

2009 LEGISLATIVE SUMMARY

Debtor-Creditor Section

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Below is a list and brief description of bills that the debtor-creditor section was tracking and that were passed by the Legislative Assembly. These summaries are not meant to be comprehensive, but merely to highlight some of the more significant aspects of the bills that the debtor-creditor legislative committee was tracking this session. A more thorough summary of these bills will be forthcoming at the annual Debtor-Creditor meeting in October.

I. SECTION BILLS

The Debtor-Creditor Section sponsored four bills this session. All four bills successfully made it through the legislative process and were signed into law.

- A. **HB 2307 - Debt Collection Agencies:** HB 2307 excludes from the definition of collection agency a person assigned a debt without obligation to pay an assignor any proceeds of the debt collection (Secondary Debt Buyers). This bill addresses an issue raised by *In re Krysl*, 304 B.R. 425 (D. Or. 2004) a bankruptcy case in which the judge prohibited debt buyer from collecting a debt because he did not register as a collection agency with the Department of Consumer and Business Services pursuant to ORS 697.015.
- B. **SB 239 - Trust Deeds:** SB 239 requires a trustee foreclosing a trust deed to record affidavits of mailing of notice required to be sent to the grantor. This bill also requires a grantor to inform certain persons in writing that he or she did not receive notice and did not have actual notice of trustee's sale in order to obtain rights equivalent to those of an omitted party defendant in judicial foreclosure proceeding.
- C. **SB 240 - Garnishment:** SB 240 provides that certain documents in judicial proceedings contain only the last four digits of a debtor's Social Security number and driver license number. This bill also allows a garnishor or garnishor's attorney to provide the full Social Security number to the garnishee if the garnishee requests the number for purpose of identifying the debtor. The bill provides that a garnishee is not liable to any person by reason of using all or part of the debtor's Social Security number for purpose of identifying the debtor

- D. **SB 241 - Forcible Entry and Detainer:** SB 241 allows purchasers to use the residential FED process in certain judicial foreclosures, sales and similar events. SB 241 also Clarifies that those FED proceedings will be subject to the same fees and process as are FED proceedings brought under the Oregon Residential Landlord and Tenant Act.

II. OTHER BILLS

In addition to the section bills, the debtor-creditor committee tracked several bills of interest to attorneys who practice in this field of law. Below are the bills that were passed into law.

- A. **HB 2084 - Financing Statements:** HB 2084 eliminates the requirement that the Secretary of State send by mail renewal notices regarding financing statements to secured parties. However, the Secretary of State must send by electronic means renewal notices upon request by the secured party.
- B. **HB 2188 - Negative Amortization Loans:** HB 2188 prohibits mortgage bankers, mortgage brokers or loan originators from making negative amortization loans without evaluating and verifying a borrower's ability to repay. This bill also requires mortgage bankers, mortgage brokers or loan originators advertising, soliciting or conducting business in a language other than English to provide disclosures in the language used in advertising, soliciting or related transactions.
- C. **HB 2191 - Debt Management Service Companies:** HB 2191 affects the regulation of Debt Management Service companies (i.e. Credit Services Organizations and Debt Consolidation Agencies) by the Department of Consumer and Business Services (DCBS). This bill consolidates previous regulations contained in ORS Chapters 646A and 697 and generally expands DCBS's regulatory authority. Of particular concern to the debtor-creditor section are the potential unintended consequences of the less comprehensive exemptions for lawyers as "debt management service" providers.
- D. **HB 2303 - Servicemembers Civil Relief Act:** HB 2303 allows an award of damages and attorney fees to servicemembers who bring a successful action to enforce their rights under the Servicemembers Civil Relief Act.
- E. **HB 3004 - Trustee Sale Deficiencies:** HB 3004 provides that a foreclosure and sale by a trustee of a residential property prohibits further action for a

deficiency against the mortgagor, grantor, or other specified obligor on any additional trust deeds for the property. However, this bill provides an exception for notes secured by a junior lien that are sold to third parties. HB 3004 also expands debt protection to include an action against a homeowner for a debt that was owed to a beneficiary of a residential trust deed that was subject to a foreclosure that was incurred to secure the residential trust deed, and other debt incurred to finance a portion of the purchase price of the foreclosed property.

- F. **SB 328 - Oregon Unlawful Debt Collection Practices Act:** SB 328 subjects persons who violate the Oregon Unlawful Debt Collection Practices Act (OUDCPA) to the provisions of the Unlawful Trade Practices Act. Previously, the Attorney General did not have authority to take action against debt collectors for violations of the OUDCPA.
- G. **SB 356 - Forfeiture:** SB 356 clarifies Oregon's forfeiture laws and incorporates changes in these laws to reflect the enactment of Ballot Measure 53, which was approved by voters in 2008.
- H. **SB 558 - Uniform Commercial Code:** SB 558 Conforms Oregon law to changes in Articles 1 and 7 of the Uniform Commercial Code (ORS Chapters 71 and 77). Specifically, this bill modifies the "General Provisions" section and updates provisions that allow for judges to determine whether parties have acted in "good faith" and to analyze transactions based on the "course of performance" between the parties. This bill eliminates the requirement for a signed writing for the sale of personal property over \$5,000, and updates the "Documents of Title" section regarding shipment and storage of goods to allow for electronic "ownership" of goods, now represented by warehouse receipts, bills of lading, and similar documents.
- I. **SB 628 - Trustee Sale Loan Modification Notices:** SB 628 requires lenders to provide information pertaining to loan modifications on notices of default for residential trust deeds and establishes a procedure for the grantor and beneficiary to enter into communication regarding loan modifications. This bill also provides an exemption for mortgages where the beneficiary has determined that the loan is ineligible for modification.
- J. **SB 685 - Credit Approval:** SB 685 prohibits a creditor from denying credit to an applicant solely because the applicant used his or her business address instead of his or her residential address if state law or local ordinance permits use of business address on application.

- K. SB 731 - Garnishment of Exempt Funds:** SB 731 provides that exempt funds in a debtor's bank account are not subject to garnishment if payments were deposited in the debtor's account by direct deposit or electronic payment during calendar month that preceded month in which writ of garnishment was delivered to financial institution. This bill also provides that all funds that are exempt under federal law remain exempt when deposited in a debtor's financial account as long as exempt funds are reasonably identifiable. It requires application of first in, first out accounting principles for purposes of identifying exempt funds in financial accounts.
- L. SB 771 - Termination of Tenancy:** SB 771 revises provisions regarding the termination of a tenancy. Among other changes, SB 771 requires a 60-day no-cause notice of termination by a landlord after the first year of a month-to-month tenancy.
- M. SB 952 - Notice to Tenants of Foreclosed Property:** SB 952 modifies the notice requirements that a purchaser of foreclosed property must provide to a tenant living in that property. Specifically, the purchaser is generally required to allow the tenant to remain in the house for 60 days after the foreclosure sale. This law has been largely superseded by recently passed federal legislation, which generally requires purchasers of foreclosed property to provide tenants with 90-days' notice. *See* The Protecting Tenants at Foreclosure Act of 2009 (PTFA), part of the Helping Families Save Their Homes Act of 2009 (Public Law 111-22, approved May 20, 2009).