal technology conference and expo. The ABA Techshow includes over 50 educational and training sessions in 15 different tracks and a two-day expo of more than 100 technology companies. For more information, go to *www.techshow.com*.

Register using the PLF's program promoter code EP1801 and receive an exclusive discount on the standard registration rate. Call DeAnna Z. Shields for more information at 503.639.6911.

Be an "early bird" and save another $200 if you register by January 22, 2018. Large group discounts are available if registering before January 29, 2018. ■

Subscribe to the PLF's Blog: *in*Practice Practical Advice for Oregon Lawyers

If you are looking for practical advice that you can use in your law practice, visit the PLF's blog, *in*Practice, at *www.osbplf.org*, and click on Blog. To receive notifications of new posts, enter your email address and click subscribe.

Our four practice management advisors, Sheila Blackford, Jennifer Meisberger, Hong Dao, and Rachel Edwards, regularly post practice management tips and information. Periodically, *in*Practice also offers information about the PLF assessment, coverage tips, and malpractice traps. For additional practice management information, follow us on Twitter: *@OregonPLF*.

Be sure to check your spam filter to make sure you receive *in*Practice posts!

New CLEs Available

The following CLEs, presented or updated in 2017, are now available in multiple formats on the PLF website:

- So You Think You Don't Practice "Securities Law"?
- eService for Criminal Filings
- From Startup to Endgame: Form of Entity Considerations for Your Law Practice
- Offering Unbundled Services
- Technology Tips and Practice Pointers
- Above the ADA: Disability and Employment Law Through an Inclusive Lens
- Using Your Resilient Lawyer Brain to Overcome Life's Challenges
- Understanding Your PLF Coverage
- Practicing Law with ADHD

To order these or any other CLE programs, go to *www.osbplf.org > CLE > Past CLE*. If you have questions, call Julie Weber in PLF CLE Resources at 503.639.6911 or 1.800.452.1639.

2017 LEGISLATION ALERTS

Business and Securities Law

SB 95 (Ch. 514) Securities Law and Elder Abuse

SB 95 adds new provisions to the Oregon Securities Law. New provisions define the term "financial exploitation" and establish the requirement that "qualified individuals," including persons who serve in a compliance or legal capacity for a broker-dealer or state investment advisor, must notify the Department of Consumer and Business Services (DCBS) when they have reasonable cause to believe that someone has attempted or is attempting to financially exploit a "vulnerable person," or that a vulnerable person has been financially exploited.

In addition, SB 95 authorizes qualified individuals to notify a third party previously designated by a vulnerable person, or another person or entity the qualified individual may notify under state or federal law, of the suspected financial exploitation. However, a qualified individual may not notify the party suspected of attempting or committing the financial exploitation of the vulnerable individual.

Finally, the bill creates safe harbor for qualified individuals, broker-dealers, and state investment advisers, and it amends ORS 59.995 to authorize the director of the DCBS to issue a civil penalty of up to $1,000 against a person who violates the reporting requirement.

SB 95 takes effect on January 1, 2018.

HB 2191 (Ch. 705) Corporate Formation

HB 2191 gives the Secretary of State certain investigatory and enforcement authority relating to the formation of a corporation and authorization to transact business in Oregon. The Department of Revenue may recommend to the Secretary of State that the Secretary of State administratively dissolve a corporation for failure to comply with Oregon's tax laws.

The bill also provides that an officer, director, employee, or agent of a shell entity may be liable for damages to a person who suffers an ascertainable loss of money or property as a result of certain conduct by the officer, director, employee, or agent. Such conduct includes making known false statements about the shell entity's financial health or business operations, causing another person to falsify information in a shell entity's books, or removing information from a shell entity's books with the intent to deceive another person.

Under the bill, articles of incorporation must include a physical street address and contact information for at least one individual. The bill adds a prohibition that a registered agent cannot be at a mail-forwarding company or a virtual office.

HB 2191 took effect on August 15, 2017. Most provisions of the bill become operative on January 1, 2018. The Secretary of State and the Director of the Department of Revenue may take certain action before January 1, 2018.

SB 131 (Ch. 240) Remote Location Testimony

SB 131 revises the rules for the use of what was previously referred to as "telephone testimony." Remote location (formerly telephone) testimony from parties and witnesses in hearings and trials in civil cases and in actions under ORS chapter 419B continues to be available if requested by motion at least 30 days (or less for good cause shown) prior to the hearing or trial.

However, ORS 45.400 has been reorganized and updated with some small changes. There seems to be a preference for testimony that allows the party or witness to be viewed, as opposed to merely heard, as is the case in a telephone connection. See section 1 of SB 131 (new ORS 45.400(4) and new ORS 45.400(8)(b)(C)). A compelling need to allow remote location testimony continues to be required if the testimony is in a jury trial (ORS 45.400(4), now ORS 45.400(5)).

SB 131 took effect on June 6, 2017.

HB 2986 (Ch. 169) Probate Modernization

HB 2986 is a wide-ranging amendment of numerous statutes – most notably in ORS chapters 111, 113, 114, 115, and 116 – but also statutes scattered in seven additional chapters.

Specific changes to be noted here include a grant of personal jurisdiction (outside of ORCP 4) over distributees of an estate administered in Oregon if the distributee accepts a distribution. See section 2 of the bill to be found at ORS 111.085(2). Also, procedures related to bonds now specifically refer to a surety qualified under ORCP 82 D to G. See sections 4 and 15 of the bill for amendments that will be found at ORS 113.005(2)(a) and 113.105 (1)(a), respectively.

Finally, section 37 of the bill amends ORS 116.183 by adding new language found at 116.183(2)(c) to exempt requests for attorney fees under that statute from the procedures specified in ORCP 68. The timing ORCP 68 imposes on requests for attorney fees does not mesh well with the settling of a final account of an estate and, indeed, ORCP 68 C(1)(c) allows for different procedures when a statute refers to the rule but specifies different procedures.

For additional information about this bill, see the Elder Law and Estate Administration chapter.

HB 2986 takes effect on January 1, 2018.

Changes to the Oregon Rules of Civil Procedure by ORCP Chapter

ORCP 9 Service and Filing of Pleadings

Rule 9 was amended to facilitate the ability of parties in litigation to serve post-summons and complaint documents on one another by email. The amendment continues to require a confirmation of receipt of the document by parties who have not consented to service by email. The amendment also clarifies the requirements for completing a certificate of service for each of the authorized methods of service of documents.

Practice tip: The Council observed that many certificates of service for service by email, as filed, do not comply with the current section C's requirement that the certificate recite that the person served confirmed receipt of the email. With the Council's amendment to ORCP 9, effective January 1, 2018, if the opposing party has consented to email service, the certificate of service need only state that service was made by email. With consent to email service, service is complete upon transmission of the email. If the opposing party has not consented to service by email, the serving party will continue to be required to recite in the certificate of service that the person served confirmed to the sender receipt of the email. In addition, in cases where there is no consent to email service, service is not effective until receipt of confirmation. See ORCP 9 C(3) and G.

Council promulgation goes into effect on January 1, 2018.

ORCP 22 Counterclaims, Cross-Claims, and Third-Party Claims

Rule 22 C was amended to incrementally increase the scope of third-party practice by allowing any party to bring a claim against a third-party defendant who is brought in as an additional party in a lawsuit. The existing rule appears to allow (and some trial courts have held) only the plaintiff to assert a claim against a third-party defendant.

Council promulgation goes into effect on January 1, 2018.

ORCP 43 Production of Documents

The current amendment to Rule 43 E authorizes any party to a lawsuit, or the court, to obtain a meeting of the parties early in the lawsuit, after the parties have appeared or served an ORCP 69 B(1) notice of intent to appear, and if the discovery of ESI is anticipated, in order to confer regarding the scope of ESI that is anticipated. Within 21 days of a request, the parties must meet. The amendment also provides a non-exclusive list of seven additional topics (e.g., cost of production of the information) to be discussed.

Council promulgation goes into effect on January 1, 2018.

ORCP 45 Requests for Admission

Rule 45 relates to the discovery practice of requesting admissions as to facts that will be relevant in a case. Section F of the current rule limits a party's right, absent a motion and order to the contrary, to 30 specific requests. The amendment creates a new class of requests and allows a party to request that another party admit to the authenticity and admissibility of a "reasonable number" of business records.

Council promulgation goes into effect on January 1, 2018.

ORCP 47 Summary Judgment

The language contained in sections A and B of the current Rule 47 does not specifically allow a party to use the motion to defeat an affirmative defense, and some trial courts have restricted the use of the summary judgment motion to attack claims asserted by an opposing party. The amendment specifically allows a summary judgment motion to be directed against any claim or any defense.

In section G, the promulgated amendment continues to require the trial court to impose sanctions on a party found to have, in bad faith, presented an affidavit or declaration in support of or in opposition to a motion for summary judgment but no longer requires that the sanction be imposed "forthwith," allowing the court to utilize its discretion to impose a sanction when the court can evaluate the nature and scope of the alleged bad faith.

Council promulgation goes into effect on January 1, 2018.

Construction Law

HB 3458 (Ch. 685) Defining "Workweek" and Overtime Provisions

HB 3458 amends ORS chapters 652, 653, and 659A. The legislation defines a "workweek" as a successive 7-day period and connects overtime payments to the amounts identified for particular trades, or 40 hours. The legislation then defines various trades, and provides various specific requirements and exceptions, provides an "undue hardship" exemption for employers in certain situations.

