

2009 LEGISLATION ALERTS

REAL PROPERTY

CONDEMNATION / FORFEITURE

FORFEITURE OF PROPERTY RELATED TO CRIME

**ORS 30.315, 131.594 – 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.

ATTORNEY FEES IN CONDEMNATION CASES

ORS 35.346, 35.348

2009 OR LAWS CH 530 (SB 794)

Ballot Measure 39 (2006) required a condemning governmental authority to pay the attorney fees and costs of a property owner if the judgment awarded compensation to the owner higher than the government's initial offer. SB 794 changes that provision by amending ORS chapter 35 to require the government to pay attorney fees if the judgment exceeds the authority's *highest* offer, rather than its initial offer.

Effective date: January 1, 2010

The amendments apply only to condemnation actions filed on or after January 1, 2010.

CONSTRUCTION / BUILDING STANDARDS

LARGE COMMERCIAL STRUCTURES

ORS 12.135, 12.280

2009 OR LAWS CH 715 (HB 2434)

HB 2434 changes the statute of ultimate repose for large commercial projects (defined in ORS 701.005). HB 2434 requires that certain causes of action related to improvements to certain large commercial structures be commenced within six years after substantial

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completion or abandonment of construction, alteration or repair, unless the plaintiff is a public body or the project is owned and maintained by a homeowners/unit owners association. It requires that action commence, if the plaintiff is a public body, within 10 years after substantial completion or abandonment of construction, alteration, or repair.

Effective date: January 1, 2010

The amendments apply only to causes of action arising on or after January 1, 2010.

CARBON MONOXIDE IN RESIDENTIAL DWELLING **ORS 90.302 – 90.325, 105.464** **2009 OR LAWS CH 591 (HB 3450)**

HB 3450 prohibits transferring title to one- and two-family dwelling or multifamily housing that has a carbon monoxide source (coal, kerosene, petroleum products, wood or other carbon monoxide-producing fuels), unless the dwelling or housing is equipped with a carbon monoxide alarm. It requires alarms in certain structures according to rules set by the State Fire Marshall.

The bill prohibits the landlord from renting out a dwelling unit that has a carbon monoxide source or is located within a structure that has a carbon monoxide source, unless the dwelling unit is equipped with a carbon monoxide alarm. It imposes a duty on the landlord to repair and maintain the alarm. It prohibits removing or tampering with the alarm. It requires the tenant of a rental dwelling unit to periodically test the carbon monoxide alarm.

It also requires the seller's property disclosure statement to include information relating to carbon monoxide alarms.

Effective date: June 25, 2009

For landlords, this law applies to rental agreements that a landlord enters into on or after July 1, 2010. For sellers of real property, property disclosures apply on or after April 1, 2011. This law applies to conveyance of fee recorded on or after April 1, 2011.

Comment: HB 3450 prohibits conveyance of a dwelling that has a carbon monoxide source and no carbon monoxide alarm. Any dwelling with an attached garage or a wood burning fireplace is subject to it.

ENERGY EFFICIENCY BUILDING STANDARDS **2009 OR LAWS CH 750 (SB 79)**

SB 79 establishes voluntary and mandatory energy efficiency building standards, as well as an energy efficiency scoring system. The bill also directs the Department of Consumer and Business Services to develop a "Reach Code" for new construction, reconstructed,

altered, or repaired buildings. SB 79 requires amendments to the building code to achieve a 15-25 percent increase in energy efficiency in nonresidential buildings and a 10-15 percent increase in efficiency in residential buildings by January 1, 2012.

Effective date: July 22, 2009

The Reach Code provisions become effective January 1, 2010; all remaining provisions of the bill took effect July 22, 2009. Section 9 of the Act is repealed on January 2, 2012.

SOLID FUEL BURNING DEVICES **ORS 105.464, 468A.005 – 468A.515** **2009 OR LAWS CH 387 (SB 102)**

SB 102 extends air quality standards from woodstoves to "solid fuel burning devices," which includes "any device that burns wood, coal or other nongaseous or nonliquid fuels for aesthetic, space-heating or water-heating purposes in a private residential structure or a commercial establishment and that has a heat output of less than one million British thermal units per hour." Solid fuel burning devices specifically exclude most masonry fireplaces and certain other heaters and stoves. The bill permits the Environmental Quality Commission to adopt a wide range of implementation regulations and standards that are more stringent.

It also requires a seller's property disclosure statement to each buyer who makes a written offer to purchase property.

