

### Cases of Note

**NONJUDICIAL FORECLOSURES:** In *Brandrup v. ReconTrust Co.*, 353 Or 668 (2013), the Oregon Supreme Court answered four certified questions from the U.S. District Court of Oregon: (1) The Mortgage Electronic Registration Systems, Inc. (MERS), which is not a lender, may not be a trust deed’s “beneficiary,” unless it is a lender’s successor in interest; (2) MERS is not eligible to serve as the “beneficiary” because the trust deed designates the lender as the beneficiary and does not convey to MERS the beneficial right to repayment; (3) ORS 86.735(1) does not require recordation of “assignments” of a trust deed by operation of law that result from the transfer of the secured obligation; (4) MERS holds neither the legal nor the beneficial interest in the trust deed, and, therefore, it cannot hold or transfer legal title to the trust deed; and MERS’s authority, if any, to perform any act in the foreclosure process must derive from the beneficiary and its successors in interest. ([www.publications.ojd.state.or.us/docs/S060281.pdf](http://www.publications.ojd.state.or.us/docs/S060281.pdf))

**NONJUDICIAL FORECLOSURES:** In *Niday v. GMAC Mortgage, LLC*, 353 OR 648 (2013), the Oregon Supreme Court found that there was a genuine issue of material fact whether MERS had authority to foreclose the trust deed as the agent of the lender’s successors in interest. ([www.publications.ojd.state.or.us/docs/S060655.pdf](http://www.publications.ojd.state.or.us/docs/S060655.pdf))

**CIVIL PROCEDURE:** In *Bell v. Tri-Met*, 353 Or 535 (2013), the Oregon Supreme Court held that the three-year time limit in ORS 30.075(1) is a limitation on the commencement of a survival action for personal injuries by a personal representative and, as such, is superseded by the two-year limitation period for the commencement of a tort action against a public body under ORS 30.275(9). ([www.publications.ojd.state.or.us/docs/S060373.pdf](http://www.publications.ojd.state.or.us/docs/S060373.pdf))

**TORTS:** In *Doe v. Lake Oswego School District*, 353 Or 321 (2013), the Oregon Supreme Court held that the applicable limitations period on a tort claim does not begin to run until the plaintiff has discovered or is deemed to have discovered not only the conduct of the defendant but also the tortious nature of that conduct. Whether a plaintiff knew or should have known the tortious nature of a defendant’s act is generally a question of fact. The court must consider the plaintiff’s circumstances, including the plaintiff’s status as a minor, the relationship between the parties, and the nature of the harm suffered. ([www.publications.ojd.state.or.us/docs/S059589.pdf](http://www.publications.ojd.state.or.us/docs/S059589.pdf))

**FAMILY LAW:** In the case of *In re the Marriage of Matar and Harake*, 353 Or 446 (2013), the Oregon Supreme Court held that, pursuant to ORS 107.104 and 107.135(15), a court may enforce an agreement between parents not to seek modification of the child support terms of a stipulated judgment of dissolution unless to do so would violate the law or contravene public policy. ([www.publications.ojd.state.or.us/docs/S060064.pdf](http://www.publications.ojd.state.or.us/docs/S060064.pdf))

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