IN BRIEF

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2009 LEGISLATION ALERTS

FINANCIAL INSTITUTIONS

RENEWAL NOTICES FOR UCC FINANCING STATEMENTS

ORS 79.0515

2009 OR LAWS CH 597 (HB 2084)

HB 2084 eliminates the requirement that the Secretary of State send renewal notices to secured parties prior to expiration of every UCC financing statement and agricultural "effective financing statement." Instead, notices of upcoming expirations will be sent electronically and only if requested.

Effective date: January 1, 2010

*The amendments made to ORS 79.0515 by this bill apply to **all** financing statements and effective financing statements, whether filed before, on or after January 1, 2010.*

Practice Tip: Check with the Secretary of State's office prior to January 1, 2010 to determine whether the Secretary of State has issued rules governing the form, contents, timing, contact information and other details pertaining to requests for expiration notices.

Practice Tip: Clients should be reminded to make this request if they desire this service and establish procedures to ensure the notices are identified and acted upon. Clients should also review tickler systems to be sure renewal dates are monitored as the consequences of failure to timely renew may include loss of perfection and loss of priority, with severe consequences. Attorneys are urged to make it clear that monitoring renewal dates is the responsibility of the client and not the lawyer.

ID DOCUMENTS FOR FINANCIAL INSTITUTION NOTARIES

ORS 194.164, 194.166, 194.515

2009 OR LAWS CH 338 (HB 2085)

HB 2085 revises the list of documents a notary may rely on in establishing identity. These documents are: (a) a current state driver's license or ID card; (b) a current U.S. or foreign country passport; (c) a current U.S. military ID card; (d) a current ID card issued by a federally-recognized Indian tribe; and (e) any other document issued by a federal, state, or local government entity that contains the person's photograph, signature, and physical description.

Of particular interest to financial institutions is the repeal of ORS 194.515(9), under which a notary employed by a financial institution could identify a customer of the institution by reviewing the customer's signature card along with one other current document bearing the customer's signature that was issued by an institution, business, or government unit.

Fees for notarization are limited to $10.

Effective date: January 1, 2010

The amendments apply only to fees charged or collected, and to identification documents provided to or relied on by a notary on or after the effective date.

Negative Amortization Loans
ORS 59.740 - 59.890
2009 Or Laws Ch 603 (HB 2188)

HB 2188 address two issues: a borrower's ability to repay a negative amortization loan, and language consistency in soliciting, advertising, and entering into mortgage lending transactions.

The bill prohibits mortgage bankers, mortgage brokers, and loan originators from making negative amortization loans without evaluating and verifying a borrower's ability to repay. A "negative amortization loan," under which the borrower may make a scheduled payment that is insufficient to pay accruing interest, does not include certain bridge loans, some loans under $50,000, certain reverse mortgage loans, and some home equity lines of credit. Lenders covered by the bill must verify the income and assets of the borrower that will be relied on to evaluate the borrower's repayment ability in a manner that is consistent with the requirements of 12 CFR. 226.34 (part of Regulation Z in the Truth in Lending Act).

Negative amortization loans made on or after the effective date may not contain prepayment penalty provisions covering periods beyond the first 24 months; and creditors cannot collect a prepayment penalty on an existing negative amortization loan in return for or as a consequence of refinancing.

HB 2188 also requires mortgage bankers, mortgage brokers, and loan originators advertising, soliciting, or conducting business in a language other than English to provide disclosures in the language used in advertising, soliciting, or otherwise conducting business with the customer.

Effective date: January 1, 2010

The bill applies to transactions that occur on or after the effective date.

Practice Tip: Counsel for mortgage bankers and others directly impacted by this bill will need to review their loan products, determine whether they are making negative amortization loans and whether they wish to continue making them, and if so, establish protocols to insure that the new restrictions and requirements are complied with. In addition, purchasers of loans should be prepared to differentiate negative amortization loans covered by the bill from other loans, and to verify the covered lender has complied with the bill as to all negative amortization loans.

Licensing for Mortgage Loan Originators
ORS 59.840 to 59.992, 446.691 to 446.741, 697.612, 725.010 to 725.230; HB 2188, HB 2191
2009 Or Laws Ch 863 (HB 2189)

In 2008 Congress passed the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act, requiring states to license mortgage loan originators or turn over such regulation to the Department of Housing and Urban Development (HUD). With HB 2189B, Oregon assumed regulation through the Department of Consumer and Business Services. The Act sets forth extensive licensing requirements for mortgage loan originators and places verification requirements on employers of originators. Anyone working with mortgage loan originators or an employer of originators should familiarize themselves with its provisions, which become operative January 1, 2010.

Effective date: July 30, 2009

Most of the bill's provisions become operative on July 31, 2010. Sections 38 through 42 amend HB 2188 and 2191; those amendments become operative January 1, 2010.

Privacy of Identification Documents
2009 Or Laws Ch 546 (HB 2371)

To protect the privacy of the personal information contained in modern driver licenses and government-issued identification cards, HB 2371 imposes restrictions on private and governmental uses of such information and provides a private remedy against an entity that uses an individual's protected information in violation of the act.

Practice tip: This bill details the permissible uses of protected information. Practitioners should carefully examine the provisions of this bill.