Effective date: January 1, 2010

CONSTRUCTION CONTRACTORS / NOTICE TO OWNERS **ORS 87.093, 701.035 – 701.305** **2009 OR LAWS CH 408 (SB 203)**

Under current law, an original contractor must provide the Information Notice to Owner to a residential owner when the contract price exceeds \$1,000. SB 203 raises this threshold to \$2,000. This is consistent with the requirement for a written contract noted in ORS 701.305 and the requirements for other residential notices. The bill also changes the definition of "residential property" for these notices.

Effective date: January 1, 2010

The amendments to ORS 87.093 apply to residential construction or improvement contracts that a contractor enters into on or after January 1, 2010. The amendments to ORS 701.063 apply to applications to the CCB received on or after January 1, 2010. The amendments to ORS 701.305 apply to written contracts delivered to an owner on or after January 1, 2010.

CONSTRUCTION CONTRACTORS / CONSUMER NOTICES
ORS 701.305 - 701.335
2009 OR LAWS CH 409 (SB 205)

SB 205 revises the statutes dealing with notices for residential projects to clarify that the notices must be provided not only to owner-occupants but also to original purchasers (if there were no prior owner-occupants). Thus, the statute now covers homes built on speculation (spec homes). The affected notices include the offer of warranty (ORS 701.320), the consumer notice (ORS 701.330), and the recommended maintenance schedule (ORS 701.335). The maintenance schedule no longer needs to be acknowledged in the written contract; however, contractors must now provide a schedule when they make the written offer of warranty. In addition to custom projects, contractors must now give a written offer of warranty on spec houses.

The bill also revises the “one-day cancellation” right to clarify that it does not apply to spec homes.

Effective date: January 1, 2010

The amendments to ORS 701.305, 701.320 and 701.335 apply to written contracts that a contractor enters into on or after January 1, 2010.

LIENS / MORTGAGES / TRUST DEEDS

LIEN RELEASE DEPOSITS
ORS 87.076 - 87.088
2009 OR LAWS CH 513 (HB 2349)

HB 2349 revises the procedures used to release a property from a construction lien claim.

A person submitting a cash deposit to the county treasurer previously needed a court order to receive any investment income from that cash deposit. Under HB 2349, the treasurer must pay the investment income to the depositor when the treasurer otherwise distributes the money from the deposit. The bill expressly states that the depositor bears the risk of loss resulting from the investment.

Previously, when cash deposits were made, many lien claimants formerly named the county treasurer as a defendant in the lien foreclosure lawsuit. HB 2349 specifically prohibits naming the treasurer or the county as defendants.

HB 2349 creates a new provision that allows the treasurer to notify the parties how the treasurer intends to distribute the money. If either party objects within 10 days, the treasurer will either hold the money pending a court order or commence an interpleader action under ORCP 31.

If the lien claimant fails to foreclose its lien, under HB 2349 the person depositing the funds has the ability to notify the lien claimant and the treasurer that the suit was not timely commenced. The notice must give the lien claimant 15 calendar days to object to release of the lien and return of the money.

The bill provides that these statutes do not create a cause of action and may not be used to assert a negligence per se action.

Effective Date: January 1, 2010

The amendments apply to a surety bond or money that is filed or deposited in connection with a demand for a release of a perfected lien on or after January 1, 2010.

SALES OF FORECLOSED PROPERTY
ORS 86.755, 86.770, 88.070; SB 952
2009 OR LAWS CH 883 (HB 3004)

HB 3004 applies to a lender that lends a large percent of the purchase price of a residence secured by a trust deed and at the same time lends the remaining balance to the same borrower secured by a junior lien. Under HB 3004, after the beneficiary forecloses on the first lien, the beneficiary cannot sue for a deficiency on the junior lien. (This protection does not apply when the beneficiary sells or assigns the junior lien to a third party.)

The bill also establishes a procedure for persons to get notice of trustees’ sales rescheduled after bankruptcy stays are lifted. Under current law, the trustee must send an amended notice of the sale by registered or certified mail to persons who were present at the time set for the original sale and who provided their addresses to the trustee. HB 3004 adds a procedure for Oregon State Bar members to obtain notice by certified mail. The trustee may dispense with these mailed notices by posting the amended notice on the trustee’s Web site.

HB 3004 also contains amendments to resolve conflicts with SB 952.

Effective date: August 4, 2009

The amendments to ORS 86.755 apply to sales that occur on or after August 4, 2009. The amendments to ORS 86.770 and 88.070 apply to a trust deed or mortgage or a note, bond, or other obligation secured by a trust deed or mortgage that was executed before on or after August 4, 2009.

