

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action: Do Pass with Amendments to the A-Engrossed Measure. (Printed B-Engrossed)

Vote: 3 - 2 - 0

Yeas: Monnes Anderson, Prozanski, Shields

Nays: Baertschiger, George

Exc.: 0

Prepared By: Channa Newell, Administrator

Meeting Dates: 5/24, 5/31

WHAT THE MEASURE DOES: Allows trustee to rescind trustee's sale of foreclosed property if, within ten days of trustee's sale, trustee asserts bona fide error occurred in specifying opening bid, providing legal description of property, or complying with other legal requirement of trustee's sale, or if grantor or beneficiary agree to foreclosure avoidance measure, or beneficiary accepts funds to reinstate trust deed, even if beneficiary did not have legal duty to do so. Specifies content of notice that must be given in event of rescission of trustee's sale. Requires trustee to record within 21 days of date of sale that resulted in rescission an affidavit stating trustee gave required notice of rescission. Requires trustee to continuously maintain registered agent and registered office within Oregon and notify Secretary of State or Department of Consumer and Business Services of such person and office.

ISSUES DISCUSSED:

- Conflict between trustee's right to rescind sale of trust deed until delivered and contract created in sale
- Errors that justify rescission
- Prevents undue delay in foreclosure process
- Consensus amendments include specifics on rescission and recordation mechanism

EFFECT OF COMMITTEE AMENDMENT: Specify circumstances of rescission of trustee's sale. Requires filing with Department of Consumer and Business Services instead of Secretary of State, where appropriate. Resolves conflicts.

BACKGROUND: Oregon law specifies the procedures for a trustee's sale of property in foreclosure, but does not give direction on rescinding a trustee's sale. Proponents assert that the lack of instruction for rescinding a trustee's sale has led to confusion amongst banks, attorneys, and trustees.

House Bill 2929-B specifies that a trustee sale may be rescinded by the trustee within ten days of the sale if a bona fide error occurs, the grantor and beneficiary come to agreement on a foreclosure avoidance measure, or the beneficiary accepts funds to reinstate the trust deed. The trustee must give notice of the rescission and refund the purchaser's money. The measure also requires the trustees to maintain an agent and office in the State of Oregon.