



The Voice of Oregon Banking

2013 OREGON LAWS IMPACTING BANKS



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INTRODUCTION

The 2013 Oregon Legislative Session concluded the afternoon of July 8, 2013. After almost six months in Salem and the introduction of more than 2500 bills, the session came to a close with the passage of more than 800 bills.

From a political point-of-view, the 2013 session was a departure from the 2011 session. Democrats regained control of the legislature by picking up four seats in the House. Democrats also retained their one vote majority in the Senate. With John Kitzhaber in the Governor's office, Democrats controlled the agenda and major policymaking levers in Salem during the session.

OBA's government relations team was hard at work throughout the session advocating on behalf of the banking industry. Despite the challenges of lingering, albeit diminished, "anti-bank" rhetoric, OBA moved forward with a successful session. In terms of pro-active legislation, OBA successfully passed revisions to the Bank Act (House Bill 2070) -- a precursor to an upcoming, more comprehensive Bank Act review taking place prior to the 2015 session. OBA also introduced three bills related to the taxation and regulation of credit unions. The bills would have mandated greater disclosures from credit unions about their efforts in their communities (House Bill 2484), introduced a CRA-like requirement for credit unions (House Bill 2485), and required certain credit unions engaged in commercial lending to pay corporate tax (House Bill 2486). Although these bills did not ultimately pass -- nor did OBA anticipate passage of the package this session -- the bills did provide an important opportunity to educate legislators on issues related to credit union expansion into commercial banking without equitable taxation and regulation.

Foreclosure was once again a major issue during the session. In the closing hours of the February 2012 session, the legislature passed Senate Bill 1552 requiring mediation prior to foreclosing a residential deed of trust. The bill, which was not properly vetted and was poorly constructed, created a multitude of problems and risks for banks seeking to protect their collateral by foreclosing a deed of trust. Senate Bill 1552, coupled with an Oregon Court of Appeals ruling in *Niday v. GMAC Mortgage LLC, et al.*, one week after Senate Bill 1552 went into effect, brought non-judicial foreclosure in the state largely to a halt.

Following the effective date of the bill and the court ruling, OBA assembled a work group of stakeholders to analyze *Niday* and the impacts of Senate Bill 1552. Hundreds of hours were spent by the work group formulating a fix to the problems created by the court ruling and the bill. The product of this work group was Senate Bill 804 (2013), which included an extensive list of changes to allow non-judicial foreclosure to once again function properly in the state. Although Senate Bill 804 was not ultimately the vehicle for reforming the foreclosure process in Oregon -- that bill was Senate Bill 558 (2013) -- many of the changes advocated by OBA were included in the final bill that was eventually signed by the Governor.

Despite many of the successes that OBA had during the session with respect to its pro-active efforts, OBA also had to contend with a variety of problematic bills aimed at banks and the greater business community. Many of these bills, if passed as originally drafted, would have added additional costly and burdensome regulations. OBA and its business partners were successful in many instances in amending particularly troublesome bills or stopping them altogether. Just a small sample of the bills that were stopped included a bill to tax bank-owned life insurance, bills that would have further complicated and stifled mortgage lending in the state, a variety of bills designed to burden employers, and bills to increase the tax burden on business.

In addition to OBA's government relations team's efforts in the capitol, OBA successfully deployed its Banker/Legislator Contact Program for the first time during the 2013 session. Each legislator was matched with at least one banker. In addition to relationship building and providing perspectives about the banking industry, these grassroots bankers communicated with lawmakers on important legislation during the session. Many legislators came to rely on their local banker contact to help them understand the many facets of legislation impacting the banking industry.

Once again, OBA's success this session was thanks in large part to the time and expertise provided by hundreds of Oregon bankers who participated in OBA's committees and were active on the grassroots level. This input was invaluable and provided critical understanding on hundreds of bills that OBA tracked during the session. We truly are indebted to these tireless bankers that provided so much of their time and energy. Whether testifying at a committee, taking part in Bankers Day, being active on the grassroots level, or simply participating and offering input during our OBA committee meetings, OBA banker involvement was truly invaluable this session.

