

Seventy-Eighth Oregon Legislative Assembly - 2015 Regular Session
STAFF MEASURE SUMMARY
House Committee On Judiciary

MEASURE: SB 368 A
CARRIER: Rep. Williamson

Fiscal: No Fiscal Impact
Revenue: No Revenue Impact

Action Date: 05/07/15

Action: Do Pass.

Meeting Dates: 05/07

Vote:

Yeas: 7 - Barker, Greenlick, Krieger, Olson, Post, Sprenger, Williamson

Exc: 2 - Barton, Lininger

Prepared By: Laura Handzel, Administrator

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:

- Support for bill from Oregon State Bar's Consumer Law Section and Debtor-Creditor Section, plus Oregon State Sheriffs' Association Legislative Committee
- Amendments to Oregon Trust Deed Act
- Effects of money awards in various circumstances
- Misinterpretations of ORS 88.010 after revisions

EFFECT OF COMMITTEE AMENDMENT:

No amendment.

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.