Finally, the legislation also creates a private cause of action for employees whose employers do not follow the law, and a right in certain cases for a complaint with the Commissioner of the Bureau of Labor and Industries. For additional information about this bill, see the Employment and Labor chapter.

HB 3458 took effect on August 8, 2017.

SB 336 (Ch. 483) Construction Contractors Board

SB 336 adds a new section to ORS chapter 701, the Construction Contractors Licensing Act.

If the responsible managing individual for a contractor or business required to have a responsible managing individual under ORS chapter 701 ceases to serve in that role, the contractor or business must notify the Construction Contractors Board in the manner required by ORS 701.144. Additionally, the notification must include the former responsible managing individual's name and the name and address of the qualified employee or individual designated as the contractor's or business's new responsible managing individual or interim responsible managing individual.

Notwithstanding ORS 701.081, 701.084, and 701.091, a contractor or business may operate with a temporary responsible managing individual while awaiting the board's determination that the individual designated as the new responsible managing individual is qualified for the position. The temporary responsible managing individual may serve in that role for the earlier of 14 days after giving notice or the date when the contractor or business receives notice that the board has approved the individual designated as the new responsible managing individual.

SB 336 takes effect on January 1, 2018, and the Construction Contractors Board must adopt temporary rules to implement it no later than 90 days after the effective date.

Consumer, Commercial, and Debtor-Creditor Law

HB 2356 (Ch. 625) Debt Collection Practices

HB 2356 creates new requirements for debt collection actions filed by or on behalf of a debt buyer, including small claim actions. Initial pleadings must include specific information about the original creditor, debt owner, and the account. A court may not enter judgment in favor of a debt buyer that fails to comply, and a judgment wrongly entered may be set aside. The bill makes it an unlawful debt collection practice for a debt buyer, or debt collector acting on behalf of a debt buyer, to bring a legal action without possessing certain authenticated documents, including proof of ownership and a copy of the debtor's agreement with the original creditor. The debt buyer or debt collector must provide copies of the authenticated documents to a debtor within 30 days after receiving a request. After receiving a request, the debt buyer or debt collector may not attempt to collect the debt until the documents are provided.

The bill also amends ORS 646.639, adding and revising key definitions and creating several new unlawful debt collection practices. Subject to an exception, a debt collector may not attempt to collect any debt that the debt collector knows, or reasonably should know, arises from medical expenses qualified for reimbursement under the Oregon Health Plan or Medicaid. The bill prohibits knowingly collecting any amount not expressly authorized by the agreement creating the debt or other law. Debt buyers and debt collectors are prohibited from filing any legal action to collect a debt if the debt buyer or debt collector knows, or reasonably should know, that a statute of limitation bars collection.

Finally, the bill requires any person engaged in debt buying in Oregon to obtain a license from the Department of Consumer and Business Services. Financial institutions, mortgage bankers and brokers, consumer finance lenders, trust companies, debt management service providers, and attorneys engaged in debt buying incidentally to the practice of law are exempt.

HB 2356 went into effect on October 6, 2017; however, most provisions of the bill become operative on January 1, 2018. Certain provisions relating to debt buyers apply only to debts sold or resold on or after January 1, 2018.

HB 2359 (Ch. 154) Foreclosure Avoidance Measures

HB 2359 eliminates the requirement in ORS 86.748 that the beneficiary of a residential trust deed send to the Attorney General a copy of a notice that the grantor is not eligible for, or has failed to comply with the terms of, a foreclosure avoidance measure (e.g., a loan modification). Beneficiaries still must mail the required notice to grantors.

HB 2359 takes effect on January 1, 2018.

HB 2562 (Ch. 161) Reverse Mortgages

HB 2562 amends ORS 86A.196 relating to reverse mortgages. The bill requires a reverse mortgage lender to send an annual notice that the borrower remains responsible for property taxes, insurance, and maintenance until the property is sold or transferred and that failure to pay may result in acceleration of the loan, imposition of a tax lien, or foreclosure. The lender must send the notice to the borrower or, if taxes and insurance are paid from an escrow account, the escrow agent or title insurance company, at least 60 days before property taxes come due.

Financial institutions and consumer finance lenders are exempt from the notice requirement. The bill also eliminates an exemption from the advertising requirements for mortgage bankers and mortgage brokers.

HB 2562 takes effect on January 1, 2018.

HB 2920 (Ch. 270) Money Awards After Judicial Foreclosure

HB 2920 adds new requirements to ORS 18.950 relating to the satisfaction of money awards after a judicial foreclosure of real property. The bill requires the judgment creditor to file a satisfaction of money award upon receipt of the proceeds of the sheriff's sale. If the judgment creditor fails to file a satisfaction within 10 days after receiving a written request from the judgment debtor or another person with an interest in the property, then the judgment debtor or person may file a motion in court to satisfy the money award. The judgment debtor or person filing the motion is entitled to an award of reasonable attorney fees unless the judgment creditor proves lack of fault.

HB 2920 applies to satisfactions filed or requested on or after the effective date of January 1, 2018.

SB 98 (Ch. 636) Mortgage Loan Servicers

SB 98 requires non-depository, non-governmental mortgage loan servicers that service at least 5,000 residential mortgage loans for another person to obtain a license from the Department of Consumer Business Services (DCBS) before servicing residential mortgage loans in Oregon.

The bill also creates new consumer protections. Servicers must assess fees on consumers within 45 days after the fee is incurred and must explain the basis for the fee in a written notice mailed to the consumer within 30 days. If a servicer does not credit a payment, then within 10 days after receipt of the payment, the servicer must mail to the consumer a written notice explaining the reason the payment was not credited. Under the bill, servicers must promptly correct errors and refund fees assessed in error. Servicers must respond to requests for information within 15 days and include specific information in the response. Servicers must also send consumers an annual statement that contains specific information about the loan. Upon request, a consumer is entitled to receive one complete account history each year at no charge. Servicers are also prohibited from engaging in fraudulent acts, including making fraudulent representations or omissions.

Additionally, the bill requires that servicers respond within 30 days to consumer complaints forwarded by the Department. The Director of DCBS is authorized to investigate a consumer complaint, and, if the Director determines that a servicer violated the Act, the Director may order the servicer to cease and desist from the wrongful act, to refund fees paid by the consumer, and/or to pay the consumer damages. Additionally, the Director may impose civil penalties of up to $5,000 per violation and up to $20,000 for continuous violations.

The bill also requires persons who provide a residential mortgage loan modification service for compensation to make certain disclosures. The bill prohibits such persons from charging a fee before providing the service, charging an unreasonable fee, and requiring or encouraging borrowers to

waive certain rights as a condition of modifying a residential mortgage loan.

SB 98 took effect on August 2, 2017, and most provisions of the bill become operative on January 1, 2018.

SB 381 (Ch. 251) Foreclosure Notices

SB 381 amends various provisions in ORS 86 to include post office boxes as a required mailing address, including the following: amended payoff statements from lenders to borrowers; notices of intent to record a release of trust deed from title insurance companies to all interested parties; notices of resolution conference from the service provider for the Oregon Foreclosure Avoidance program; notices from residential trust deed beneficiaries relating to the grantor's eligibility for or noncompliance with a foreclosure avoidance measure; "danger" notices from the sender of a notice of sale to the grantor or occupant; and notices of sale from trustees to all addresses on file.

SB 381 applies to notices mailed on or after the bill's effective date of January 1, 2018.

SB 134 (Ch. 241) Retail Installment Contracts

SB 134 has "clean-up" language to accurately describe the transaction between a motor vehicle dealer and the company to which it sells a retail installment contract or lease. The bill adds the option for a dealer to provide a required notice to the vehicle's buyer by written electronic communication. The dealer must retain proof of the date on which it sent the notice to the vehicle's buyer.

SB 134 applies to retail installment contracts or lease agreements into which a seller and buyer enter on or after January 1, 2018.

HB 2090 (Ch. 145) Privacy Policy

HB 2090 adds a new unlawful trade practice to ORS 646.607. A person may not publish on its corporate website or in a consumer agreement a statement or representation of fact in which the person asserts that it will use, disclose, collect, maintain, delete, or dispose of information that the person requests, requires, or receives from a consumer in a manner that is materially inconsistent with any statement or representation the person made as to the manner or purpose of the use, disclosure, collection, maintenance, deletion, or disposal of the information.

HB 2090 takes effect on January 1, 2018.

SB 899 (Ch. 358) Receiverships

SB 899 creates an Oregon Receivership Code, substantially revising and clarifying law around receiverships, which had previously varied from jurisdiction to jurisdiction.

The bill specifies the powers and duties of a receiver in Oregon, and creates statutory definitions for a number of terms, including "receivership," "residential property," "executory contract," "foreign action," "insolvency," "affiliate," and "owner."

The bill specifies the process for the appointment of a receiver, drawing in part on the previous language in ORCP 80B. The bill also specifies who is eligible to serve as a receiver, and requires disclosure of certain conflicts of interest that would render a person ineligible to serve as a receiver.

Additionally, the bill provides for the automatic stay of certain proceedings effective upon entry of the order appointing the receiver.

SB 899 applies to receiverships in which the receiver is appointed after January 1, 2018.