As always, should you have any questions regarding the bills included in this digest, or questions about legislation that did or did not pass in 2013, please contact the OBA government affairs team.

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OBA 2011-2013 GOVERNMENT RELATIONS COMMITTEE

OBA committees played a key role in reviewing and advocating on hundreds of legislative issues during the 2013 session. OBA is grateful for the time and effort put forth by hundreds of volunteer Oregon bankers that serve on OBA committees. Special thanks are extended to the members of the **2011-2013 OBA Government Relations Committee** listed below:

CHAIR: Gary Prophet

Bank of Eastern Oregon
Heppner, OR

Dave Howell

Wells Fargo
Phoenix, AZ

Tom Perrick

JPMorgan Chase & Co
Portland, OR

Melvin Beck

Umpqua Bank
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Portland, OR

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Heritage Bank
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Tom Hosea

KeyCorp
Tacoma, WA

Tim Otani

Union Bank
Everett, WA

Ken Yates

Umpqua Bank
Portland, OR

Estates and Trusts

The 2013 session witnessed several changes to the law concerning estate planning and trusts. The OBA worked closely with our partners in the legal community with respect to several of these measures, including revisions to the Oregon Uniform Trust Code (See Senate Bill 592 below). A bill to create an Oregon Public Guardian and Conservator in the office of the Long Term Care Ombudsman was considered (House Bill 2671), but failed to receive the necessary support to get out of committee. A bill providing that Oregon Estate Tax is not due unless the value of the Oregon taxable estate exceeds \$5 million was also introduced (Senate Bill 671), but failed to receive a committee hearing. The following are the important changes concerning estates and trusts that passed during the 2013 legislative session.

House Bill 2570: Fee Recovery in Protective Proceeding

HB 2570 provides that funds of a person subject to a protective proceeding may be used to pay for the reasonable fees, costs and disbursements of the services related to the protective proceeding. The bill clarifies when court approval is required for payment of fees from the funds of a person subject to a protective proceeding. It also specifies the factors for the court to consider in determining whether to award attorney fees in a protective proceeding and in determining the amount of attorney fees to award. HB 2570 prohibits a reviewing court from modifying a lower court decision making or denying an award of attorney fees except upon a finding of abuse of discretion.

Reference: Chapter 99

Statutory Changes: Creates new provisions; amends ORS 125.095.

Effective Date: January 1, 2014

House Bill 3129: Fiduciary Certification

HB 3129 prohibits a person from being nominated as a fiduciary or serving as a fiduciary for three or more protected persons, who are not related to the person, unless the person or individual responsible for making decisions for clients or for managing client assets for the person, is certified by the Center for Guardianship Certification or its successor organization. An exemption to this provision for financial institutions, as defined in ORS 706.008, and trust companies, as defined in ORS 706.008, is found in ORS 125.242.

Reference: Chapter 690

Statutory Changes: Amends ORS 125.240.

Effective Date: January 1, 2014

Senate Bill 592: Revisions to the Oregon Uniform Trust Code

During the 2013 session, the Oregon Law Commission spearheaded an effort to revise and update Oregon's Uniform Trust Code (OUTC). The product was SB 592 which passed late in the session.

SB 592 makes a number of revisions to OUTC. Among other things, the bill: (a) creates new definitions for "remote interest beneficiary" and "secondary beneficiary"; (b) modifies the definition of "interested person" for non-judicial settlement agreements; (c) redefines "charitable trust" to exclude trusts where the combined interests of all charitable beneficiaries do not constitute more than the interest of a remote interest beneficiary; (d) clarifies that a settlement agreement does not constitute a "transfer" in violation of a spendthrift provision; (e) clarifies that assets in an irrevocable trust will not be subject to the claims of the settlor's creditors just because the trustee may pay or reimburse the settlor for payment of a tax on principal or income of the trust; (f) revises the definition of "pretermitted child"; (g) revises provisions on delegation of authority between co-trustees and on court removal of a trustee; (h) provides for successor trustees and courts to get reports from former trustees, and for former trustees to be compensated for production of such reports; (i) modifies rules on compensation of multiple trustees or where fees have been paid to third parties; (j) clarifies that a trustee is not required to object to modification, reformation or termination solely because of the trustee's duty to administer the trust or duty of loyalty; (k) revises rules on full and partial distributions; (l) provides for removal of a trust advisor; (m) adds new provisions allowing trustees to send beneficiaries proposals for actions, and barring objection after 45 days; and (n) adds a new section on abatement (the full or partial failure of a gift made under the trust) and includes an amendment setting forth the order of abatement.

