



Senate Veterans and Emergency Preparedness Committee | March 14, 2017

Senate Bill 79 Briefing:

Technical Statutory Amendment to Home Loan Foreclosure Procedures

What the measure does: SB 79 is a technical statutory amendment to resolve an unintended omission in Senate Bill 251 (2015) that amended ORS 86.726 (part of the Residential Foreclosure Avoidance Mediation Program) and exempted the Oregon Department of Veterans' Affairs (ODVA) from the requirement to request and participate in a resolution conference with a veteran borrower prior to foreclosure.

Background: The Attorney General brought the problem to the attention of ODVA and drafted language for this legislative concept to resolve the matter. As background, in order to complete a non-judicial foreclosure, ORS 86.752(4) requires the beneficiary of a trust deed (in this case, ODVA) to record either: 1) a certificate of compliance with the foreclosure mediation program or 2) an affidavit claiming the beneficiary initiated fewer than 175 foreclosures in the previous calendar year. In addition, ORS 88.010(2)(a), requires that a complaint for a judicial foreclosure for a residential trust deed include as an attachment : 1) a certificate of compliance with the foreclosure mediation program, 2) an affidavit claiming the beneficiary initiated fewer than 175 foreclosures in the previous calendar year, or 3) a notice from the mediation service provider that it will not issue a certificate of compliance.

However, because Oregon Department of Veterans' Affairs is exempt from participating in the mediation program, it will not have the documents required by ORS 86.752(4) or ORS 88.010(2)(a). Therefore, it is impossible for ODVA to meet this requirement. Unfortunately, the exemption given to Oregon Department of Veterans' Affairs under ORS 86.726 in 2015 under Senate Bill 251 was not extended to requirements of 86.752(4) or 88.010(2)(a).

Solution: Amend ORS 86.752(4) to authorize ODVA to record an affidavit stating that ODVA, acting in its capacity as a beneficiary under ORS 407.125 is exempt from the requirements to request or participate in a resolution conference with a grantor under ORS 86.726. This procedure gives notice to the public that Oregon Department of Veterans' Affairs has complied with ORS 86.752 and is beneficial to title companies who will look to the public real property records to determine compliance with the statute.

Amend ORS 88.010(2)(a) to authorize ODVA to attach to a complaint to judicially foreclose a residential trust deed an affidavit stating that ODVA, acting in its capacity as a beneficiary under ORS 407.125 is exempt from the requirements to request or participate in a resolution conference with a grantor under ORS 86.726.

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