

Fiscal: No Fiscal Impact
Revenue: No Revenue Impact

Action Date: 02/04/15
Action: Do Pass With Amendments. (Printed A-Eng.)
Meeting Dates: 02/04
Senate
Yeas: 5 - Burdick, Gelser, Thatcher, Prozanski, Kruse

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WHAT THE MEASURE DOES:

Clarifies that writ of execution for foreclosure suit is not required to include money award in all circumstances. Requires inclusion of declaration of amount of debt lien secures, and if plaintiff requests in complaint, money award against lien debtor. Provides clarifying language to distinguish between in rem (action taken directly against property, not the title of individual claimants) and real property. Requires sheriff to deliver proceeds from execution sale to court administrator. Permits judgment creditor in foreclosure to bid on foreclosed property at execution sale or ahead of time in writing with certain requirements. Mandates judgment creditor's bid may not exceed full amount owing on money award if judgment includes money award or amount declared in judgment when no money award is included. Applies to foreclosure suits commencing or pending on or after effective date. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Problems arising when money awards included in foreclosure judgments
- History of such actions and non-use of money awards
- Problems arising from current language ("shall") and judicial interpretations

EFFECT OF COMMITTEE AMENDMENT:

Adds "or the amount declared in the judgment" to provide clarifying language to distinguish between in rem and real property.

BACKGROUND:

Historically in Oregon, courts and sheriffs have not had difficulty enforcing non-recourse mortgages. Judgment statutes, however, underwent revision between 2003 and 2007, which created unintended interpretations of the new statutes. Specifically, problems emerged when state court judges include entry of a money award in judicial foreclosure cases. This is because monetary judgments for the discharged obligation are: 1) in violation of the discharge injunction; 2) inappropriate when the property being foreclosed is secured by a residential Deed of Trust as defined by statute (cannot result in a money judgment.); and 3) problematic as they improperly cloud the title of unrelated real property and adversely impact credit reports.

Senate Bill 368-A eliminates the need to include a monetary judgment in a foreclosure action when such inclusion is inappropriate or contrary to law. In such cases, Senate Bill 368-A instead requires a declaration of the amount of debt that a lien secures and allows for a monetary award when a plaintiff requests it in the complaint. Senate Bill 368-A also outlines how and when a judgment creditor that requested a writ of execution may bid on property to be sold. The bill mandates that if a judgment creditor submits a written bid prior to the sale, it may not be for: 1) more than the full amount owing on the money award if a money award was included in the judgment; or 2) more than the amount declared in a non-monetary judgments. Senate Bill 368-A

distinguishes between in rem and real property and also specifies when a judgment creditor must make payment to the sheriff. Additionally, it requires the sheriff to deliver proceeds of an execution sale to the court administrator.