**WFG Oregon Underwriting Bulletin**

**WFG National Title Insurance Company**

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**Date:** October 14, 2015

**To:** WFG Oregon Title and Escrow Employees

**Re: RECENTLY-ENANCTED OR REAL ESTATE BILLS**

**Bulletin #:** WFG-Oregon-2015-3-RJH

This Bulletin outlines the 2015 real estate-related bills enacted in the legislative session that ended on July 6, 2015, which are most relevant to WFG’s title and escrow activities. Copies of all such bills are attached to the end of this Bulletin.

**Senate Bill 27** (effective January 1, 2016) - SB 27, among other things, amends ORS 18.942 to require that, in situations where a sheriff sells real property at an execution sale and provides a certificate of sale to the purchaser, the purchaser must record the sheriff’s certificate of sale in the county clerk lien record.

**Senate Bill 367-A** (effective January 1, 2016) -SB 367-A amends ORS Chapters 18, 94 and 100 and specifies that, following a sheriff’s execution sale, the holder of the certificate of sale is solely liable for assessments imposed by an owners association during the ensuing redemption period. In addition, the certificate holder is deemed to be the owner of the property (and therefore responsible for owners association assessments) in the event the claimant does not redeem the property by the end of the redemption period, whether or not the certificate holder has caused the sheriff to execute and deliver a sheriff’s deed.

This bill also clarifies that, in order for a claimant to redeem property from the execution sale purchaser, the claimant must reimburse the certificate holder for any assessments paid by such holder to the owners association during the redemption period, with interest at the rate of nine percent per annum. In connection therewith, the redeeming claimant may require the certificate holder to provide an accounting of the assessment amounts paid by such holder to the owners association.

**Senate Bill 368-A** (effective June 8, 2015) - SB 368 amends ORS Chapters 18 and 88 and applies to judicial foreclosure suits pending on or commenced after the effective date.

Background - Historically in Oregon, courts and sheriffs have not had difficulty enforcing non-recourse mortgages. Judgment statutes, however, underwent revisions between 2003 and 2007, which created unintended interpretations of the new statutes. Specifically, problems arose when some state court judges included money awards in judicial foreclosure judgments because money judgments for the discharged obligation are (i) inappropriate when the property being foreclosed is secured by a residential deed of trust (cannot result in a money judgment), and (ii) problematic as they improperly cloud the title of unrelated real property and adversely impact credit reports.

First, this bill eliminates the need to include a money judgment in a foreclosure action when such inclusion is inappropriate or contrary to law. In such cases, the bill instead requires the judgment to include a declaration of the amount of debt that a lien secures (which is necessary in order to obtain a writ of execution against the property being foreclosed) and allows for a money award when a plaintiff requests it in the complaint.

Second, if (i) the lien debtor or another person, as principal or otherwise, has given a promissory note or other personal obligation to pay the debt, and (ii) the plaintiff in the foreclosure complaint asks the court that a money award be included in the judgment, the court must include in the judgment a money award against the lien debtor or other person for the amount of the debt.

If the foreclosure judgment includes a money award, the creditor will have the legal right to pursue recovery on the deficiency. However, under certain circumstances SB 368 and other laws may prohibit a creditor from including a money award in the judgment. For example, under revised ORS 86.797(2) a judgment to foreclose a residential trust deed may not include a money award for the amount of the debt.

Third, Senate Bill 368-A outlines how and when a judgment creditor that requested a writ of execution may bid on property to be sold, either at the execution sale or before the sale if in writing. The bill provides that if a judgment creditor submits a written bid prior to the sale, it may not be for (i) more than the full amount owing on the money award if a money award was included in the judgment, or (ii) more than the amount declared to be the amount of the debt that a lien secures if the judgment does not include a money award.

Finally, the bill provides that, if a judicial foreclosure of a trust deed that is not a residential trust deed results in a judgment that includes a money award, the judgment must provide that execution may issue for the amount by which the unpaid balance of the money award exceeds the net sale proceeds that are payable to the judgment creditor from the sale of the property that is subject to the foreclosure if (i) the net sale proceeds are insufficient to satisfy the money award, and (ii) the plaintiff requests the provision in the complaint.

**Senate Bill 402-B** (effective January 1, 2016) - SB 402-B, which amends ORS 114.505 and 114.545, allows an affiant in a small estate proceeding to open deposit accounts in a financial institution with the decedent’s funds for the purpose of paying claims and expenses of the estate. The small estate statutes were previously silent on this issue and, for that reason, many financial institutions were wary of opening such accounts. The financial institution is not required to ensure that the funds are used properly and is not liable for the affiant’s use of such funds.

The bill also allows the Department of Human Services or the Oregon Health Authority to appoint an affiant in cases in which money from a small estate is owed to the agency. The affiant may then proceed with the sale of property to a third party for valuable consideration without the signature of other heirs or devisees who fail or refuse to join in the conveyance.

Finally, SB402-B provides that, while property conveyed by an affiant to a third party pursuant to ORS 115.545 is subject to liens and encumbrances against the decedent or the decedent’s estate, it is not subject to the rights of decedent’s creditors or liens or encumbrances against the decedent’s heirs or devisees.

**House Bill 2127-A** (effective October 5, 2015) -See the separate Underwriting Bulletin (WFG-Oregon-2015-2-RJH) dated as of and circulated on September 28, 2015, which relates to procedures for the conveyance of real property to tax-exempt government transferees.

**House Bill 3244-A** (effective June 16, 2015) - HB 3244-A, which amends ORS 86.157, provides that a borrower or a borrower’s agent (such as a title company) may rely on a lender’s payoff statement as regards the amount required to satisfy the borrower’s obligation under a real estate loan agreement. The lender may amend the payoff statement as long as the borrower or the borrower’s agent receives the amended statement before the disbursement of payoff funds. A borrower that timely pays the amount specified in a payoff statement is entitled to a trust deed reconveyance or mortgage discharge. This bill only applies to residential real estate transactions and specifically excludes construction loans.

To satisfy an obligation set forth in an original or amended payoff statement, the borrower must (i) submit the amount shown in the payoff statement, (ii) instruct the lender to close any line of credit related to the obligation, and (iii) request a reconveyance of trust deed or discharge of mortgage prior to the expiration of any deadline set forth in the payoff statement.

If a lender fails to include an amount that a borrower owes in the original or amended payoff statement, the lender may recover such amount only as an unsecured obligation or through foreclosure of other property securing the obligation.

If you have any questions related to this Bulletin, please contact your local WFG underwriting personnel.

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