



STATE OF OREGON
Legislative Counsel Committee

February 23, 2018

To: Senator Floyd Prozanski
From: Sean Brennan, Senior Deputy Legislative Counsel
Subject: -9 amendments to Senate Bill 1556

After meeting with Senators and members of the committees considering Senate Bill 1556, I have prepared amendments that let stand, as introduced in the bill, the bar against lawsuits from plaintiff counties that are based on statements in trust deeds as to the status of a nominee or agent of the lender, on a county's recording a trust deed with such a statement or on a person's having obtained or transferred an interest in a trust deed by means of an instrument that is not recorded in the county's deed and mortgage records or the county's County Clerk Lien Record. In the amendments, however, the bar would apply to claims that arise before, on or after January 1, 2018, but would **not** apply to any actions that began before January 1, 2018.

The effect of these amendments would be to let continue any pending litigation over whether a transfer of an interest in a trust deed that names the Mortgage Electronic Registration Systems, Inc., as a nominee or agent of a lender must be recorded, and related issues. The amendments would bar any new actions after January 1 of this year that are based on the same set of facts.

In asking for these amendments, you indicated that the intent of the Legislative Assembly is that the parties to the litigation and other interested stakeholders must join in a work group to devise a permanent statutory fix for the issues that gave rise to the litigation that, in turn, prompted the introduction of Senate Bill 1556. These issues include, but are not limited to:

- Whether and to what extent private electronic mortgage registration systems can or should substitute for county mortgage or lien records with respect to recording and giving notice of transfers of beneficial interests in mortgage loans or of transfers of responsibility for servicing mortgage loans;
- Whether private electronic mortgage registration systems provide adequate recordkeeping for the purposes of establishing a complete chain of title for all transfers of beneficial interests and changes in loan servicing for mortgage loans and whether the records are sufficiently accessible to borrowers and other interested parties;
- Whether borrowers have adequate notice of the possibility under a private electronic mortgage registration system that their lender may transfer ownership of their mortgage

loan or change their loan servicer without further notice to the borrower and that the county mortgage records will not record the change or transfer;

- Whether county clerks are adequately compensated for the costs of keeping accurate mortgage records that are necessary for perfecting liens against real property in this state; and
- Whether the benefits to lenders of being part of a private electronic mortgage registration system and, more specifically, the benefits of having a ready market for selling and securitizing mortgage loans in order to recapitalize outweigh the loss of revenue to the counties from recording transfers and any potential loss in the transparency of records related to transfers of beneficial ownership, loan servicing and related information.

To devise the statutory fix that you indicated the Legislative Assembly would like to see as a condition of granting a bar to future actions, you suggested that work group membership should include, at a minimum, these parties, designated by the President of the Senate and the Speaker of the House of Representatives:

- Two members of the Senate, one from each caucus;
- Two members of the House of Representatives, one from each caucus;
- One member who represents large financial institutions that extend mortgage loans within this state;
- One member who represents community banks in this state that extend mortgage loans within this state;
- Two members who serve as advocates for borrowers, one member from the Oregon Law Center and another member from the Oregon State Bar who is a member of the bar's Consumer Law or Debtor-Creditor section;
- A member who represents the Department of Justice;
- A member who represents Oregon county clerks; and
- A member who represents title companies that do business within this state.

To ensure that recommendations for legislation to implement the statutory fix are available in time for drafting and consideration in the next regular session of the Legislative Assembly, you indicated that the intent of the Legislative Assembly is that the work group complete all necessary discussion, research, consideration and drafting not later than September 28, 2018. The further intent of the Legislative Assembly, you indicated, would be that the Legislative Policy and Research Office provide staff assistance where necessary to aid the work group in its deliberations and recommendations.

Finally, you indicated that the intent of the Legislative Assembly is to revisit this issue during the 2019 regular session and to implement the statutory fix the work group recommends or, if the work group does not come up with an adequate solution or the Legislative Assembly is unable to implement a recommended solution, to consider repealing the provisions of SB 1556

as amended. My understanding is that you intend to read this memorandum into the record as a summary of the intent and legislative history of this measure.

Encl.