

COMMERCIAL, CONSUMER, AND DEBTOR-CREDITOR

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**UNLICENSED CONSUMER FINANCE LOANS
VOID****ORS 725.045, 725A.020****2015 OREGON LAWS CH. 490 (SB 278)**

Senate Bill 278 amends ORS 725, which applies to certain consumer finance loans of \$50,000 or less, and ORS 725A, which applies to payday and title lenders. If a person makes a covered consumer finance loan, payday loan, or title loan without a license, the loan is void (rather than voidable) and the lender may not deposit the borrower's check or money order; withdraw money from the borrower's accounts; or otherwise collect principal, interest, or fees in connection with the loan. Under prior law, loans made without a license were merely voidable. The bill contains an exception for lenders that held a license that lapsed inadvertently or by mistake.

Effective date: June 18, 2015. The amendments apply only to loans made on or after the operative date of September 17, 2015.

**CONDO AND HOA ASSESSMENTS
DURING REDEMPTION PERIOD
ORS 18.966 TO 18.980, 94.712,
100.475****2015 OREGON LAWS CH. 120 (SB 367)**

After a judicial foreclosure, the purchaser obtains possession of the property immediately, but the judgment debtor retains legal title until the six-month redemption period ends.

Senate Bill 367 amends ORS 94.712 and

ORS 100.475 to clarify that the purchaser – more precisely, the certificate holder as defined in ORS 18.960 – is solely liable for all homeowner association or condominium assessments that come due during the redemption period. If the property is redeemed, SB 367 provides that the assessments paid by the purchaser or claimant are included, with interest, in the redemption amount.

Effective date: January 1, 2016. The amendments apply to properties sold at an execution sale conducted on or after the effective date.

**MONEY JUDGMENTS IN FORECLOSURES
ORS 18.862, 18.936, 86.797,
88.010, 88.060****2015 OREGON LAWS CH. 291 (SB 368)**

Senate Bill 368 amends a number of statutes, including ORS 88.010, ORS 18.862, and ORS 18.936, to eliminate the need to include a money judgment in a foreclosure action when such inclusion is inappropriate or contrary to other laws.

Previously, Oregon law had been interpreted to require a money award against the maker of the note or other person obligated on the debt when entering a judgment of foreclosure. SB 368 permits plaintiffs to elect to foreclose a mortgagee's interest in real or personal property without necessarily seeking entry of a money award, especially when to do so would be contrary to federal or other law.

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The bill neither addresses nor has an effect on the current laws regarding an automatic stay in bankruptcy. In other words, a party bringing a foreclosure action – whether or not a money award is sought – in an open bankruptcy case would still violate the automatic stay unless an order granting relief had been entered, or unless the stay was terminated under the other circumstances described in Bankruptcy Code §362(c).

Effective date: June 8, 2015. The amendments apply to foreclosure suits that commence or are pending on or after the effective date.

DEBTOR NAMES ON FINANCING STATEMENTS

ORS 79.0502, 79.0503

2015 OREGON LAWS CH. 538 (SB 462)

Senate Bill 462 requires a financing statement to show the name of an individual debtor, as indicated on his or her unexpired driver license or identification card, for sufficiency of the name on the financing statement. This bill also provides a phase-in period for financing statements perfected under current law.

Sections 1 and 2 of this bill provide the requirements regarding what is now necessary to perfect a financing statement. Sections 3 through 11 provide requirements regarding the perfection of previously filed statements and the application to actions pending before the effective date of this act. Specifically, Section 4(2) provides that an individual has one year to satisfy the requirements of this act if they were not satisfied in the previously filed financing statement.

In 2012, the Legislature adopted the Oregon Law Commission’s recommended “Option B,” which permits filing of a financing statement under the debtor’s “true name” (that is, basically any variant of the debtor’s name that he or she goes by). This recommendation, which came from the Uniform Law Commission, was one of two acceptable variations of this particular provision. “Option A” is represented by SB 462. Oregon was one of only a few states that initially passed Option B. The Legislature changed course this session and adopted Option A.

Effective date: June 22, 2015. The amendments become operative on January 1, 2016. The amendments apply to a transaction or lien that is within the scope of ORS 79.0502 or 79.0503, as amended by this bill, even if the transaction or lien was entered into or created before the operative date.

EXPANDED IDENTITY THEFT PROTECTION

ORS 646.607, 646A.602, 646A.604, 646A.622

2015 OREGON LAWS CH. 357 (SB 601)

Senate Bill 601 amends the Oregon Consumer Identity Theft Protection Act. It expands the definition of “personal information” to include certain biometric data, health insurance policy numbers, and health information. The bill also adds that persons who have had a breach of security must provide notice to the Attorney General if the breach affects more than 250 Oregonians. HIPAA-covered entities do not need to give notice of data breaches to Oregon consumers as long as they provide a copy of the notice sent under HIPAA to the Attorney General.

Enforcement of the Oregon Consumer Identity Theft Protection Act will also be covered under the Unlawful Trade Practices Act, ORS 646.607.

Effective date: January 1, 2016. The amendments apply to breaches of security that occur on or after the effective date.

PHISHING VIOLATES THE UTPA

ORS 646.607

2015 OREGON LAWS CH. 128 (HB 2377)

House Bill 2377 makes phishing a violation of the Unlawful Trade Practices Act (UTPA) under ORS 646.607. The bill provides that, unless for a lawful investigation, a person may not use a website, email, text message, or other electronic means to induce another person to provide personal information by falsely representing who the person is.

Effective date: May 21, 2015. The amendments apply to solicitations or requests for, or inducements to provide, personal information that occur on or after the effective date.

REQUIRED DISCLOSURES FOR REVERSE MORTGAGES

ORS 86A.196

2015 OREGON LAWS CH. 87 (HB 2532)

House Bill 2532 amends ORS 86A.196 to require that every advertisement, solicitation, or communication intended to induce a person to apply for or enter into a reverse mortgage must contain a clear and conspicuous summary of the terms of the mortgage.

The requirements of HB 2532 apply to lenders and their agents and affiliates but do not apply to financial institutions as defined in ORS 706.008, licensees as defined

in ORS 725.010, or mortgage bankers and mortgage brokers licensed under ORS 86A.106.

Effective date: May 18, 2015. The requirements apply only to reverse mortgage transactions that occur on or after the operative date of January 1, 2016.

LENDER PAYOFF STATEMENTS

ORS 86.157

2015 OREGON LAWS CH. 431 (HB 3244)

House Bill 3244 provides that a borrower may rely on a lender's payoff statement for the purpose of establishing the amount a borrower must pay to satisfy the obligation under a real estate loan agreement unless the lender delivers an amended payoff statement. This bill also provides that a lender may recover the amount a borrower owes that did not appear on the payoff statement or amended payoff statement only as an unsecured debt or by foreclosing on other property securing the obligation.

Effective date: June 16, 2015. For additional information about this bill, please see Real Property.