Reference: Chapter 529

Statutory Changes: Creates new provisions; amends numerous ORS Chapter 130 provisions.

Effective Date: June 26, 2013

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Mortgage and Foreclosure

Mortgage foreclosure remained a major issue during the 2013 legislative session. Lawmakers returned to Salem intent on addressing a variety of problems with the ill-vetted foreclosure mediation program hastily passed in the waning hours of the February, 2012 session (Senate Bill 1552). The OBA, in a pro-active effort to address the many shortcomings of the mediation program introduced its own foreclosure mediation fix bill, Senate Bill 804. While SB 804 did not ultimately pass, many aspects of the bill -- a product of countless hours of work by the OBA, its member banks, title companies, credit unions, lawyers and other interested partners -- were incorporated into the mortgage foreclosure "fix" bill that passed the legislature, Senate Bill 558 (see below). While not perfect, SB 558 fixes and clarifies a number of issues with the foreclosure mediation program.

OBA also sought to address an Oregon Court of Appeals ruling in the *Niday v. GMAC Mortgage et al.*, case that was handed down one week after SB 1552 went into effect. The combination of the *Niday* decision and the problems associated with the foreclosure mediation program, effectively stopped non-judicial foreclosure in Oregon. Prior to a legislative fix to *Niday* being considered by the legislature, the Oregon Supreme Court handed down its ruling in *Niday* in June. The Supreme Court's ruling appears to create a path forward for banks in Oregon to return to non-judicial foreclosure.

In addition to SB 558 and the issues related to the *Niday* decision, legislators attempted to advance a number of other foreclosure related bills. Almost daily throughout the session OBA's government relations team was defending the industry against onerous mortgage foreclosure measures that would have only added additional cost, delay and regulatory burden to an already complex mortgage lending and foreclosure process. While some bills passed, such as House Bill 2662 (neglected foreclosed property maintenance), others were stopped. Bills that did not advance include the following: House Bill 2399 (requiring that each transfer, assignment or conveyance of the beneficial interest in a note that is evidence of an obligation the grantor owes, and that is secured by a trust deed on residential property, be recorded); House Bill 2400 (removing the exemption for beneficiaries from the requirement to mediate with grantors before foreclosing a residential trust deed); House Bill 3319 (imposing a tax on mortgage interest due lenders on residential real estate loans when the loan amount exceeds the value of residential property); and House Bill 3499 (prohibiting a beneficiary or trustee from selling or offering for sale real property acquired as result of a residential trust deed foreclosure unless the beneficiary or trustee tests the property for contamination from methamphetamine manufacturing and discloses the test results, in writing, to a prospective purchaser).

The following are the important legislative changes concerning foreclosure that passed the 2013 legislature.

House Bill 2568: Amended Notice of Sale

HB 2568 was introduced at the request of the Debtor-Creditor Section of the Oregon State Bar. Under ORS 86.755(12)(a), if a trustee's sale in a trust deed foreclosure is stayed by court order, bankruptcy proceedings or for any other lawful reason, after the stay is released, the foreclosure may proceed, so long as the trustee sends out an amended notice of sale within 30 days. HB 2568 provides that this amended notice of sale must reflect any changes in the grantor's default situation. For example, if a portion of the defaults specified in the original notice of default or in the original notice of sale were cured during the time the foreclosure proceedings were stayed, or if additional defaults occurred, the trustee would be required to describe in the amended notice of sale those defaults that existed on the date the stay was terminated.

