

2017 LEGISLATION ALERTS

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.