



OREGON LAND TITLE ASSOCIATION

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TO: Chair Paul Holvey, Vice Chairs Greg Barreto and Janelle Bynum and the members of the House Business and Labor Committee

FROM: Cleve Abbe, OLTA Legislative Committee Chair

DATE: March 1, 2017

SUBJECT: House Bill 2855 / Non-judicial land sale contract fulfillment procedure

Summary. House Bill 2855 will create a non-judicial procedure for a buyer under a land sale contract to enforce the contract's requirement for a fulfillment deed when the contract is paid and satisfied in full but the seller has failed to deliver the deed to the buyer.

Background. A land sale contract is an agreement by which the seller delivers possession of real estate to the buyer, but retains the legal title until the buyer pays the contract in full, at which point the seller is obligated to deliver a deed that transfers the legal title. Under existing law, if the seller fails to deliver the deed, the buyer's recourse is filing a legal action against the seller to compel the seller to perform on fulfilling the contract. By contrast, if it is the buyer who defaults on the contract by, for example, failing to pay according to the contract terms, the seller may employ a non-judicial procedure to extinguish the buyer's interest. That remedy is statutory forfeiture, available to a seller if the contract authorizes forfeiture. HB 2855 will add balance to the buyer's remedies for enforcing the contract when it is paid and satisfied.

Nearly all buyers who pay their land sale contracts receive timely fulfillment deeds from their respective sellers. Nevertheless there is the occasional buyer who does not realize the necessity for a fulfillment deed. This may be because the buyer has changed, such as by a family member acquiring the original buyer's interest by inheritance. It may be that, over the passage of many years of timely payments, the buyer forgets that a fulfillment deed is needed after the last payment. Furthermore, if the buyer fails to press the seller for a fulfillment deed, the passage of time could jeopardize the buyer's record interest in the property.

Procedure. The procedure established by HB 2855 calls for the buyer to give notice to the seller and those claiming an interest through the seller that the buyer is entitled to a fulfillment deed and will enforce that obligation unless the seller delivers a deed or objects. If the seller objects, then the buyer's recourse would be through the courts; however, because the contract must be satisfied in full, an objection is unlikely. What is more likely is no response by the seller. In that event, the procedure calls for the buyer to publish a notice of intent to enforce the deed requirement. If there still is no response, the buyer, after the requisite time has passed, may record an affidavit of fulfillment that has the effect of establishing the buyer's acquisition of title the same as would occur by delivery of the fulfillment deed.

OLTA. The Oregon Land Title Association (OLTA) is a trade association of title companies doing business in Oregon. OLTA members occasionally receive orders with missing fulfillment deeds. OLTA seeks passage of HB 2855 as a useful, balanced and practical approach to clearing land titles through a non-judicial procedure.