Criminal Law

HB 3077 (Ch. 171) Crime Victims

HB 3077 amends a statute relating to crime victims. Section 1 amends ORS 135.815, which governs the discovery obligations in criminal cases. ORS 135.815(5) precludes an attorney, or an agent of the attorney, from disclosing certain personal information to the defendant in a criminal case unless certain findings are made by the court. The personal information includes the address, telephone number, Social Security number, date of birth, and financial account information of a witness or victim. This measure adds the victim's email address and social media account information to the list of information that cannot be disclosed to the defendant.

HB 3077 takes effect on January 1, 2018.

SB 505 (Ch. 650) Grand Jury Proceedings

SB 505 requires the recording of testimony in grand jury proceedings. The bill provides for a phased-in implementation of the recordation requirement. The bill requires recordation effective March 1, 2018, in judicial districts with a population between 150,000 and 300,000 or over 700,000, which include Deschutes, Jackson, and Multnomah counties. The requirement applies to all counties effective July 1, 2019.

SB 719 (Ch. 737) Extreme Risk Protection Order

SB 719 creates a process for an individual to petition the court for an extreme risk protection order enjoining an individual from possessing a dangerous weapon, including a firearm.

Under the bill, violation of an extreme risk protection order is a Class A misdemeanor. Likewise, petitioning for such an order with the intention to harass the respondent or filing a petition containing information the petitioner knows to be false is also a Class A misdemeanor.

For more information about SB 719, see the Domestic Relations chapter. SB 719 takes effect on January 1, 2018.

SB 896 (Ch. 529) Direct Criminal Appeals

SB 896 clarifies concepts related to "appealability" (which establishes which orders and judgments can be appealed to an appellate court) and "reviewability" (which establishes which of those appealed orders and judgments can actually be reviewed by the appellate courts). In addition, the bill establishes in statute what specific types of judgments and orders can be appealed, by whom they can be appealed, and when they can be appealed. It reorganizes certain appellate procedures, and revises provisions concerning the filing and service of a notice of appeal.

The bill expressly provides for appellate review of misdemeanor sentences and merger issues. It defines what intermediate court orders are subject to appellate review, clarifies the trial court's authority to enter certain corrected judgment during the pendency of an appeal, and clarifies and defines the dispositional authority of the appellate courts.

SB 896 takes effect on January 1, 2018.

SB 931 (Ch. 359) Alternate Jurors

SB 931 makes modifications to statutes regarding the use of alternate jurors in criminal cases. The bill amends ORS 136.260 and provides the trial court with more flexibility in selecting alternate jurors. Additionally, it amends ORS 136.280 and allows an alternate juror to replace a juror after deliberations have begun if the juror is unable to deliberate because of death, sickness, or other sufficient cause. This provision requires the existence of an alternate juror and an agreement to the substitution prior to the beginning of trial. It applies to a trial regarding sentencing enhancement facts as well. When an alternate juror substitutes on to the jury, the court shall instruct the jury to begin deliberations anew.

SB 931 takes effect on January 1, 2018.

HB 3176 (Ch. 123) Domestic Abuse as a Mitigating Factor

ORS 137.090 establishes procedures for the trial court to consider mitigating and aggravating factors in imposing a sentence. Currently, the statute authorizes the court to consider the defendant's status as a service member as a mitigating factor.

HB 3176 authorizes the court to consider as a mitigating factor whether the defendant committed the crime while under duress, compulsion, direction, or pressure of domestic abuse or violence from another person.

HB 3176 takes effect on January 1, 2018.

SB 714 (Ch. 689) Stalking/ Residency Restrictions

ORS 137.540 establishes what conditions the court may impose upon a probationer. ORS 144.102 establishes what conditions the Board of Parole and Post-Prison Supervision (Board) may impose on an offender subject to its jurisdiction.

SB 714 amends both statutes and authorizes reasonable residency restrictions on persons convicted of stalking or violating a stalking protective order. However, neither the court nor the Board may require the offender to change residence if the victim moves to a location that causes the offender to be in violation of the condition.

SB 714 takes effect on January 1, 2018.

Domestic Relations

SB 492 (Ch. 457) Exchange of Financial Information

SB 492 provides a post-judgment, out-of-court process for parties subject to a spousal support award to exchange financial documents.

In order to review the other party's financial documents, the requesting party must send his or her own financial documents with the request. Requests must be in writing and may only be made once every two years. The documents that can be requested include the first and second page of the most recent state and federal income tax returns or, if no tax returns were filed, all records of income for the prior calendar year.

The parties may redact all identifying contact information, including addresses, employer addresses, and account numbers, but must provide their name on the documents. If the request is properly made and the requesting party's documentation is provided, the other party must provide the requested documents.

SB 492 takes effect January 1, 2018.

SB 510 (Ch. 486) Department of Justice Data Sharing

SB 510 expands the Division of Child Support's access to information on delinquent obligors. It clarifies that an "account" for purposes of data matching includes those receiving insurance benefits or payments of more than $500 under a liability or noninsured motorist policy, thus capturing those receiving or entitled to substantial insurance payments in the data-matching requirement.

The measure also requires companies to provide three days' written notice to the Division of Child Support prior to disbursement of a benefit or payment if information sharing on a delinquent obligor has not already been established.

SB 510 takes effect on January 1, 2018.

SB 511 (Ch. 459) Liquidated Debt

The Division of Child Support within the Oregon Department of Justice may create an overpayment in favor of the State when it sends money from an obligor to an obligee and the amount of the payment or the person paid is incorrect. For example, an obligor may send a check to the Division to process. The Division must process that payment and send money to the obligee within two days of receipt of the payment. If there are not sufficient funds to cover the written check, the Division is left with an overpayment to the obligee and may begin recovery attempts. Currently, the Division may only create an account receivable if the recovery is against the obligee and there is limited ability for the Division to develop a repayment plan.

SB 511 creates a process for creating accounts receivable for moneys paid out in error to any person or entity and allows collection efforts against the person or entity that sent the payment. Additionally, the measure gives the Division and the person 90 days to either pay in full or begin payment under a plan before the account receivable becomes delinquent.

SB 511 takes effect on January 1, 2018.

SB 512 (Ch. 651) Parentage

Currently, gender-specific language in the paternity statutes excludes same-sex couples from the duties and obligations of being a parent to children. SB 512 creates a gender-neutral list for establishing when a person is a parent of a child.

The effect of the bill is to include same-sex parents in the duties and obligations of opposite-sex parents under Oregon law, including child support orders, benefit eligibility determinations, and juvenile dependency and delinquency proceedings.

SB 512 takes effect on January 1, 2018.

SB 513 (Ch. 460) Child Support Notices

The Division of Child Support must follow state and federal guidelines for processing child support, including the federal Fair Credit Reporting Act, which previously required 10 days' notice to a person when requesting the person's consumer report. A consumer report provides the Division with information about a parent who owes child support, including income and location. In 2015, the Fair Credit Reporting Act was revised, removing the 10 days' notice requirement and allowing for the use of consumer reports for enforcement of a child support order.

SB 513 removes the current requirement that the Division notify an obligor or obligee when it requests a consumer credit report in child support cases and allows the Division to request reports to enforce a support order.

SB 513 takes effect on January 1, 2018.

SB 514 (Ch. 461) Obligee Notification

The Division of Child Support is required to give notice to an obligee of certain actions the Division is taking against an obligor. In many of these cases, the information in the notice is heavily redacted and may create confusion for the individual receiving the notice. Currently, the Division must provide such a notice when (1) it issues an order for withholding, (2) intends to refer a case to the Department of Revenue for the purposes of collecting tax returns, (3) intends to report information on the obligor's payments to a credit reporting agency, or (4) intends to place a lien on the obligor's property. In these instances, the obligee is entitled to information but has no ability to object to the Division's actions.

SB 514 removes the notice requirements to obligees for these four Division actions. It does not affect the notice requirements for the obligor or any other required entity.

SB 514 takes effect on January 1, 2018.

SB 516 (Ch. 462) Child Support Due Dates

SB 516 requires all orders for child or spousal support processed through the Division of Child Support to have payment due on the first day of the month. The bill also specifies that for enforcement purposes, income withholding will be on the first day of the month, even if the due date is another day, and allows for a monthly average for alternative payment structures.

SB 516 specifies liens and actions to which this requirement does not apply, and specifies when support payments become delinquent.

SB 516 takes effect on January 1, 2018.

SB 517 (Ch. 463) Credits on Child Support

The Division of Child Support is responsible for processing over $1 million each day in medical and child support of children. Occasionally, payments are made from one party to another outside of the Division's disbursement unit. In some instances, one party may owe money to the State for services, such as Temporary Assistance for Needy Families. Current law requires the Division to credit outside payments to the amounts owed the State if the parties make sworn statements that the payments were made and substantial evidence corroborates the statements. If money is not owed to the State, the outside payment is credited to the account of the obligee, even if there are no arrears or outstanding balance owed by the obligor. The Division identified this process as inefficient internally and susceptible to fraud externally.

SB 517 removes the requirement to credit an outside child support payment to moneys owed to the State. Additionally, the measure limits the amount of credit on payments owed to the obligee to the current balance of the account.

SB 517 takes effect on January 1, 2018.

