

**Testimony before the Senate Judiciary Committee
In support of SB 367
On behalf of the OSB Consumer Law Section
2/17/2015**

Chair Prozanski, members of the committee

My name is Kelly Harpster. I am an attorney in Lake Oswego. I am here today as a member of the Oregon State Bar's Consumer Law Section. The Consumer Law Section is made up of over 200 attorneys from all parts of Oregon, who represent clients in matters ranging from foreclosures and real property disputes to contractual matters arising from consumer products and services.

Today I want to express the Consumer Law Section's support for SB 367, and specifically to support the -1 amendments to the bill. These amendments were drafted to correct a misunderstanding between the Consumer Law Section and Legislative Counsel about the intent of this bill which we did not have time to address before the bill was originally filed.

The Problem

This bill is intended to clarify who is liable for condominium and homeowners' association assessments during the six-month redemption period after a judicial foreclosure sale. Although associations and lenders have developed a common practice and generally agree about how the law is intended to apply, the language of the statutes has been a source of confusion for many consumers.

The relevant statutes state that an "owner" is liable for all assessments. However, during the redemption period after a judicial foreclosure, the purchaser at sale acquires all of the rights incident to ownership—including the right to use and possess the property and to collect rents—but bare legal title is not transferred until the redemption period expires. This division of equitable ownership and bare legal title sometimes results in confusion about who is liable for assessments.

Because the purchaser is the equitable owner, in practice the purchaser pays all assessments during the redemption period. This practice is consistent with current law, case law from other jurisdictions, and sound policy. Unfortunately, consumers—and even courts or occasional investors who are not familiar with this area of law—sometimes mistakenly assume that the foreclosed debtor is personally liable for the assessments because the debtor holds bare legal title. The result has been bad legal advice, unnecessary disputes, additional fees, and delayed resolutions to the detriment of all interested parties.

What the Bill Does

SB 367 as modified by the -1 amendment would modify the statute to make it clear that the certificate holder is solely responsible for paying these fees during the redemption period. If the property is redeemed, the bill expressly requires the redemptioner to repay any assessments actually paid by the purchaser during the redemption period.

Thank you for your time and your consideration, and I'd be happy to answer any questions that you have.