TRUSTEE'S NOTICE OF SALE
ORS 86.750, 86.780
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 of SB 239 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 that the grantor did not receive written and actual notice of the sale.

Effective date: June 4, 2009

The amendments apply to trustees' sales that occur on or after June 4, 2009.

FED ON FORECLOSED PROPERTY
ORS 105.115, 105.130
2009 OR LAWS CH 638 (SB 241)

SB 241 amends ORS 105.115 to clarify that purchasers of property in judicial foreclosures, judicial sales, strict foreclosure, and deed in lieu of foreclosure may use the FED (forcible entry and detainer) statutes.

Effective date: The amendments apply to FED proceedings or actions that begin on or after June 30, 2009.

RESIDENTIAL PROPERTY FORECLOSURES
ORS 86.750, 2008 OR LAWS CH 19
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

This law applies to notice of sale sent on or after September 28, 2009 [the 60th day following July 30, 2009]. The amendments do not apply to property secured by trust deed that a governmental agency holds for a loan

the government agency funded through a government program. The amendments to ORS 86.750 by Sections 4 and 6, become operative on January 2, 2012. Section 3 of SB 628 is repealed on January 2, 2012.

REAL ESTATE SERVICE PROVIDERS

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.

MORTGAGE LOAN ORIGINATORS

**ORS 59.840 - 59.992, 446.691 - 446.741,
697.612, 725.010 – 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 2189, 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.

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.

EXCHANGE FACILITATORS

2009 OR LAWS CH 858 (HB 3484)

HB 3484 creates a regulatory structure for “exchange facilitators,” who are persons in the business of assisting customers with complying with IRS requirements for tax-free exchanges of property, particularly deferred tax-free exchanges of real property. The bill also creates a private right of action against exchange facilitators.

Effective date: January 1, 2010

Sections 1 to 6 of the Act are repealed on January 2, 2014.

TAXES / ASSESSMENTS

\$15 FILING FEE

**ORS 205.320, 205.323, 294.184, 294.187,
306.815, 458.610 - 458.655**

2009 OR LAWS CHAP 18 (HB 2436)

This bill adds an additional \$15 fee to each recorded document in Oregon. This fee does not apply for recording certified copies of judgments or lien record abstracts, or

satisfactions of judgment. These additional fees will be sent to a County Assessment and Taxation Fund created under new ORS 294.187.

Effective date: September 28, 2009

HISTORIC PROPERTY TAX INCENTIVES

ORS 93.040, 358.475 - 358.545

2009 OR LAWS CH 892 (SB 192)

Commencing with the 2010 property tax year, SB 192 makes wide-ranging changes in the historic property special assessment program, including reducing the term of each partial exemption period from 15 years to 10 years and adopting a minimum investment requirement.

Effective date: September 28, 2009

Section 7 of the Act applies to tax years beginning on or after July 1, 2010.

Caution: New forms for historic property designation and reporting.

MISCELLANEOUS

JUDGMENT REMEDIES FOR CHILD SUPPORT

ORS 18.180

2009 OR LAWS CH 354 (HB 2278)

HB 2278 amends ORS 18.180 by providing that judgments for child support expire after 35 years rather than 25 years.

Effective date: January 1, 2010

This bill applies to all judgments entered before, on, or after January 1, 2010, but does not operate to revive any judgment remedies that expired before January 1, 2010.

BANKRUPTCY HOMESTEAD EXEMPTIONS

ORS 18.345 – 18.912

2009 OR LAWS CH 612 (HB 2306)

HB 2306 increases the amount of value of vehicles and homesteads exempt from sale on execution of bankruptcy proceedings. It provides that the homestead exemption is applicable to floating homes and manufactured dwellings; the vehicle amount increased from \$2,150 to \$3,000; the homestead amount increased from \$30,000 to \$40,000, and for two or more members of a household in the same property it increased from \$39,600 to \$50,000.

Effective date: June 26, 2009

The amendments to apply only to executions issued on or after June 26, 2009.

TRUSTS & ESTATES

**ORS 24.260, 36.250, 36.600, 60.001,
62.015, 63.001, 65.001, 67.005, 70.005,
84.004, 86.205, 87.700, 95.200, 98.302,
105.624, 130.010, 205.010, 520.005,
648.005**

2009 OR LAW CH 294 (HB 2313)

HB 2313 prevents efforts to deed property to estates and trusts instead of to the personal representative or the trustee. It removes the phrases from the definitions of person found in various statutes related to real estate, but, this change was not made to all statutory definitions related to business entities.

