

OREGON STATE BAR
Legislative Proposal

RE: Recording Notices of Bankruptcy

FROM: OSB Debtor/Creditor Section

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This bill would amend 93.770.

1. PROBLEM PRESENTED

ORS 93.770 is out of date. It is a cumbersome and impractical process for a bankruptcy trustee to give constructive notice of the bankruptcy estate's interest in real property located in another part of the state. Under current law, the trustee must obtain a copy of the debtor's petition, certified by the District Court, and record it in the county where the debtor owns or has an interest in real property. This process may cause unnecessary delay in giving notice of the bankruptcy estate's interest to prospective purchasers and encumbrances.

2. SOLUTION

ORS 93.770 should be revised to allow for the recording of a notice of bankruptcy by the trustee, trustee's counsel, the debtor or its counsel, much the same way as a notice of pendency of action is recorded to give notice of a lawsuit affecting real property. The notice of bankruptcy must state the name of the debtor, case number, the bankruptcy chapter filed, the trustee's name, if applicable, the attorneys for the debtor and the trustee, if applicable, and state that it affects all real property and real property interests of the debtor in the county of recording. The notice should include the legal description of specific real property, if known. If the real property or real property interest is subsequently abandoned in the bankruptcy case, or the bankruptcy case is subsequently closed, a copy of the notice of intent to abandon or any order authorizing the abandonment or closing of the case, certified by the bankruptcy court clerk, may be recorded in the real property records to eliminate the notice of bankruptcy if the real property was not otherwise administered in the bankruptcy case.

In addition, ORS 93.770 should be revised to refer to "federal bankruptcy laws" rather than "National Bankruptcy Act." It should also state that judgments and orders of the bankruptcy court that have been certified by the bankruptcy court clerk may be recorded in the real property records in any county of this state.

3. PUBLIC POLICY IMPLICATION

Current law already allows a certified copy of the bankruptcy petition to be recorded. The proposed revisions to ORS 93.770 will further the policy of public notice to prospective purchasers and encumbrancers of legal proceedings that affect real property that already exists with the recording of a notice of pendency of action and lien record abstract.