

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	9 - 0 - 0
Yeas:	Barnhart, Berger, Dembrow, Hicks, Holvey, Hoyle, Jenson, Kennemer, Garrett
Nays:	0
Exc.:	0
Prepared By:	Erin Seiler, Administrator
Meeting Dates:	6/6, 6/12

WHAT THE MEASURE DOES: Prohibits beneficiary from requiring non-profit purchaser at short sale to sign “arm’s length affidavit” - promising not to sell or rent back to original owner of home. Creates exceptions to allow beneficiary to continue requiring these affidavits if they had not received adequate notice of the non-profit’s intention ahead of time, if homeowner does not cooperate with appraisal process, or if lender’s contractual or other legal obligation requires lender to have these affidavits. Changes definition of “residential trust deed.” Clarifies lender’s certificate of compliance must be filed prior to non-judicial foreclosure, must be unexpired at time of recording of notice of default. Certificate of compliance does not need to be unexpired for entire length of the proceeding, just when proceeding begins.

ISSUES DISCUSSED:

- Loan Refinancing Assistance Pilot Project (LRAPP Program) in Central Oregon
- Short sale process that allows home owner to stay in home
- Negative equity that exists in communities within residential home market
- LRAPP Program acts as revolving home fund by allowing LRAPP Program as lender to homeowner at lower value of restructured loan
- Reason for changing definition of residential trust deed
- Determination of residential trust deed made at time of loan
- Clarification of Senate Bill 588 (2013) to require unexpired certificate be only needed at time of filing

EFFECT OF COMMITTEE AMENDMENT: Replaces original measure.

BACKGROUND: The Loan Refinancing Assistance Pilot Project (LRAPP) in Crook, Deschutes, Jackson, Jefferson and Josephine counties is designed to address the needs of homeowners in these counties, who suffer disproportionately from the foreclosure crisis in Oregon by helping homeowners in these counties avoid foreclosure through innovative refinancing. The LRAPP Program is funded by the Oregon Homeownership Stabilization Initiative (OHSI), operated under the Oregon Housing and Community Services. The program works with lenders and servicers to identify homeowners who have fallen behind on their mortgage due to a hardship but are re-employed and could afford their mortgage. It utilizes the services of a real estate contractor to purchase a home at a short sale then resell it to the original homeowner at close to its current value. The homeowner can then sign on for a new mortgage at a more affordable and equitable price, thereby avoiding foreclosure. House Bill 3389-A by removing a barrier to this program by prohibiting 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 is to facilitate short sales to non-profits who do want to re-sell the home, or lease it, back to the borrower at a reduced principle or better mortgage rate. There are exceptions, which allow the beneficiary to continue requiring these affidavits if they had not received adequate notice of the non-profit’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.

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 and states that the deed is residential if the borrower was living in the home as a primary residence

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at the time of default. Therefore, 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. Concerns have arisen that it is difficult to determine the time of first default and who is living in the home at that time, which may be years after the loan was originally recorded. House Bill 3389-A changes the definition of a residential trust deed to provide a more finite point in time for determining who is living in 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, making it easier to identify and record whether or not the trust deed is residential.

Finally, House Bill 3389-A amends a section of Senate Bill 558 (2013), 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. The certificate of compliance does not have to be unexpired for the entire length of the proceeding, just when the foreclosure proceeding begins.