SB 522 (Ch. 341) Life Insurance Recovery

In a family law proceeding in which a spousal or child support order is created, the court may also require the obligor to maintain or purchase a life insurance policy to guarantee continued support in the event of the obligor's death. Typically, the life insurance must be maintained until the end of the support obligation.

In some instances, such as an obligor changing employment and changing life insurance policies, the obligor's policy may not reflect the court-ordered beneficiary to a policy. In those circumstances in which a third party is designated as a beneficiary and receives the proceeds of a life insurance policy, the court-ordered beneficiary must bring a claim against the third-party beneficiary for unjust enrichment in order to recover the support obligation. That action requires proving that the third-party beneficiary had notice of the obligor's obligation to the court-ordered beneficiary prior to receiving the money.

SB 522 provides a mechanism for a court-ordered beneficiary of a life insurance policy in a family law proceeding to bring an action against a third-party beneficiary. The measure specifies that entry of the judgment constitutes notice to third-party beneficiaries of the obligation.

SB 522 limits the court-ordered beneficiary to recovery of no more than the support obligation amount or arrears and provides a defense for third-party beneficiaries who purchase the policy against which a claim is made.

SB 522 takes effect on January 1, 2018.

SB 682 (Ch. 464) Suspension of Child Support Orders

SB 682 adds new provisions to support enforcement laws that create a rebuttable presumption that an obligor incarcerated for 180 or more consecutive days is unable to pay child support and suspends accrual of the child support obligation during incarceration. This presumption may be rebutted. The suspended child support order will be automatically reinstated at 50 percent of the previously ordered amount on the first day of the month following the 120th day of the obligor's release from incarceration. Within 60 days of this reinstatement the administrator will review the support order for possible modification.

SB 682 mandates that an obligor's incarceration for at least 180 consecutive days or the obligor's release from incarceration is a substantial change of circumstances for child support modification proceedings. Proof of this incarceration is also sufficient for a credit and satisfaction against support arrearages for each month of incarceration and the 120 days following release from incarceration.

SB 682 also makes conforming amendments within ORS 416.425, which governs motions to modify support orders when support enforcement services are being provided. It eliminates the provision reinstating support obligations on the 61st day following an obligor's release from incarceration.

SB 682 takes effect on January 1, 2018. However, support orders modified to zero prior to January 1, 2018, remain in force, with reinstatement at the full amount ordered 61 days after release from incarceration.

SB 719 (Ch. 737) Extreme Risk Protection Order

SB 719 allows a family or household member to petition the court for an "extreme risk protection order" enjoining a person from possessing a deadly weapon. The petitioner has the burden of proof at the initial ex parte hearing, which must be held within one judicial day of the day the petition is filed. In order to issue the order, the court must find, by clear and convincing evidence, that the respondent presents a risk in the near future of suicide or of causing physical injury to another person. If the order is issued, the respondent must be personally served with a copy of the order and a hearing request form. The respondent has 30 days within which to request a hearing challenging the order.

The bill specifies that violation of an extreme risk protection order is a Class A misdemeanor, as is petitioning for an order with the intent to harass or doing so knowing that the information in the petition is false.

SB 719 takes effect on January 1, 2018.

SB 765 (Ch. 467) Child Support Enforcement Updates

SB 765 makes amendments to support enforcement laws. Changes to federal rules, published as the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, took effect on January 19, 2017. States are required to comply with these provisions. One of these changes amended 45 CFR 303.31 to eliminate the distinction between private and public health care coverage. SB 765 amends ORS 25.323 to eliminate this distinction, allowing parent(s) to provide public or private health insurance coverage for a child.

The 2017 changes to federal rules also amended 45 CFR 302.38 to require support payments be made directly to the resident parent, legal guardian, or the like. SB 765 complies with this change by amending ORS 25.020 to remove requirements for the Department of Justice to disburse child support payments to private collection agencies when requested by the obligee.

SB 765 took effect on June 22, 2017.

SB 830 (Ch. 351) Definition of Current Caretaker

In 2015 the legislature passed SB 741, which required administrative rules that govern home studies and placement reports to provide greater weight to a child's relatives and current caretaker seeking to adopt the child than to others. SB 741 also defined "current caretaker" as a foster parent who has cared for a ward or sibling of a ward for the previous 12 consecutive months.

SB 830 modifies this definition to cover a caretaker who has cared for a ward or a sibling of the ward for 12 cumulative months.

SB 830 takes effect on January 1, 2018.

SB 1055 (Ch. 534) Deployed Parents Visitation

The 2011 legislature passed HB 3162, which created new provisions prohibiting courts from changing parenting and support orders involving deployed parents, but permitted modifications to accommodate a parent's active military service as long as they are in a child's best interest.

SB 1055 adds a new provision to these visitation laws to allow a deployed parent to petition the court for visitation, during deployment, between the child of the deployed parent and a stepparent, grandparent, or other family member related to the child. The bill also directs the court to consider whether visitation will facilitate contact between the child and the deployed parent, the best interests of the child, and the third-party visitation factors in ORS 109.119.

SB 1055 takes effect on January 1, 2018.

HB 2630 (Ch. 391) Guardianships

HB 2630 makes several changes to guardianship laws and is intended to increase the notification, awareness, and protection of a protected person's interest.

ORS 125.055 (petitions in protective proceedings)

Now when petitioning for an appointment of a fiduciary in a protective proceeding, the petitioner, in addition to pleading the factual information to support the petition, is required to plead the less restrictive alternatives to the appointment of a fiduciary that were considered and why the alternatives were determined to be inadequate. ORS 125.055(2)(g).

The bill also adds a new subsection (k) to ORS 125.055(2). The petitioner will now need to plead whether he or she is seeking that the fiduciary has plenary authority or only specific limited authority. However, the amendment does not define "plenary authority."

ORS 125.060 (who must be given notice)

As part of the notice requirements for the appointment of a guardian, entry of other protective orders in a guardian matter, motion to terminate a guardianship, motion for removal of a guardian, motion for modification of a guardian's power or authority, motion for approval of a guardian's actions, or motion for protective orders, ORS 125.060(8) now requires the person seeking one of the above-referenced motions to provide to persons identified in ORS 125.060(8)(a), (b), and (c) the protected person's address, telephone number, and other contact information. The amendment does not provide a disclosure exception when it is in the best interest of the protected person. When it is in the best interest of the protected person, disclosure of the protected person's address may be restricted. *State v. Symon (in re Symons)*, 264 Or.App. 769, 333 P.3d 1170 (Or.App. 2014).

ORS 125.075 (presentation of objections)

Prior to HB 2630, ORS 125.075(2) objections to a motion in a protective proceeding were required to be in writing. Now, a protected person may object in writing, orally in person, or by other means that are intended to convey the protected person's objection. Any person, other than the protected person, objecting to a motion in a protective proceeding must still do so in writing. Further, amended ORS 125.075(2) requires the court to designate the manner in which an oral objection may be made that "ensures that a protected person will have the protected person's objection presented in the court."

ORS 125.225 (removal of fiduciary)

Currently, a court may remove a guardian if the guardian places the protected person in a mental health treatment facility, nursing home, or residential facility. Now, in addition, the court may remove the guardian if the guardian changes the adult protected person's abode.

ORS 125.320 (limitation on guardian)

In addition to an intention to change the adult protected person's placement at a mental health treatment facility, nursing home, or other residential facility, an intention to change an abode requires the guardian to notify the court by filing and serving a statement declaring the guardian's intent.

Pursuant to ORS 125.065, the statement must be filed and served to those persons specified in ORS 125.060 (3) and (8) at least 15 days prior to each change of abode or placement. However, if the guardian determines that the change of abode or placement must occur in less than 15 days to protect the immediate health, welfare, or safety of the protected person, the statement to the court shall declare that the change of abode or placement must occur in less than 15 days for the reasons stated above. The statement must be filed and served with as much advance notice as possible. However, the statement must be filed no later than two judicial

days after the change of abode or placement, and the guardian may make the change of abode or placement prior to the objection hearing.

ORS 125.325 (guardian report)

The guardian's report has been amended to require facts that support the conclusion that the protected person is incapacitated.

HB 2630 takes effect on January 1, 2018.

SB 59 (Ch. 633) Long Term Care Ombudsman

SB 59 amends ORS 125.085 and allows the Office of Long Term Care Ombudsman to appear in existing protective proceedings, to move to remove a fiduciary, to move for a modification of the powers or authority of a fiduciary, and to move for termination of a protective proceeding.

Under the bill, any protected information disclosed to the court by the Office of Long Term Care Ombudsman shall remain confidential, subject only to inspection by the parties to the proceeding, and not subject to inspection by members of the public expect by court order after a showing of good cause.

SB 59 took effect on August 2, 2017.

SB 95 (Ch. 514) Financial Exploitation

SB 95 adds sections to ORS 59.005 to 59.451 and provides that certain securities professionals are now required to be mandatory elder financial abuse reporters. This new act specifically requires that "qualified individuals" are required to report "financial exploitation" of a vulnerable individual with whom they have contact. A qualified individual includes a person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or state investment adviser.

When a qualified individual who has reasonable cause to believe that financial exploitation of a vulnerable person with whom he or she has come into contact has occurred, has been attempted, or is being attempted, as soon as practicable that qualified individual must notify the Department of Consumer and Business Services. The new act lists the type of information that must be provided in the notice.

