

**OREGON STATE BAR**  
**Legislative Proposal**  
**Part I – Legislative Summary**

**RE:** SB 239: Oregon Trust Deed Act and the Notice required by HB 3630, 2008 Oregon Laws, signed by the Governor on March 11, 2008

**Submitted by:** Debtor/Creditor Section

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**1. Does this amend current law or program? Yes.**

86.750 and the new statute created under 86.705 through 86.795 by Section 21 of HB 3630, 2008 Oregon Laws.

**2. PROBLEM PRESENTED (including level of severity):**

The 2008 legislative session passed HB 3630 in part to ensure that homeowners facing foreclosure understand their rights. Section 20 of HB 3630 requires a trustee foreclosing a residential trust deed under 86.705 through 86.795 to send a special notice to the grantor of the trust deed explaining their rights, duties and options. Under Section 21 of HB 3630, if the notice required by section 20 is not sent to the grantor and the grantor did not have actual notice at least 25 days before the foreclosure sale, the grantor has the same rights possessed by a holder of a junior lien or interest who was omitted as a party defendant in a judicial foreclosure proceeding – the same rights as provided in ORS 86.742(1). The law does not provide a way for the trustee to prove that the notice was given or that the grantor had actual notice of the sale at least 25 days before the sale. The lack of a mechanism to provide for such proof is a serious problem because there is no way for a title company to know whether the notice was given. Moreover, the remedy of Section 21 essentially gives the grantor, who may no longer be the owner of the property, an unlimited right of redemption that has never existed under the Oregon Trust Deed Act, necessitating a judicial action for strict foreclosure in order to eliminate that redemption right. Title insurance companies will now include exceptions in their reports issued after non-judicial foreclosures which may make the state of title unmarketable.

**3. SOLUTION:**

Amend ORS 86.750(3) to require the trustee to record affidavits of mailing and service of the notice required by Section 20 of HB 3630.

In addition, Section 21 of HB 3630 should be amended to provide a bar date for the grantor to raise the issue that they did not receive the Section 20 notice required by HB 3630. This remedy will eliminate the uncertainty relating to the title after a non-judicial sale, while giving the grantor under the trust deed the benefit intended by HB 3630. In the printed bill, the deadline for a grantor who has been non-judicially foreclosed is 30 days after the

trustee's sale. After discussions with the proponents of HB 3630, the proposal will be amended to provide that the deadline is 60 days after the purchaser takes possession.

**4. PUBLIC POLICY IMPLICATION** of this proposed legislative change:

This change will eliminate the uncertainty and potential unmarketability of title after non-judicial trust deed foreclosures while keeping the spirit of the original intent of HB 3630 and protecting the grantors who do not receive the notice prescribed by Section 20 of HB 3630.

**5. Could the problem be addressed through a NON-LEGISLATIVE SOLUTION, such as administrative rule or education?**

No. The problem is the effect of statutory provisions.

**6. COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL?** If so, have you suggested it to the section or group?

No. The Debtor-Creditor Section is an appropriate section to introduce the bill because it deals with non-judicial trust deed foreclosures more often than others. The Debtor-Creditor Section Legislative Committee has consulted with the Real Estate/Land Use Legislative Committee and the Oregon Land Title Association Legislative Committee.

**7. IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED** or interested in this change. Who would support it and who would oppose it?

The groups or constituencies that would be most effected by the change would be grantors of trust deeds, title companies, lenders, third party purchasers at foreclosure sales, and trustees conducting foreclosure sales. As mentioned above, Debtor-Creditor Section representatives met with the proponents of HB 3630 and worked out a proposed amendment that makes the bill acceptable to all concerned.

**8. Has this been introduced in a prior session?** No.