

SB 1556 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Action Date: 02/15/18

Action: Without recommendation as to passage and request referral to Rules.

Vote: 7-0-0-0

Yeas: 7 - Bentz, Dembrow, Gelser, Linthicum, Prozanski, Thatcher, Wagner

Fiscal: Fiscal impact issued

Revenue: No revenue impact

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WHAT THE MEASURE DOES:

Prohibits counties from bringing action or claim against a person based upon specific information within a trust deed making the nominee or agent of the lender the grantee or beneficiary, or upon the county's recording or indexing of such instruments. Prohibits counties from bringing action or claim against a person based upon the person obtaining or transferring an interest in a trust deed that is not recorded with the county. Maintains the rights of borrowers under the Oregon Trust Deeds Act. Prohibits county clerk from charging or collecting fee for transfer of interest in trust deed that is not recorded. Applies to claims arising prior to, on, or after effective date, so long as final judgment has not been entered on the action. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Multnomah county lawsuit and effect on small banks
- Current recording process with county and with MERS
- Need for community banks to provide mortgages in local area
- Need for accurate record of trust deeds at county level

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

A trust deed is an instrument that gives an interest in real property to a trustee to secure the performance of an obligation that the grantor of the trust deed owes to a beneficiary. ORS 86.705(6). A trust deed creates a lien on real property to secure the underlying obligation. The trustee holds a legal interest in the property, which includes the power to sell the property. *Brandrup v. ReconTrust Co. N.A.*, 353 Or 668, 676-677 (2013). If the trustee exercises its legal authority and sells the property, the proceeds must go to the trust deed's beneficiary, reflecting the beneficial or equitable interest in the property. Under Oregon law, if a beneficiary wishes to foreclose on a mortgage through a non-judicial foreclosure process, the transfer or assignment of the interest to a new beneficiary must be recorded in the county records in the county in which the real property is located prior to beginning the foreclosure process. See ORS 86.752. However, the Court in *Brandrup* held that the only assignments contemplated by that statute are assignments of trust deeds done with written formalities and the law "does not require recordation of 'assignments' of the trust deed by operation of law that resulted from the transfer of the secured obligation." *Id* at 699.

The Mortgage Electronic Registration System (MERS) is an entity developed to serve as the nominee of the lender and subsequent buyers of trust deeds. MERS utilizes an electronic tracking number for each trust deed and tracks the trust deeds as they are sold on the secondary market. As of March of 2017, 75 percent of newly made mortgages are registered with MERS. This allows for swift electronic selling of mortgages after the initial loan is made. In 2012, Multnomah County filed a lawsuit against MERS, alleging MERS failed to properly record transfers of trust deeds. The suit was ultimately settled in 2017 in the county's favor. Currently, 11 other Oregon counties have filed suit against MERS on the same basis.

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Senate Bill 1556 prohibits the county actions, if the action is based upon the designation of the grantee or beneficiary, or upon lack of presenting the trust deed for recording in the county. The measure prohibits the counties from charging a fee for instruments that transfer an interest in a trust deed but are not presented for recording. The measure becomes effective upon passage and would apply to cases that have not yet exhausted their appeals.