Notice may also be provided to a third party who has previously been designated by the vulnerable person to receive information that otherwise would be private.

Any person who violates these reporting requirements, or who procures, aids, or abets in the violation, may be subject to a penalty of not more than $1,000 for every violation. However, a qualified individual, a broker-dealer, and state investment advisers are not liable for following these provisions if they are performed in good faith with reasonable cause and with the exercise of reasonable care.

SB 95 takes effect on January 1, 2018.

HB 2608 (Ch. 54) Uniform Trust Code

HB 2608 corrects an oversight in HB 2331, passed during the 2015 session. That bill made several major changes to ORS chapter 130, Oregon's Uniform Trust Code (UTC). As drafted, HB 2331 applied only to trusts executed after that bill went into effect. HB 2608 addresses this problem by specifying that the changes to the UTC apply to all trust proceedings that are commenced after HB 2608 goes into effect, as well as to all trusts executed after HB 2331 took effect.

HB 2608 took effect on May 15, 2017.

HB 2986 (Ch. 169) Probate Modernization

HB 2986 makes a large number of changes to ORS chapters 111, 113, 114, 115, and 116, including expanding the definition of "estate" in Chapter 111.

The bill expands on the process for the appointment of a special administrator in chapter 113, and provides the court with guidance on setting the amount of the bond in order to balance the need for a bond to protect persons interested in an estate with the concern that in some situations a bond can create an unnecessary expense.

The bill also creates an alternative compensation scheme for personal representatives in ORS chapter 113. This change is intended to address circumstances where an estate has modest assets but complicated property issues. The bill also makes changes to the priority order for the naming of a personal representative.

Among the many other changes made in HB 2986, the bill adds requirements that individuals filing a will contest must provide notice to heirs and devisees identified in the petition for probate.

HB 2986 takes effect on January 1, 2018.

Employment and Labor Law

HB 2005 (Ch. 197) Pay Equity Law

HB 2005 expands the protections of equal pay found in ORS 652.220. HB 2005 will explicitly prohibit employers from paying people less based not only on gender, but also on race, color, religion, sexual orientation, national origin, marital status, disability, or age. However, pay disparities can exist when there is a bona fide reason for such a disparity. These bona fide reasons include "seniority, merit, production-related metrics, workplace locations, travel needs, education, training, or experience."

HB 2005 provides a safe harbor for employers who have conducted a pay analysis within three years of any lawsuit, and can show a reasonable effort based on that analysis to eliminate wage disparities that violate HB 2005. Employers who trigger the safe harbor provision are able to file a motion to disallow an award of compensatory and punitive damages. However, employers are prohibited from cutting other workers' pay in order to even out the compensation levels.

HB 2005 also bars employers from using salary history when determining new workers' pay. Thus, job applications that ask for prior salary history are now prohibited by law.

Although a majority of HB 2005 goes into effect on January 1, 2019, the prohibition on inquiring into salary history went into effect on October 6, 2017.

HB 3008 (Ch. 211) False Employment Records

HB 3008 prohibits employers from compelling, coercing, or otherwise inducing or attempting to induce an employee to create, file, or sign documents that the employer knows are false in regards to hours worked or compensation received. It provides a private cause of action for falsifying these time cards, and allows for either an award of actual damages or $1,000 for each violation, including attorney fees and costs.

HB 3008 takes effect on January 1, 2018.

HB 3458 (Ch. 685) Manufacturing Employers Overtime

HB 3458 amends ORS 652.020 and 653.265 to clarify an issue regarding how manufacturing employers calculate overtime. The bill essentially rejects the Oregon Bureau of Labor and Industries' (BOLI's) interpretation concerning overtime entitlements. The new law requires manufacturing employers who owe daily and weekly overtime to calculate the two amounts and then pay out the greater of the two to their employees.

The law also caps weekly manufacturing hours at 55, although employees can voluntarily request or agree to up to five more hours as a permissible overage (more for manufacturers dealing with perishable products and who have an undue hardship notice approved by BOLI).

Employees claiming they were required or coerced to work beyond 13 hours in a day, or 55 hours in a week, may recover $3,000 for each violation, plus liquidated damages equal to twice the employee's overtime wages earned during the period of non-compliance.

Although HB 3458 took effect on August 8, 2017, the portion of the law regarding the new private right of action becomes effective January 1, 2018.

SB 299 (Ch. 520) Sick Leave Accrual

SB 299 amends ORS 653.606 to expressly permit an accrual cap on sick leave. Starting January 1, 2018, employers can limit the accrual of both paid and unpaid sick time to 40 hours per year. As originally written, the law specifically allowed employers to limit the amount of carryover of sick hours from one year to the next, but it was unclear whether an employer could limit sick time accrual within a single year. Now, the legislature has clarified that employees can have a maximum sick leave bank of 80 hours, but only if they have 40 hours from a prior year and 40 hours from the current year.

SB 299 took effect on August 8, 2017.

SB 398 (Ch. 333) Earned Income Tax Credit

SB 398 requires employers to provide employees written notice that they are able to receive both federal and state earned income tax credits. The notice must:

1. Be in English and in the language the employer uses when speaking with employees;
2. Be sent annually with the W-2 forms; and
3. Provide website addresses for the Internal Revenue Service and the Department of Revenue where the employee can find information about state and federal earned income tax credits.

The bill also requires the Bureau of Labor and Industries to provide notice to employees on state minimum wage posters about the earned income tax credit. The legislature enacted this law because over 75 percent of Oregonians who qualify for this credit do not claim it.

SB 398 took effect in October 2017.

SB 416 (Ch. 334) Prevailing Rate of Wage

SB 416 modifies the prevailing wage rate for projects that are divided into multiple contracts. The new statutory language added to ORS 279C.827 essentially closes a loophole that enabled contractors to avoid prevailing wage rate laws. It now prohibits anyone – not just public agencies – from dividing public works projects into more than one contract in order to avoid prevailing wage rate laws.

In addition, new statutory language added to ORS 279C.836 provides that disadvantaged business enterprises, minority-owned businesses, women-owned businesses, businesses owned by service-disabled veterans, and emerging small businesses must post bond if they fail to pay workers the prevailing wage rate. Further, the bill amended ORS 279C.865 to establish that the failure to pay fringe benefits and the failure to pay the prevailing wage rate are separate violations.

SB 416 took effect on June 14, 2017.

SB 828 (Ch. 691) Predictive Scheduling

SB 828 creates new obligations for certain employers (those retail, food service, and hospitality businesses with 500 or more employees worldwide) to post schedules seven days in advance. Enforcement of this provision does not begin until January 1, 2019. Beginning January 1, 2020, however, schedules must be posted 14 days in advance. Employers with collective bargaining agreements are not exempt from SB 828's requirements.

SB 828 also requires employers to provide employees with a written, good-faith estimate of the worker's schedule at the time of hire. Employers are no longer allowed to schedule employees within 10 hours of their last shift.

If an employer needs to change the work schedule after the date that advance notice is required, the employer must meet several requirements to satisfy the new law and will likely have to pay a premium to the employee impacted by the change. Furthermore, an employer cannot require employees to work shifts that were not on their written work schedules.

To alleviate some of the burden on employers, SB 828 allows for the creation of voluntary standby lists. This will help employers deal with unexpected absences or last-second changes to their work needs.

Initially, the law includes a narrow private right of action against employers for retaliation. As of January 1, 2019, employees may pursue private, civil causes of action for discrimination and retaliation claims under this law. The Bureau of Labor and Industries will also have the power to seek penalties for each violation.

SB 828 took effect on August 8, 2017.

SB 949 (Ch. 360) Home Care Workers' Noncompetition Agreements

SB 949 makes noncompetition and non-solicitation agreements in employment contracts for home care workers voidable by the worker. Further, SB 949 makes these agreements unenforceable in Oregon courts.

SB 949 takes effect on January 1, 2018.

SB 1040 (Ch. 369) Union Security Agreements

SB 1040 is a response to the decision in *United Automobile Workers v. Hardin County (KY),* 842 F.3d 407, a recent decision by the Sixth Circuit Court of Appeals that appeared to recognize a right of some local governments to ban union security agreements. This bill establishes a statewide policy permitting an employer or labor organization in this state to have an agreement requiring membership in a labor organization as a condition of employment to the full extent allowed by federal law.

SB 1040 took effect on June 14, 2017.

Financial Institutions

HB 2161 (Ch. 35) Credit Union Governance

HB 2161 makes several amendments to ORS chapter 723, which governs credit unions chartered by the State of Oregon.

ORS 723.022 provides for amendments to the articles of incorporation and the bylaws of a credit union. The current statute provides that amendments are to be submitted to the Director of the Department of Consumer and Business Services (DCBS) for approval or disapproval, and that the Director must approve or disapprove within 30 days. HB 2161 eliminates the requirement that the Director act within 30 days.

The current statute also provides that amendments to either the articles or the bylaws become effective upon approval by the Director. HB 2161 retains that provision for amendments to the articles, but provides that amendments to bylaws become effective 30 days after submission, unless the Director within that time notifies the submitter that the Director either disapproves the amendments or requires additional information. If the Director requires additional information, the amendments will become effective 30 days after it is submitted, unless the Director disapproves the amendments within that time.