Effective date: January 1, 2010

Deposits of Funds for Minors
ORS 126.700, 126.725
2007 Or Laws Ch 311 (HB 2687)

ORS 126.700 provides that a person who is required to pay not more than $10,000 to a minor may, among other things, pay the money to a "financial institution incident to a deposit in a federally insured savings account in the sole name of the minor." Similarly, ORS 126.725 provides that a person having custody of a minor may enter into a settlement agreement for the minor under which not more than $25,000 is "deposited directly into a federally insured savings account in the sole name of the minor." Some

financial institutions have refused to accept such deposits because minors lack the capacity to contract.

HB 2687 addresses this problem by providing that, notwithstanding other law, a minor may contract with a financial institution to establish an account for receiving deposits pursuant to ORS 126.700 and 126.725, as well as receiving deposits not exceeding $25,000 when the funds are paid by a person obligated by a judgment to pay the moneys to the minor. Accounts established under these provisions are "binding upon the minor and cannot be voided or disaffirmed by the minor based upon the minor's age or status as a minor." The bill further provides that the consent of the minor's parent, guardian, or custodian is not needed to establish the account.

The bill also provides that when settlement or judgment payments in cash are made for a minor who is represented by an attorney, the payment must be made "by direct deposit into the attorney's trust account," and the attorney must then deposit the moneys "directly into a federally insured savings account that earns interest in the sole name of the minor, and provide notice of the deposit to the minor."

Effective date: January 1, 2010

The bill applies to amounts paid to minors, settlements made, and judgments entered on or after the effective date.

Trustee's Notice of Sale
ORS 86.750, 86.780; 2008 Or Laws Ch 19, Section 21
2009 Or Laws Ch 229 (SB 239)

SB 239 addresses notice requirements relating to foreclosure sales. Section 1 requires the trustee, prior to a foreclosure sale, to file for recording any affidavits of mailing, service, service attempts, and postings directed to the occupant and grantor that exist along with an affidavit of publication. Notice to the grantor must be by both first class and certified mail with return receipt requested. Section 3 adds a 60-day period after the purchaser takes possession of the foreclosed property for the grantor to inform the trustee, the purchaser, the beneficiary, or loan servicer in writing that the grantor did not receive written and actual notice of the sale.

Effective date: June 4, 2009

The amendments apply to trustees' sales under ORS 86.705 to 86.795 that occur on or after the effective date.

Forfeiture of Property Related to Crime
ORS 30.315, 131.594, 131.597, 131.662, 163.707, 167.164, 358.925, 475.497, Ch 475A, 647.155, 809.730, 809.735
2009 Or Laws Ch 78 (SB 356)

SB 356 enacts a comprehensive civil forfeiture law to conform to SJR 18 from the 2007 legislative session and Ballot Measure 53, a constitutional amendment approved by voters in May 2008, which addressed the forfeiture of property related to crime. This area of the law has been in flux since 2000, when voters approved a constitutional amendment that drastically changed civil forfeiture law. SB 356 is designed to clarify Oregon's forfeiture laws.

Its provisions affect the types of property that may be forfeited, the appropriate manner of seizure, an agency decision to seek forfeiture, the ability of interested persons to challenge it, the applicable evidence standard, and the affirmative defenses available. Anyone dealing with forfeited property in a criminal proceeding should familiarize themselves with its provisions.

Effective date: April 28, 2009

Any forfeiture proceeding commenced before the effective date of this bill by giving a notice of seizure for forfeiture or by recording a notice of intent to forfeit will continue to be governed by the provisions of ORS 475A as in effect immediately before the effective date.

Modification of loan in foreclosure
ORS 86.750; 2008 Or Laws Ch 19 Section 20
2009 Or Laws Ch 864 (SB 628)

SB 628 institutes a formal process by which homeowners may modify their loans, requiring additional information be provided to the grantor in the notice of sale. It also requires the sender to provide a modification request form and give the grantor 30 days to return it to the lender. If the grantor returns the request form, the beneficiary has 45 days to respond either that the grantor is not eligible for modification or must speak directly with the grantor. The foreclosure sale cannot proceed until the beneficiary responds to the grantor. The trustee must file the beneficiary's affidavit of compliance on or before the date of the trustee's sale.

Effective date; July 30, 2009

Sections 1, 3, and 5 apply to a notice of sale sent on or after September 28, 2009 (the 60th day following the effective date). Sections 4 and 6 become operative on January 2, 2012. Section 3 is repealed on January 2, 2012.

Caution: Chapter 19 of the 2008 laws created a new disclosure form that must be delivered to the grantor on the trust deed. A series of new laws in 2009 change the wording in the form, create new rights to modification, and shorten the time a grantor has to object to not receiving the new notice. The wording in the notice has changed and under Chapter 864 it will change again in two years.

Protection for Exempt Payments to a Garnishee's Account
ORS 18.252 to 18.993
2009 Or Laws Ch 430 (SB 731)

SB 731 protects a garnishee's financial accounts when the financial institution or account holder can identify qualifying exempt funds. It amends ORS 18.252 to 18.993 to provide that the lesser of the qualified amounts directly deposited during the calendar month, which preceded the writ of garnishment, or the debtor's account balance, is not subject to garnishment. First in, first out accounting principles apply to an account in which exempt and non-exempt funds are co-mingled. Financial institutions are required to make a form available to account holders to indicate whether the account holder is receiving qualified payments. Financial institutions are not liable for any determination made in "good faith."

Effective date: January 1, 2010

The amendments apply only to writs of garnishment and writs of execution issued on or after the effective date.

The Professional Liability Fund sincerely thanks Kenneth Sherman Jr for assistance with this section of the 2009 Legislation Alerts.