



DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

## **SB 968: Opening the Door for Abuse in Oregon's Foreclosure Process**

**Background:** The Mortgage Electronic Registration System ("MERS") is a registry that was established by the banking industry in the 1990's to track changes in servicing rights and beneficial ownership interests in mortgage loans. MERS was specifically designed to avoid local recording requirements for assignments of mortgages. Thus, its immediate and practical effect was that lenders who invested in the system stopped publicly recording their mortgage assignments.

The MERS business model led to years of court challenges. In 2013, the Oregon Supreme Court decided *Brandrup v. ReconTrust*, 353 Or 668 (2013), clarifying the law as it relates to the use of MERS and providing guidance to all parties involved in Oregon's non-judicial foreclosure process.

**Harmful Effect of SB 968:** SB 968 revises the definition of "beneficiary" for purposes of the Oregon Trust Deed Act and modifies the requirements for Oregon's non-judicial foreclosure process. The proposed amendment to ORS 86.705(2) would have the effect of creating less transparency for the homeowner and undermining the clarity provided by the Supreme Court's decision in *Brandrup*. SB 968 also creates a significant departure from Oregon law by allowing lenders to sever the beneficial interest in the trust deed from the ability to enforce the note.

There are three even more concerning aspects of the bill. First, pursuant to Section 4(3), any instrument executed by a beneficiary, as newly defined under the bill, would be evidence that the person who actually holds or owns the note authorized the beneficiary to sign the instrument. **This may increase the risk of the type of robo signing activity that occurred during the foreclosure crisis, where employees of mortgage servicing companies signed foreclosure documents without reviewing them for accuracy.** Second, the bill is retroactive and purports to cure relevant defects in all prior foreclosures. Title companies issued guidance after *Brandrup* about how to foreclose MERS trust deeds with a title guarantee and they have been foreclosing non-judicially since then. Reversing that guidance would create unnecessary confusion. Finally, the bill's repeal of ORS 86.752(6) means consumers who are actively performing on an agreement to avoid foreclosure would no longer be protected from foreclosure under Oregon law.

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