HB 2161 amends ORS 723.202 by adding an additional basis upon which a credit union may expel a member: Namely, where the member creates an undue risk of loss to the credit union, as determined in accordance with the credit union's bylaws.

ORS 723.292 currently requires that credit union boards meet at least 10 different times in 10 different months during each calendar year. HB 2161 replaces that statutory requirement with a requirement that a credit union board hold regular meetings, and permits the DCBS Director to issue a rule specifying the minimum frequency of meetings.

HB 2161 takes effect on January 1, 2018.

HB 2346 (Ch. 51) Distributions From a Decedent's Account

ORS 708A.430 within the Oregon Bank Act and ORS 723.466 in the credit union statute provide a means for distribution of the balance remaining in a decedent's bank or credit union account upon the filing of an affidavit by one of the persons listed in the statutes. Under current law, the Department of Human Services (DHS) and the Oregon Health Authority (OHA) may file such an affidavit under limited circumstances where DHS or OHA has a preferred claim against the decedent's estate.

HB 2346, introduced at the request of DHS, makes several changes to these statutes.

DHS and OHA are second in line (behind a surviving spouse) to claim the funds in the decedent's account. Others in line to file claims under these statutes (in descending order of priority) are the decedent's surviving adult children, parents, and adult siblings. To give a spouse time to claim the funds in the account, DHS and OHA are not permitted to file their claims until the 46th day following the decedent's death, and the claim must be filed within 75 days after the decedent's death. To give DHS and OHA time to perfect their claim, HB 2346 clarifies that the financial institution may not distribute the proceeds of the decedent's account to the decedent's children, parents, or siblings sooner than 46 days after the decedent's death, and may only distribute the proceeds to such relatives prior to 76 days after the decedent's death if the institution gets prior verbal or written authorization from OHA and DHS.

Under the current law, DHS and OHA may only claim funds in the decedent's account by filing the affidavit described in ORS 708A.430 and 723.466. HB 2346 creates a second pathway for these agencies. In lieu of filing the affidavit, DHS and OHA may submit a declaration made under penalty of perjury. The contents of the declaration must mirror those of the affidavit and must include a specific declaration of authorization.

HB 2346 takes effect on January 1, 2018.

HB 2610 (Ch. 55) Oregon Business Corporation Act

HB 2610 makes several changes to the Oregon Business Corporation Act to address the use of certain electronic technology by incorporating terminology and concepts from the Uniform Electronic Transmissions Act (UETA) and the federal Electronic Signatures in Global and National Commerce Act (E-Sign). The bill is primarily intended to facilitate the use of electronic transmission and signature of corporate documents and creates a number of new provisions to this effect.

HB 2610 takes effect on January 1, 2018.

HB 2622 (Ch. 290) Financial Exploitation

HB 2622 creates specific statutory authority for banks, trust companies, and credit unions to take certain protective actions with respect to the accounts of "vulnerable persons" (as defined in ORS 124.100).

An institution, in the exercise of its discretion, may (but is not required to) take action (including limiting account access) when the institution reasonably believes that "financial exploitation" (as defined in ORS 124.050) of a vulnerable person may have occurred, may have been attempted, or is being attempted.

Generally, an institution that limits account access under HB 2622 must make a reasonable effort to notify, orally or in writing, all parties currently authorized to transact business on the account concerning the institution's action. However, such notice is not required when the institution in its discretion determines that providing notice could compromise an investigation of or response to the suspected exploitation.

HB 2622 provides that a financial institution and its employees are immune from criminal, civil, and administrative liability for actions taken in good faith under the bill.

Many financial institutions have language in their deposit account contracts allowing the institution to take actions of the type described in HB 2622. Therefore, HB 2622 provides that its provisions are in addition to and not in lieu of any right the institution may have under its contract, and that HB 2622 does not restrict the institution's rights to take or refuse to take any action pursuant to its contract and does not require the institution to comply with the provisions of HB 2622 when the institution acts pursuant to the provisions of its contract.

HB 2622 took effect on October 1, 2017.

SB 254 (Ch. 644) Data Match System

SB 254 mandates that "financial institutions" (banks and credit unions doing business in Oregon) participate in a new "data match system" – a system for the exchange of information between financial institutions and the Oregon Department of Revenue (ODR), under which the institutions would periodically (not more often than quarterly) receive a list of the names and Social Security or TIN numbers of "delinquent debtors" (persons for whom a warrant has been issued by ODR) and compare the ODR list against the institution's list of persons holding accounts at the institution. The bill does not prescribe a time frame within which institutions must report back any matches.

ODR may temporarily exempt a financial institution from participation in the data match system if it determines that the institution's participation would not be cost-effective for ODR or would be unduly burdensome for the institution, or if the institution provides written notice from its supervisory authority that the institution has been determined to be undercapitalized.

The bill shields financial institutions and their affiliates from liability under Oregon law for any disclosure of information to ODR, for encumbering or surrendering assets held by the institution in response to an ODR notice of lien or levy, and for any other action taken in good faith to comply with SB 254.

The bill provides that if ODR through use of the data match system determines that a delinquent debtor is also delinquent in child support payments, ODR must wait 30 days before it issues a garnishment

to the institution to collect the debt for which the warrant was issued. The bill does not require ODR to report the results of the data match to child support collection authorities. The bill adds a new section to ORS chapter 25, permitting (with limitations) DOJ's Division of Child Support to make agreements with ODR and other divisions within the DOJ for the provision of information reported to the Division of Child Support by an employer pursuant to ORS 25.790 regarding the hiring or rehiring of individuals in Oregon. The bill provides that this information may be used for purposes other than paternity establishment or child support enforcement, including but not limited to debt collection.

SB 254 provides that, except as otherwise permitted by law, a person may not:

a. Disclose to a delinquent debtor that information relating to the debtor was transmitted using the data match system within the 45-day period prior to the disclosure; or

b. Knowingly use or disclose information relating to the debtor that was transmitted to or from the ODR through the data match system for any purpose except the collection of debts by ODR or purposes that are reasonably necessary for the functioning of the system. This prohibition does not apply to information that is in the person's control or possession prior to the transmission to or from ODR, or to information that enters a person's control or possession through means unrelated to the data match system.

SB 254 authorizes ODR to impose civil penalties (a) upon financial institutions for failure to participate in the data match system or to comply with department rules; and (b) upon any person who violates the prohibitions against disclosing information to delinquent debtors or using or disclosing information obtained through the data match system for an unpermitted purpose.

A penalty against a financial institution can only be levied if the institution failed to remedy its noncompliance within 30 days after ODR provided notice of the noncompliance, and only if the noncompliance made ODR unable to identify a delinquent debtor. The initial penalty for a noncompliant financial institution may be up to $1,000, and additional penalties of up to $1,000 each may be levied if the institution continues to be noncompliant.

Penalties on persons (including financial institutions) who violate the limitations on disclosure and use of information obtained through the data match system range from up to $1,000 for knowingly using or disclosing information on a delinquent debtor to up to $2,500 for disclosing to a delinquent debtor that information relating to the debtor is being transmitted through the data match system.

The ODR rules must be adopted not later than July 1, 2018, which is also the date on which the Act becomes operative.

Judicial Administration

HB 2795 (Ch. 663) Oregon eCourt, Filing Fee Increases

HB 2795 was proposed by the Oregon Judicial Department. The bill – in conjunction with HB 2797 and with an increase in document access fees – will raise funds to pay for the ongoing maintenance costs of the Oregon eCourt system.

The measure increased most filing fees charged by courts for filings, motions, and settlements and trial fees by five percent. In addition, HB 2795 increases prevailing party fees and reduces the filing fee for foreign judgments.

HB 2795 took effect on August, 8, 2017.

HB 2797 (Ch. 712) Oregon eCourt, Criminal Fines and Assessments

HB 2797 was proposed by the Oregon Judicial Department. The bill – in conjunction with HB 2795 and with an increase in document access fees – will raise funds to pay for the ongoing maintenance costs of the Oregon eCourt system.

The measure increased presumptive fines for certain violations, generally by five dollars, to be deposited in the Criminal Fines Account.

HB 2797 took effect on August 15, 2017.

SB 490 (Ch. 94) Oregon State Bar Governance

SB 490 made several minor changes to the governance of the Oregon State Bar.

The bill renamed the position of "executive director" of the bar to "chief executive officer" of the bar.

Additionally, the bill added language to ORS 9.200 to allow the Board of Governors to assess late payment penalties against a member delinquent in the payment of membership fees.

Finally, the bill clarified sections of statutes relating to the distribution of ballots for elections to the Board of Governors and House of Delegates by using terminology reflecting that elections are largely held electronically and do not normally involve the use of paper ballots distributed to the members at large.

SB 490 took effect on May 17, 2017.

SB 491 (Ch. 524) Oregon State Bar Disciplinary System

SB 491 made several changes relating to the process of investigating attorneys accused of misconduct. The bill provides explicit statutory authority for the bar to employ one or more professional adjudicators to preside over disciplinary hearings, subject to rules promulgated by the Supreme Court and the OSB bylaws.

The bill eliminated the Local Professional Responsibility Committees (LPRCs), as these committees are rarely used in modern investigations. The bill also shifted the responsibility to appoint the State Professional Responsibility Board (SPRB) from the Board of Governors to the Oregon Supreme Court in order to ensure greater independence of the SPRB from the bar itself.