HB 2568 also fixes a problem created by the foreclosure mediation bill passed in 2012, SB 1552. When SB 1552 became effective, notices of postponement of a trustee's sale had to be personally served. This was sometimes difficult if not impossible if the homeowner had already moved. It was also expensive because all other parties, including junior lienholders, also had to be personally served. Under HB 2568, for notices of postponement sent after January 1, 2014, the notice need only be served by mail, first class and certified returned receipt requested.

Reference: Chapter 76

Statutory Changes: Creates new provisions; amends ORS 86.755.

Effective Date: January 1, 2014

House Bill 2569: Law Practice Permitted to Act as Trustee

HB 2569, also introduced at the request of the Debtor-Creditor Section of the Oregon State Bar, would permit "law practices" to be named as Trustees on Oregon Trust Deeds. ORS 86.790 already permits any attorney who is an active member of the Oregon State Bar to be named as Trustee. This bill would permit the attorney's law firm (as opposed to the individual attorney) to be the Trustee.

Reference: Chapter 125

Statutory Changes: Amends ORS 86.705 and 86.790.

Effective Date: January 1, 2014

House Bill 2662: Neglected Foreclosed Property Maintenance

The original version of HB 2662 introduced at the beginning of the session would have permitted local governments to levy daily fines on an owner of abandoned property that was deemed "neglected". The OBA, in conjunction with a coalition of stakeholders including Realtors and cities, not only raised a variety of concerns and problems associated with this initial approach, but also the approach ultimately adopted by lawmakers. Among these

concerns were those related to potential conflicts between the bill and existing local nuisance ordinances, the costs for banks, and issues related to trespass. Despite these serious concerns, lawmakers advanced the bill through the legislative process.

HB 2662 imposes new responsibilities on "owners" of vacant "foreclosed residential real property". The version of HB 2662 that was signed into law defines an "owner" as a person (other than a local government) that forecloses a trust deed on "residential property" (1-4 dwelling real property, condo units, manufactured dwellings and floating homes). "Foreclosed real property" means residential property (see ORS 18.901) that an owner obtains as a result of foreclosing a trust deed on the residential property or receiving a judgment that forecloses a lien on the property. At first glance, it may appear that anyone who owns residential real property that has been foreclosed upon would be subject to the anti-neglect provisions of the bill. Given the definitions of "owner" and "foreclosed real property", however, a person who is in title to such foreclosed property is an "owner" only if that person did the foreclosure. If a trust deed beneficiary completes a foreclosure and the buyer at the foreclosure sale is someone other than the trust deed beneficiary, the anti-neglect provisions will not apply because the buyer at the sale is not the "owner" as defined in the bill.

Under HB 2662, an "owner" may not "neglect" the owner's foreclosed residential real property at any time the property is vacant. "Neglect" is defined as (a) failure to maintain buildings, grounds and appurtenances so as to allow excessive foliage growth, trespassers or squatters to remain, mosquito larvae/pupae to grow or other conditions causing a public nuisance; or (b) failure to monitor the condition of the property by inspecting at least once every 30 days. Key provisions of the bill requires the owner of foreclosed property that is vacant to: (a) provide the owner's (or the owner's agent's) name, telephone number and other contact information to the local government or neighborhood association for the neighborhood; and (b) post a durable notice in a conspicuous location on the foreclosed residential real property listing the phone number for the owner or for the local government that may be called to report neglect. This notice must be maintained on the property during all times when the property is vacant. The bill empowers a local government to address violations of the "no neglect" requirement by notifying the owner of the problem, giving the owner not less than 30 days to correct the problem, and remedying problems that aren't resolved during the grace period. Any "reasonable costs" incurred by the local government in remedying a problem would be a priority lien against the property.

The term "local government" is not defined in the bill, however, it is presumed this would be the city, if the property is located within the boundaries of a city, or the county if the property lies outside the city limits. The bill does not set forth a model form for owners to use in complying with its notice requirements. In fact, the bill does not require that owners satisfy the first requirement (identifying and giving contact information for the owner or agent) in writing, but it would be prudent to do so, so that the owner will have a record of compliance. The second notice requirement (posting a durable notice in a conspicuous place on the property) does require a writing, however, the bill does not provide a model form.

