

Testimony in Support of HB 2568
Before the House Consumer Protection and Government Efficiency
Committee
February 21, 2013

Chair Holvey and Members of the Committee:

My name is Patrick W. Wade. I have been a member of the Oregon State Bar since 1984, and I practice in Eugene. My practice has focused primarily on representation of creditors in state and bankruptcy courts and enforcement of secured interests in both real and personal property and to some extent on representation of debtors in state court and out of court workouts. I appear before you today as a representative of the Oregon State Bar Debtor-Creditor Section as a proponent of HB 2568.

The membership of the Debtor-Creditor Section of the Oregon State Bar includes over 700 practitioners who focus on representing debtors, creditors, or both. The Legislation Committee of this Section is composed of members representative of the Debtor-Creditor Section as a whole. The primary purpose of the Legislation Committee is to propose new legislation to improve the administration of justice in connection with debtor-creditor issues in Oregon. The Legislation Committee also reviews and comments on legislation proposed by others that affects the adjustment of debtor-creditor relations in Oregon.

HB 2568 addresses problems with the administration of non-judicial foreclosures following release from a stay. It amends ORS 86.755.

Under current law, when a non-judicial foreclosure (also known as a foreclosure by advertisement and sale or as a trustee's sale) is stayed by a bankruptcy proceeding or some other lawful stay, upon the termination of that stay the foreclosure proceeding may resume and be completed if the obligation is still in default. The trustee must provide an amended notice of sale pursuant to ORS 86.755(12), (13), and (14).

The current statutes do not clearly define the duties of the trustee, resulting in some confusion about the content and service of the amended notice of sale. A frequent issue which arises is found in situations where a homeowner has filed a Chapter 13 bankruptcy case which provides for cure of defaults. If the Chapter 13 case later fails for some reason, but the borrower has in the meantime partially cured the defaults, it is not clear what the trustee must include in the notice of sale regarding the nature of the defaults upon which the continued foreclosure proceeding is based.

Finally, there appears to be confusion regarding the ability of a trustee to postpone a sale which has been scheduled by an amended notice given after the termination of a stay.

This bill amends ORS 86.755 to specify that the default or defaults described in the amended notice of sale must be those which existed at the time the stay was terminated.

The bill also provides for limited additional postponements of a sale. In this respect the bill also includes a clarification of certain changes made during the 2012 legislative session in SB 1552 (Oregon Laws 2012, c. 112, effective 7/11/12). These changes have the support of the proponents of SB 1552 from the 2012 session and are intended to clarify the objectives of the drafters of that legislation regarding postponements of foreclosure sales.

The bill also reorganizes the statute slightly to make clear that certain provisions apply only in the circumstance where an amended notice of sale is being sent.

I urge the House Consumer Protection and Government Efficiency Committee to move this bill to the full House with a “do pass” recommendation. Thank you for the opportunity to testify before you today. I would be happy to answer any questions.