Finally, the bill extended statutory immunity to disciplinary monitors and new lawyer mentors who help the bar fulfill its regulatory function.

SB 491 took effect on June 29, 2017.

HB 2216 (Ch. 36) Foster Children's Sibling Bill of Rights

HB 2216 creates new provisions establishing the Oregon Foster Children's Sibling Bill of Rights. The bill provides that siblings who are foster children have certain rights, which include the right to obtain substitute care placement together, the right to maintain contact and visits with siblings, and an age-appropriate explanation for why contact with a sibling has been denied or prohibited. These rights apply regardless of whether the parental rights of one or more of the foster child's parents have been terminated.

HB 2216 goes into effect on January 1, 2018.

SB 241 (Ch. 447) Bill of Rights of Children of Incarcerated Parents

SB 241 creates new provisions requiring the Department of Corrections (DOC) to develop guidelines for making decisions that impact incarcerated individuals with children using the Bill of Rights of Children of Incarcerated Parents established by the bill.

SB 241 takes effect on January 1, 2018.

SB 942 (Ch. 740) Child Abuse Investigations

SB 942 requires child abuse investigations conducted pursuant to ORS 419B.020 to conclude with a finding of "founded," "unfounded," or "cannot be determined" until several specific criteria are met. Among these criteria are that departments complete investigations within mandated timelines and conduct in-person contacts with children who are the subject of reports of abuse in at least 90 percent of cases.

SB 942 took effect on August 15, 2017.

HB 2616 (Ch. 389) Right to Counsel

HB 2616 amends ORS 419C.200 to provide that when a petition is filed under ORS 419C.050, the court, following a determination that a youth is indigent:

1. Shall appoint counsel to represent the youth at all stages of the proceeding if the offense alleged in the petition is classified as a crime.
2. Shall appoint counsel at any proceeding concerning an order of probation.
3. Shall appoint counsel in any case in which the youth would be entitled to appointed counsel if the youth were an adult charged with the same offense.
4. May appoint counsel in any other proceeding under ORS 419C.005.

HB 2616 also provides that the court may not accept a waiver of counsel by a youth except under the following circumstances:

1. The youth is at least 16 years of age; and
2. The youth has met with either appointed or retained counsel and has been advised regarding the right to counsel; and
3. A written waiver is filed with the court; and
4. A hearing is held to determine whether the waiver was knowingly, intelligently, and voluntarily made and not unduly influenced by the interests of others, including the youth's parents or guardians.

These requirements do not apply to a youth entering into a formal accountability agreement under ORS 419C.230.

HB 2616 also amends ORS 419C.245 to require that a juvenile department counselor inform a youth and the youth's parents or guardians of the right

to court-appointed counsel, and that a youth may waive the right to counsel before entering into a formal accountability agreement only if the youth has been advised in writing of the right to counsel and the youth waives that right in writing.

HB 2616 takes effect on January 1, 2018.

HB 3242 (Ch. 431) Recording Custodial Interviews

HB 3242 amends ORS 133.400 to provide that a custodial interview conducted by a peace officer in a law enforcement facility shall be electronically recorded if the interview is conducted "with a person under 18 years of age in connection with an investigation into a felony, or an allegation that the person being interviewed committed an act that, if committed by an adult, would constitute a felony."

HB 3242 further provides that if the State offers an unrecorded statement in a juvenile delinquency proceeding and none of the exceptions in the statute apply, the court "shall consider the superior reliability of electronic recordings when compared with testimony about what was said and done when determining the evidentiary value of the statement."

HB 3242 takes effect on January 1, 2018.

SB 49 (Ch. 558) Juvenile Fitness to Proceed

SB 49 amends ORS 419C.380 to provide that when a youth is ordered to participate in a fitness-to-proceed evaluation, the youth may not be removed from his or her current placement for the purpose of the evaluation unless the youth has been placed in a detention or youth correctional facility.

SB 49 takes effect on January 1, 2018.

Real Property

HB 2562 (Ch. 161) Tax Notices for Reverse Mortgages

HB 2562 requires that the lender under a reverse mortgage must send annual notices to the borrower or to any servicer paying property taxes from escrow. The notice must be sent at least 60 days before property taxes are due and payable to inform the borrower that the borrower retains title to the property and that the borrower is responsible for paying property taxes, insurance, maintenance, and related taxes, and that failure to pay the taxes and fees may cause the reverse mortgage to become due immediately.

Notice is not required for a reverse mortgage that includes a reserve account for taxes. Under existing law, financial institutions (as defined in ORS 706.008), consumer finance brokers/facilitators, and licensed mortgage bankers and mortgage brokers are exempt from the notice requirement. This amendment removes the exemption for mortgage brokers and mortgage bankers.

HB 2562 takes effect on January 1, 2018.

HB 2359 (Ch. 154) Nonjudicial Foreclosure

ORS 86.748 requires that a beneficiary must send to a homeowner a notice informing him that he is ineligible for a foreclosure avoidance measure, or that he has not complied with the terms of a foreclosure avoidance measure, within 10 days of making such a determination.

HB 2359 eliminates the requirement that a copy of this notice must also be sent to the Attorney General.

HB 2359 takes effect on January 1, 2018.

HB 2920 (Ch. 270) Satisfactions Following Foreclosure Sales

HB 2920 provides that if a judgment of foreclosure results in an execution sale of real property, the judgment creditor must file a full or partial satisfaction upon receipt of the execution sale proceeds. Upon failure of the judgment creditor to file the satisfaction, the judgment debtor or other interested person may send a written request that the judgment creditor file the satisfaction within 10 days. If the satisfaction is not timely filed, the judgment debtor may file a motion to compel satisfaction under ORS 18.235.

If the court grants the request and if the judgment creditor does not show that failure to file the satisfaction was not the fault of the creditor, the court may enter a supplemental judgment for attorney fees in favor of the judgment debtor. The judgment debtor is not required to show that the creditor's failure to file a satisfaction was willful, as normally would be required under ORS 18.235. The burden appears to shift to the judgment creditor to establish that the failure to file the satisfaction was not the creditor's fault.

HB 2920 takes effect on January 1, 2018.

HB 3056 (Ch. 110) Homeowners Association Liens

Oregon law provides that when a homeowners association in a planned community or a condominium community levies an assessment, that assessment is a lien against the real property to which the assessment applies. Several remedies exist for the homeowners association, bring an action to obtain a money judgment, foreclose its association lien; or accept a deed in lieu of foreclosure from the owner.

HB 3056 amends ORS 90.709 of the Planned Community Act and ORS 100.450 of the Oregon Condominium Act to clarify that an association may obtain a money judgment for unpaid assessments

without extinguishing its lien, that a partial satisfaction of the money judgment does not extinguish the lien, and that a full satisfaction of the money judgment does not extinguish any portion of the association's lien that is unrelated to the amounts awarded in the judgment. Payment of the judgment will extinguish the lien, or a portion of the lien, but only to the extent of the amount received.

HB 3056 takes effect on January 1, 2018.

SB 79 (Ch. 236) Foreclosure of Trust Deeds by the DVA

SB 79 modifies the prerequisites for judicial and nonjudicial foreclosures of residential trust deeds with respect to loans in which the Director of Veterans' Affairs is a beneficiary under ORS 407.125. Instead of having to record or attach to a complaint a certificate of compliance with the resolution conference requirements, or an exemption from such requirements, the Director of Veterans' Affairs may record or attach to a complaint the Director's signed affidavit stating that the Department of Veterans' Affairs, in the department's capacity as a beneficiary of loans made under ORS 407.125, is exempt from the requirement under ORS 86.726 to request or participate in a resolution conference.

SB 79 took effect on June 6, 2017.

SB 98 (Ch. 636) Residential Mortgage Loan Servicers

SB 98 creates a new Mortgage Loan Servicer Practices Act (Act) comprised of comprehensive statutes authorizing the Department of Consumer and Business Services (DCBS) to license and regulate residential mortgage loan servicing. The bill prohibits any individual or business entity from directly or indirectly servicing a residential mortgage loan without first obtaining a license under the new Act, and it requires that individuals or entities holding a different license from DCBS obtain a separate license as a residential mortgage loan servicer.

The new licensing requirement will not apply to, among others, an attorney who is licensed or otherwise authorized to practice law in this state if the attorney services the loan as an ancillary matter while representing a client and does not receive compensation from a residential mortgage loan servicer.

DCBS is authorized to investigate complaints against servicers at the servicer's cost, order that the licensee cease and desist, pay damages to the borrower, and pay to the borrower any amounts received from the borrower as compensation while engaging in any action that constituted a violation of the Act. DCBS may impose a civil penalty under ORS 183.745 in an amount of not more than $5,000 for each violation. Each instance is a separate violation, and each day in which a licensee engages in a continuous violation constitutes a separate violation. DCBS may not impose a penalty that exceeds $20,000 for a continuous violation.

SB 98 took effect on August 2, 2017, and applies to servicing for residential mortgage loans that occur on or after January 1, 2018.

HB 2189 (Ch. 143) Real Estate Appraisals

HB 2189 provides that an action arising out of real estate appraisal activity must be commenced before the earlier of the applicable period of limitation otherwise established by law or six years after the date of the act or omission. The six-year limitation period does not apply to actions based on fraud or misrepresentation, which continue to be subject to the two-year discovery rule set forth in ORS 112.110(1).