Reference: Chapter 317

Statutory Changes: Creates new provisions.

Effective Date: June 6, 2013

House Bill 2688: Filing Statement of Accounts for Chattel Foreclosure

HB 2688 increases from \$250 to \$1,000 the value of chattel for which a person that forecloses a lien on chattel by sale must file a statement of account with the recording officer of the county in which the sale takes place.

Reference: Chapter 206

Statutory Changes: Creates new provisions; amends ORS 87.202.

Effective Date: January 1, 2014

House Bill 2822: Publication and Posting of Notice of Execution Sales of Real Property

HB 2822 modifies the requirements for sheriffs conducting execution sales of real property. The bill provides that before an execution sale of real property takes place, the sheriff shall post notice of the sale on the website established under ORS 18.926, for at least 28 days, and publish the notice of sale in a newspaper of general circulation as defined in ORS 193.010 in the county where the real property is located, once a week for four successive weeks. The sheriffs of the state would be required to maintain a website for posting these notices. The new requirements for the sheriff to publish and post notices of the execution sales would apply only to execution sales for which the sheriff receives instructions on or after August 1, 2013.

Reference: Chapter 464

Statutory Changes: Creates new provisions; amends ORS 18.924 and 18.926.

Effective Date: June 24, 2013

House Bill 2929: Rescission of Trustee's Sale

HB 2929 concerns the non-judicial foreclosure of a deed of trust. The bill would permit a trustee to rescind a trustee's sale and void the trustee's deed if within 10 calendar days after the sale the trustee asserts that a bona fide error occurred during the sale a) in the setting, advertising, or specification of the opening bid amount for the property that is the subject of the trustee's sale; b) in providing a correct legal description of the property; or c) in complying with a requirement or procedure that is imposed by law. The bill also provides that a trustee's sale can be set aside if the grantor and beneficiary agreed to a foreclosure avoidance measure that would postpone or discontinue the trustee's sale or if the beneficiary accepted funds to reinstate the trust deed. Notice of the rescission of the sale would have to be given within ten

calendar days after the sale, not just to the purchaser but to anyone whom notice of the sale was given. The trustee would also be required to refund the purchase price to the purchaser within three calendar days after the date displayed on the rescission notice. Given the provisions of the bill, trustees should consider not paying over cash proceeds of a trustee's sale to the beneficiary until the time for rescission has expired. If the trustee rescinded a trustee's sale and voided the trustee's deed as provided above, the trustee, not later than twenty-one days after the date of the trustee's sale, must present for recording an affidavit stating that the trustee provided a notice of rescission and must identify the trust deed that was subject to the rescinded trustee's sale and the voided trustee's deed.

In addition to the above, the sponsors and advocates of the bill, despite objections by the OBA and the Secretary of State, insisted on additional amendments to ORS 86.790. The amendments require financial institutions, trust companies and title insurance companies and their affiliates that act as a trustee under a trust deed to obtain a certificate of authority from the Secretary of State, unless the trustee has registered with or obtained a certificate of authority from the Department of Consumer and Business Services. By its nature, this requirement will not apply to Oregon state-chartered banks.

Reference: Chapter 465

Statutory Changes: Creates new provisions; amends ORS 86.705, 86.755 and 86.790.

Effective Date: January 1, 2014

House Bill 3389: Foreclosure of Residential Trust Deeds and Short Sales

HB 3389 would generally prohibit beneficiaries from requiring non-profit corporations, as a condition of offering or approving a short sale, to enter into an agreement with the beneficiary or grantor that limits or bars the grantor from owing or occupying the property after the short sale. The bill provides four exceptions in which this prohibition would not apply: a) if the beneficiary does not receive notice before the short sale that the nonprofit entity or grantor intends for the grantor to continue to own or occupy the property after the short sale; b) the grantor does not allow the beneficiary reasonable access to the property for inspection or appraisal of the property; c) if offering or approving the short sale would require the beneficiary to breach a contractual obligation to another person with respect to a residential trust deed that was recorded before the effective date of the bill; or d) offering or approving the short sale would require the beneficiary to breach a legal obligation that is not based on contract.

