

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action: Do Pass as Amended and Be Printed Engrossed

Vote: 3 - 1 - 1

Yeas: Prozanski, Walker, Burdick

Nays: Beyer

Exc.: Kruse

Prepared By: Matt Kalmanson, Counsel

Meeting Dates: 1/24, 3/27

WHAT THE MEASURE DOES: Permits a creditor to foreclose on a debt secured by the property of a decedent, and execute the judgment through a sale of the property. Establishes that if the money received from the sale is insufficient to satisfy the debt, the remainder “shall” be paid as a claim against the estate if otherwise allowed by law.

ISSUES DISCUSSED:

- The Legislation Committee of the Debtor-Creditor Section of the Oregon State Bar
- Interaction between Oregon probate statutes and foreclosures on property
- Legal impact of death of debtor after foreclosure but before execution of judgment
- Discretion of creditor to seek deficiency if otherwise allowed by law

EFFECT OF COMMITTEE AMENDMENT: Deletes provision in bill that provides that if the money received from a foreclosure is insufficient to satisfy the debt, the remainder “shall” be paid as a claim against the estate if otherwise allowed by law. Establishes that if the money received from a foreclosure is insufficient to satisfy the debt, and if collection of the deficiency is otherwise allowed by law, the deficiency “may” be collected by the trustee by making a claim against the estate in a manner consistent with Oregon probate law.

BACKGROUND: ORS 18.312 prohibits the execution of judgments through the sale of property of a deceased party, in order to require general judgment creditors to participate in the probate process. It is not clear whether this provision intended to alter the traditional right of creditors to foreclosure on a secured obligations through sale of the property that secures the obligation. SB 302 allows creditors whose claims are secured by property to foreclose on that property, even when the owner is deceased. The amendments are intended to clarify that the trustee has the discretion, but is not required, to seek any deficiency from the estate, and only if collection is permitted by law.