

**Testimony before Senate Judiciary Committee
In support of SB 368
On behalf of the OSB Debtor-Creditor Section
February 4, 2015**

Chair Prozanski and Members of the Committee:

My name is Patrick Wade and I am an attorney with Hershner Hunter LLP in Eugene. I am here as a representative of the Debtor-Creditor section of the Oregon State Bar in support of SB 368.

The Oregon State Bar

The Oregon State Bar (OSB) is a public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon with over 14,000 active members. The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice. Among its core values are fairness and diversity. The Oregon State Bar licenses and disciplines lawyers and performs other functions to benefit the public, including lawyer referral services, modest means and veterans programs, and legal education for attorneys and members of the public.

Debtor-Creditor Section

The Debtor-Creditor section of the Oregon State Bar was originally formed in 1978, and today is made up of over 650 attorneys who practice throughout Oregon. Our members represent clients from eastern Oregon to Hood River, to the Portland metro area and out to the coast. The Debtor-Creditor section's executive committee has 15 members with a wealth of experience throughout the state.

The Executive Committees of the Debtor-Creditor section and of the Consumer Law section of the Oregon State Bar both support SB 368 and we urge the passage of this bill.

Additionally, the Oregon State Sheriff's Association's legislative committee has reviewed and approved this bill.

The Problem

The increase in judicial foreclosure actions in the recent past has revealed a problem with ORS 88.010(1). This statute has been interpreted by some, but not all, circuit court judges to require that a money award against the maker of the note or other person obligated on the debt be included in a judgment of foreclosure, whether or not the plaintiff wants that form of relief in addition to the traditional *in rem* foreclosure relief against the property involved, or whether or not there is some other reason not to include a money award in such a judgment.

There are several situations where imposing a money award against the borrower is inappropriate, for example: (a) cases involving the bankruptcy of the debtor; (b) cases involving conveyance of the real property to a third party who is not obligated on the note; (c) cases involving deceased debtors without active probate proceedings; (d) situations involving purchase money loans under ORS 88.103; and (e) foreclosure after the running of the statute of limitations on the underlying obligation.

Aside from situations where other law or practical difficulties make entry of a money award inappropriate, secured lenders should have the flexibility to elect to foreclose a mortgagee's interest in real or personal property without necessarily seeking entry of a money award, especially where to do so would be contrary to an agreement made with the borrower.

Without making a change, Oregon may continue to have inconsistent rulings in the circuit courts, and continue to have cases in which the entry of a money award in a judgment in a foreclosure case may improperly cloud the title of unrelated real property, as well as adversely impact credit reports of affected consumers.

The Solution

SB 368 will amend ORS 88.010 and a number of related statutes including ORS 18.862, and ORS 18.936 and would eliminate the need to include a money judgment in a foreclosure action when such inclusion is inappropriate, contrary to other laws, or simply not elected as a remedy by the plaintiff.

The changes proposed in SB 368 are not intended to, and do not, change existing law regarding the circumstances under which a plaintiff may be entitled to pursue a money award or how a judgment creditor goes about enforcing a money award when one is included in a judgment. The bill is designed simply to authorize the court to refrain from entering a money award where the plaintiff does not seek that relief, and to make conforming procedural changes to the statutes to facilitate execution of foreclosure judgments which do not contain money awards.

On behalf of the Debtor-Creditor Section of the Oregon State Bar, as well as the Consumer Law section, I thank the committee for its consideration and urge the passage of SB 368. I am happy to answer any questions.