

# 2017 LEGISLATION ALERTS

## Consumer, Commercial, and Debtor-Creditor Law

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### **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.