Effective date: January 1, 2010.

**SOCIAL SECURITY NUMBERS
ORS 130.355 – 130.860
2009 OR LAW CH 363 (HB 2360)**

HB 2368 relates to privacy and seeks to prevent identity theft. This bill provides that only the last four digits of a settlor's Social Security number is included in certain trust related proceedings.

Effective date: January 1, 2010

The amendments apply only to petitions filed, notices given, and certifications of trust furnished on or after January 1, 2010.

**FACILITY SALES
ORS 90.820**

2009 OR LAWS CH 295 (HB 2383)

HB 2383 provides a 14-day right of first refusal to a tenants' association, facility purchase association, or tenants' association supported nonprofit organization to an offer or agreement by the owner to sell a manufactured dwelling park or marina to the association.

Effective date: January 1, 2012

This law applies to facilities for which the owner gives notice as required by ORS 90.760(2) or 90.810 on or after January 1, 2012.

**RE-RECORDING CERTIFIED COPIES FOR
INSTRUMENT CORRECTION
ORS 205.244**

2009 OR LAWS CHAP 302 (HB 2560)

The re-recording of certified copies of instruments with erroneous information is now allowed so long as documents specifying the error are recorded at the same

time to correct the deficiency. HB 2560 requires a cover sheet to be included and no alteration to the certified copy of the document being corrected.

The bill requires the cover sheet to contain the following language:

“RERECORDED AT THE REQUEST OF _____ TO CORRECT _____ PREVIOUSLY RECORDED IN BOOK _____ AND PAGE _____, OR AS FEE NUMBER _____.”

Effective date: January 1, 2010

**RECORDATION OF INSTRUMENTS IN COUNTY RECORDS
ORS 87.517, 87.539, 205.246
2009 OR LAW CH 628 (HB 2759)**

HB 2759 creates a form for correcting errors in recorded trust deeds and provides that long-term care liens be indexed in the statutory lien records instead of in the deed and mortgage records.

This bill addresses the problem that county clerks have no clear way to record corrections to information in a trust deed. The changes to indexing of long-term care liens do not change the procedure to enforce the liens, but are intended to make them easier to locate within county records.

Effective date: January 1, 2010

This law applies to liens recorded on or after January 1, 2010, and to discharges or releases of those liens.

**REASONABLE MODIFICATIONS BY DISABLED TENANTS
ORS 659A.145
2009 OR LAWS CH 109 (SB 58)**

SB 58 deals with the situation in which a disabled tenant needs to make a reasonable modification to existing premises. Under SB 58, the landlord may condition permission for the tenant to make the modification on the tenant's agreement to restore interior of premises to pre-modification condition.

Effective date: May 21, 2009

The amendments apply only to unlawful and discriminatory practices occurring on or after May 21, 2009.

INTERVENORS IN HOUSING DISCRIMINATION CASES
ORS 659A.850
2009 OR LAWS CH 110 (SB 59)

SB 59 allows BOLI to award attorney fees and prevailing party costs to a party who intervenes in an administrative case involving allegations of housing discrimination under ORS 659A.145, ORS 659A.421, or federal housing laws.

Effective date: July 1, 2009

The amendments apply only to proceedings commenced on or after July 1, 2009.

SMALL ESTATE AMOUNTS INCREASE
ORS 114.515
2009 OR LAWS CH 413 (SB 235)

HB 235 increases the value of estate for which a small estate affidavit may be filed. It provides that the total value of the estate may not be greater than \$275,000, of which not more than \$75,000 may be personal property and not more than \$200,000 may be real property.

Effective date: January 1, 2010

The amendments apply only to decedents who die on or after January 1, 2010.

CONDOS/PLANNED COMMUNITIES
ORS 94.572 – 94.733, 100.020 – 100.640;
2003 OR LAWS CH 803
2009 OR LAWS CH 641 (SB 963)

SB 963 revises various provisions governing condominiums and planned communities. It defines who can serve as a director; provides for a dissolved association to continue and provides for reinstatement; provides that unless the board determines that a reserve fund is adequately funded they cannot waive assessments to the fund; requires recording of amendments to bylaws; provides for granting of leases, easements, rights of way, and licenses by the association on common property if not governed by bylaws; allows for investment in certificates of deposit; and specifies the components of an amendment to a condominium plat.

Effective date: January 1, 2010

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