HB 2189 takes effect on January 1, 2018.

HB 2008 (Ch. 198) Manufactured Dwellings

HB 2008 increases the termination fees that a landlord of a manufactured home park must pay to a tenant upon closure of the park or conversion of the park to another use. The bill provides that the Office of Manufactured Dwelling Park Community Relations (MCRC) must recalculate these amounts annually,

and requires the owner of a manufactured home park to notify the MCRC of certain information upon sale, transfer, or exchange of the manufactured home park, including the number of vacant spaces and homes, the date of transfer, the final sale price, and the contact information for the new owner.

HB 2008 took effect on June 6, 2017.

HB 2855 (Ch. 164) Nonjudicial Transfer of Title

HB 2855 adds new sections to ORS chapter 93 that provide for a nonjudicial method of transferring a seller's/vendor's title where a contract of sale (land sale contract) has been fully paid but the seller has failed to provide a fulfillment deed.

The bill requires service of buyer's/vendee's notice of intent to enforce the contract on the seller and other interested parties pursuant to ORCP 7 D(2) and 7 D(3), as well as by first-class mail certified with return receipt. The bill requires that certain information must be contained in the notice, and provides procedures if an objection to the notice is received within 30 days. If no objection is received, the seller's interest in the real property will be transferred by publishing the required notice and recording an affidavit of compliance within 15 days following the last publication date.

HB 2855 takes effect on January 1, 2018.

SB 277 (Ch. 324) Manufactured and Floating Homes

SB 277 increases the notice period from 30 to 60 days for a landlord to terminate a month-to-month or fixed-term rental agreement and requires the removal of a deteriorating manufactured dwelling or floating home.

The bill also allows a landlord to terminate a rental agreement with 30 days' written notice to the tenant if the manufactured dwelling or floating home creates a risk of serious or imminent harm. The notice must include specific information regarding the disrepair or deterioration, including risk of harm. The bill requires that a landlord give a prospective purchaser as a tenant of the manufactured dwelling or floating home copies of termination documents outlining maintenance, disrepair, and deterioration issues and potential liability for repairs. The bill allows a landlord to terminate the rental agreement within six months of new tenant occupation after proper notice if a tenant fails to complete repairs.

SB 277 took effect on June 14, 2017.

SB 381 (Ch. 251) Notices Related to Real Estate Loans

Many documents related to real estate loans are required to be mailed to borrowers in hard copy, including payoff statements; requests for resolution conferences; notices of noncompliance with, or ineligibility for, foreclosure avoidance measures; notices of default; and notices of trustees sale. Existing law specifies that the documents are to be mailed to the address on file.

SB 381 specifies that the documents must be mailed to a post office box if that is the address on file for the borrower, and requires that certain notices relating to real estate loans be mailed to all addresses on file for the recipient, including post office boxes.

SB 381 takes effect on January 1, 2018.

Taxation

HB 2156 (Ch. 611) New Hotline for C and S Corporations

HB 2156 requires the Department of Revenue to establish a program for representatives of C corporations and S corporations to contact the Department by dedicated phone and other electronic means to resolve issues and ask questions concerning Oregon corporate income and excise tax laws in an expedited manner. The Department is required to clearly list the dedicated telephone number and electronic means on any notice or letter the Department sends to a business customer and is required to track customer satisfaction with the program.

HB 2156 takes effect on January 1, 2018.

HB 2285 (Ch. 23) Tax Not Paid With a Return

HB 2285 changes the date when underpaid income tax is considered assessed in the case of a taxpayer who submits a return with payment of less than the amount due. Existing law treats the underpaid amount as assessed on the extended due date or the date of actual filing, whichever is later. The new law treats the underpaid amount as assessed on the original due date, without regard to extensions, or the date of actual filing, whichever is later. The effect of the law change is to prevent a taxpayer from delaying the commencement of collection procedures, and the imposition of "Tier II" interest, by obtaining an extension to file the return.

HB 2285 applies to returns originally due on or after January 1, 2018.

SB 33 (Ch. 278) Interest Computation

SB 33 replaces the monthly or partial monthly method for computing interest rates with an annual percentage rate computed daily. The new method applies to deficiencies and refunds. It is intended to conform to generally accepted accounting principles. This method will apply to income taxes, estate tax, and most other tax programs administered by the Department of Revenue, except property tax.

SB 33 applies to tax deficiencies or refunds owing as of January 1, 2018.

SB 254 (Ch. 644) Financial Institutions Data Match

SB 254 requires financial institutions to participate in a "data match" program, including transmitting data to the Department of Revenue quarterly. The law is intended to enable the Department to more easily locate a debtor's accounts for collection purposes, without first conducting and paying for a search among multiple financial institutions where the debtor might have an account.

SB 254 took effect on October 6, 2017, but most provisions become operative on July 1, 2018.

HB 2283 (Ch. 24) Application of Overpayment

HB 2283 changes the date an overpayment of tax is credited as payment of the estimated income tax under ORS 316.583 to the later of the first date prescribed for payment of the estimated tax or the date that the taxpayer actually made the overpayment. Prior to the change in law, the overpayment was credited to the date of the first estimated tax payment due date. The change in law means the Department of Revenue may charge interest on a late estimated tax payment when the taxpayer makes the overpayment that the taxpayer applies to estimated tax payments after the due date of the estimated tax payment.

HB 2283 applies to estimated tax payments made in tax years beginning on or after January 1, 2018.

HB 2284 (Ch. 22) Conflicting Taxpayer Claims

Existing law requires the Department of Revenue to arrange a meeting among taxpayers (typically parents) filing conflicting claims for the same dependent. HB 2284 broadens the "joint determination" requirement to apply to "conflicting returns or reports addressing an item of income, deduction, or credit under the personal income tax laws."

HB 2284 applies to tax years beginning on or after January 1, 2018.

SB 32 (Ch. 182) Failure to File and Failure to Pay

For estate tax returns due on or after January 1, 2018, SB 32 eliminates the possibility that two of the 5 percent penalties (failure to timely pay and initial failure to timely file) would apply. If the failure to file continues more than three months after the due date, the 20 percent penalty in ORS 118.260(2) is added to one of the 5 percent penalties, but not both, so that the cumulative penalty will not exceed 25 percent.

SB 32 applies to estate tax returns due on or after January 1, 2018.

HB 2017 (Ch. 750) Gross Wages Tax

This omnibus transportation funding bill includes a new 0.1 percent tax on the wages of Oregon residents and the wages of nonresidents for services performed in Oregon. The entire tax amount will be withheld from employee wages, and there is no provision to collect from employees, except that a resident employee whose employer is not doing business in Oregon will be required to report and pay as determined by administrative rule.

In contrast to regular wage withholding, HB 2017 includes no cross-reference between the new wage tax (starting at section 122a of the bill) and ORS 316.187; therefore, the new tax functions as an independent excise tax and not as a credit against the employee's personal income tax liability. There is no employer-paid component to this tax. The new law imposes a penalty of $250 per employee (up to $25,000) if an employer knowingly fails to deduct and withhold the tax.

The new wage tax applies to tax periods beginning on or after July 1, 2018.

Thank You

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CASES *of* NOTE

OREGON TORT CLAIMS ACT: In *Humphrey v. Oregon Health Sciences University,* 286 Or App 344 (June 21, 2017), the Oregon Court of Appeals held that the plaintiff alleged sufficient facts for OTCA notice under ORS 30.275(3)(d) by pleading that defendants paid for the costs of her medical care at a time when she had a basis to assert a claim, and because such costs would be recoverable in the claim that she ultimately asserted for negligence. The court further held that defendants' provision of free or discounted medical services qualified as "compensation" for the "injury" that plaintiff suffered "prior to the determination of legal liability," which is all that is required for an "advance payment" for purposes of the statute of limitations tolling provision in ORS 12.155.

ATTORNEY FEES / INSURANCE: In *Spearman v. Progressive Classic Insur. Co.,* 361 Or 584 (June 22, 2017), the Oregon Supreme Court held, in a case of statutory construction regarding UM benefits, that Progressive's pleadings did not raise any issue that would remove it from the attorney fee safe harbor of ORS 742.061(3). The court reviewed legislative history and distinguished the safe harbor provisions of PIP and UM benefits. The court concluded that even though it was possible that Progressive could have established that it owed plaintiff nothing (if plaintiff did not incur reasonable and necessary medical expenses), that does not establish that the insurer raised issues beyond the "damages due the insured." Progressive was not subject to the attorney fee provision of ORS 742.061(1) because it fell within the safe harbor of ORS 742.061(3).

CHILD ABUSE / STATUTE OF LIMITATIONS: In *Doe v. Silverman*, 287 Or App 247 (August 16, 2017), the Oregon Court of Appeals held that the plain text and legislative history of the 2009 amendment to ORS 12.117 confirms that the legislature intended that the new statute of limitations for actions based on child abuse (before the person turns 40 versus not more than six years after the person turns 18 for the previous statute) applies to all causes of action, no matter when the cause of action arose. The court rejected defendant's assertion that the legislature was required to use some sort of magic words of revival for the 2009 amendment to apply retroactively to otherwise time-barred claims. Thus, the current version of ORS 112.117(1) applies to any applicable cause of action for which judgment has not been entered before the effective date of the 2009 amendment, which includes plaintiff's claims against defendant.