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### OLTA CONCERNS WITH HB 2780

House Bill 2780 seeks to prevent elder financial abuse in real estate transactions, but proposes an unworkable approach that will place new burdens on escrow agents and others.

**Summary of requirements.** The bill requires that an escrow agent report an attempted sale as suspected elder financial exploitation when the following circumstances occur:

1. A principal is 65 years of age or older.
2. The escrow agent has carefully explained the terms of the escrow and the sale to the principal.
3. The sales price is more than 20 percent below the property's fair market value based on an appraisal or the assessor's records.
4. The escrow agent reasonably believes that the principal does not understand the terms of the sale or of the closing.

**Escrow Confusion.** Typically, **an escrow agent does not engage in a detailed explanation of the purchase and sale agreement, because that document has been negotiated between buyer and seller, usually with the assistance of real estate brokers or lawyers.** The escrow officer does engage in a careful explanation of the escrow instructions, but this occurs shortly before closing, not when the order is opened.

**Adverse impact on escrow neutrality.** By law, an escrow agent is a neutral stakeholder and must maintain its neutrality in the escrow. The bill requires, as noted above, that the escrow agent "carefully [explain] the terms of the real estate closing escrow and the sale."

The terms of the sale are set out in the purchase and sale agreement. Although an escrow officer could go through the purchase and sale agreement line by line at a closing, **she or he will not be able to answer questions about the agreement without risking a perception that her or his explanation is advice and is not neutral.** NOTE: OAR 863-050-0020(1) states, "An escrow agent must act as a disinterested, neutral third party with regard to any of the principals to an escrow transaction."

**Competency Determination and "Reasonably believes."** In Section 2, subsection (B) on page 2 of the bill, line 15 through 20, the bill would require an escrow agent to make a determination as to whether they "reasonably believe" a principal is in the proper state of mind to understand the terms of the sale. The bill provides no clarity on the scope of this requirement and is a significant concern.

In the September 10, 2014 Financial Exploitation Report released by DHS and the Office of Adult Abuse Prevention and Investigations, the most frequent reporters of financial exploitation are bankers, case

managers and family members - those individuals who have developed extensive relationships with the victim over years and decades. **Escrow agents often know the principals for only a few short hours and the bill requires them to make, and be held responsible for, competency decisions in that time frame.**

**Closing appointments.** As a convenience to its principals, escrow agents often arrange for signing appointments outside of an escrow agent's branch office. This could be an out-of-state signing that uses an approved notary service. It could be a signing at the office of a different escrow agent. In such circumstances, the escrow agent itself may not be in a position to conclude that it "reasonably believes" the principal understands the terms of the sale and the escrow. Instead, the escrow agent would be relying on the report of the person who took the principal's signature, a circumstance not addressed in the bill. **As a result, the bill may have the effect of causing escrow agents to discontinue out-of-office signings for persons 65 years old or older.**

**Application to buyers as well as sellers.** The bill's requirements concern real estate closings in which a principal is 65 years old or older and certain other circumstances apply. The word principal in the escrow law includes a buyer as well as a seller. The bill will cause escrow agents to ask for age information of buyers as well as sellers and to go through the above noted careful explanation with an elderly buyer and an elderly seller.

**Appraisals.** The threshold of whether the sales price is more than 20 percent below fair market value or the assessor's records (see Factor #3 in the bill summary below) means that the escrow agent must consider both formulas to ascertain whether at least one applies. **This may compel a seller to obtain an appraisal, something a seller usually does not obtain.** Typically, the appraisal is required by the buyer's mortgage lender. It is not shared necessarily with the seller.

**Lack of coordination with Legislature's Elder Abuse Work Group.** The OLTA is interested in participating in discussions on how to address the problem of financial exploitation elder abuse in Oregon. The Elder Abuse Work Group, chaired by Rep. Val Hoyle and Rep. Vic Gilliam, has been looking at this particular issue over the past four years. They have convened a panel of experts, stakeholders, financial institutions, elder law specialists and agency staff to discuss the most prudent next steps on this issue. We would appreciate the opportunity to collaborate with this group and add OLTA's voice and experience on instances of elder abuse in real estate transactions.

OLTA believes that the intent behind HB 2780 is admirable and we hope to work together with the bill proponents and other stakeholders on this issue before making significant changes to current law that will have far reaching and negative outcomes for principals in Oregon.