

OREGON LAW CENTER

921 SW Washington, Suite 516
Portland, Or. 97205
(503) 936-8959

TESTMONY IN SUPPORT OF HB 3389A
Before the
Senate Committee on Rules
June 24th, 2013

Chair Rosenbaum, Vice-Chair Ferrioli, and Members of the Committee:

On behalf of the Oregon Law Center, I submit this testimony in support of House Bill 3389A. Thank you for this opportunity to provide comments.

The Oregon Law Center's mission is to achieve access to justice for low-income communities of Oregon by providing a full range of the highest quality civil legal services. The vast majority of our clients have incomes at or below the federal poverty level, and work hard to provide the basic necessities for themselves and their family. During recent years of escalating economic crisis, we have seen a marked increase in the number of people eligible for our services. Homeowners and the formerly middle class have joined a list of groups more traditionally associated with poverty. An unfortunately increasing number of foreclosure cases can position homeowners between shelter and homelessness. Access to loss mitigation programs, and fairness and transparency in the foreclosure process are a high priority for our clients. We greatly appreciate the attention of this legislature in creating an important mediation program for struggling homeowners, and in providing access to foreclosure counseling and legal assistance so that homeowners can make responsible and informed decisions about their options.

HB 3389A is a replacement for the original bill, and as amended it addresses three distinct issues:

Section 2 – (Facilitation of short sales to non-profits for homeowner assistance)

- This section will help further the success of an important homeowner assistance program, the state's Loan Refinancing Assistance Pilot Project. The LRAP project negotiates short sales of underwater homes between a beneficiary and a non-profit, as an alternative to foreclosure. The non-profit then re-sells or leases the home back to the borrower, at a reduced principle. This program provides a benefit to purchasers by allowing them to recoup real market value without having to go through foreclosure, allows underwater borrowers to remain in their homes, and protects community stability.
- The bill would prohibit a beneficiary from requiring a non-profit purchaser at a short sale to sign an "arm's length affidavit" promising not to sell or rent back to the original owner of the home.

- The purpose of this section is to facilitate the legitimate business of the LRAPP and to allow short sales to buyers who DO want to re-sell the home, or lease it, back to the borrower at a reduced principle or better mortgage rate, if the buyer is a non-profit organization.
- There are exceptions, which allow the beneficiary to continue requiring these affidavits if they did not get adequate notice of the non-profit purchaser's intention ahead of time, if the homeowner doesn't cooperate with the appraisal process, or if the lender's contractual or other legal obligation requires the lender to have these affidavits.

Section 3 – (definition of residential trust deed)

- This section changes the definition of the term “residential trust deed” – which has many implications for the foreclosure process, and the parties' rights and responsibilities before, during, and after that process. One of the principle rights for borrowers implicated by this term is that there is deficiency judgment protection for a borrower who is foreclosed on, if the property qualifies as a “residential trust deed.”
- The current law assesses whether or not the trust deed is residential by looking at the time of the default upon which the foreclosure is filed. The current law says that the deed is residential if the borrower was living in the home as a primary residence at the time of default. Under current law, if the borrower is living in the home as a primary residence at the time of the default, the borrower is protected from a deficiency judgment.
- Lenders have expressed concern that this point in time (the time of first default) is difficult to pin down, and it is difficult to determine who was living in the home at that time, which may be years after the loan was originally recorded. The purpose of the bill is to link the analysis of whether a deed is “residential” to a more finite point in time, when it is easier to determine the purpose of the home.
- The bill would assess whether or not a trust deed is “residential” by looking at the intent of the parties at the time the deed is recorded. This is a more finite point in time, and it will be easier for all parties to identify and note whether or not the trust deed is residential, and thus whether or not there is deficiency judgment protection.

Section 4 – (Small consensus clarification of a provision of SB 558)

- This section amends one small section of SB 558, the foreclosure mediation bill, to clarify that a lender's certificate of compliance that must be filed prior to a non-judicial foreclosure must be unexpired at the time of the recording of the notice of default. It need not be unexpired for the entire length of the proceeding, just when the proceeding begins.

For these reasons, we respectfully urge passage of the bill.

Thank you for your work and for your consideration.

Sincerely,
Sybil Hebb
Oregon Law Center