In addition to the above, HB 3389 addresses two issues related to the foreclosure mediation program in the state. First, the bill resolves a problem with the definition of "residential trust deed" created by the foreclosure mediation bill that passed in 2012, SB 1552. The issue dealt with whether the grantor or a family member resided in the property at the time the default that results in an action to foreclose first occurs, which in many cases is very difficult to determine. The revised definition in the bill focuses on who is living in the property at the time the trust deed is recorded. Second, HB 3389 clarifies that a certificate of compliance issued under the foreclosure avoidance program (which is good for one year from the date of

issuance) must only be valid and unexpired at the time the notice of default is recorded or judicial foreclosure is filed. It does not matter that the certificate expires prior to the completion of the foreclosure.

Reference: Chapter 625

Statutory Changes: Creates new provisions; amends ORS 86.705 and 86.735.

Effective Date: July 19, 2013

SB 558: Foreclosure Mediation Reform

On June 4, 2013 the Governor signed Senate Bill 558 ("the Bill") which reforms the mandatory foreclosure mediation program enacted in February, 2012 by SB 1552. OBA, its policy committees, bank counsel, lobbying team and stakeholders spent a great deal of time attempting to fix the poorly constructed and ill-vetted mediation program created by SB 1552. As noted above, OBA introduced its own foreclosure mediation fix, Senate Bill 804 ("SB 804"), during the session. While SB 804 was not ultimately the legislative vehicle for fixing the mediation program, many of the changes contemplated by SB 804 made their way into the Bill and HB 3389 (see above).

The Bill borrows much from the mediation program established by SB 1552, however, it makes a number of procedural and substantive changes. The Bill extends the requirement of mediation, now referred to as a "resolution conference", to judicial foreclosures (in addition to non-judicial foreclosures). Prior to initiating foreclosure, judicial or non-judicial, the beneficiary is obligated to request a resolution conference with the grantor, who has 25 days to respond and pay a fee in order to trigger the resolution conference. A resolution conference is defined as a meeting at which the grantor and beneficiary attempt to negotiate and agree upon a foreclosure avoidance measure (FAM). The Bill calls for a service provider ("SP") to be hired by the Attorney General ("AG") who would be responsible for appointing a facilitator (formerly called a mediator) to act as the intermediary between the beneficiary and the grantor. Late this spring the AG selected Mediation Case Manager to serve as the SP. The Bill also gives the AG authority for rulemaking prior to the effective date of the Bill. OBA was very active in the rulemaking process after passage of the Bill.

The Bill makes changes to SB 1552's framework in several key areas. The following is a brief summary of those major changes:

- The exemption to the resolution conference process is available to any beneficiary, regardless of their licensure or legal status, commencing less than 175 foreclosure actions (judicial or non-judicial) in the previous calendar year, as opposed to 250 in SB 1552. To be exempt, beneficiaries must file an affidavit with the AG before January 31st in any calendar year in which the beneficiary intends to claim the exemption, or prior to filing a notice of default or commencing suit.

- In lieu of a notice 30 days prior to sale required by SB 1552, the Bill creates a new notice requirement. This new notice must be given by all beneficiaries, whether exempt or not. The beneficiary must notify the grantor and AG in writing within 10 days when the beneficiary “determines that a grantor of a residential trust deed is not eligible for a FAM or that the grantor has not complied with the terms of a FAM to which the grantor has agreed”. Beneficiaries should think very carefully before choosing not to give this notice, regardless of what the beneficiary has or has not determined. The beneficiary now must only prove “substantial compliance” with the “plain language” requirement for this notice.
- The Bill caps fees for the resolution conference to a maximum of \$200 for grantors and \$600 for beneficiaries, the specific amounts being set by the AG (during rulemaking, the AG determined that grantors must pay \$175 and beneficiaries \$525). The Bill further provides that before the beneficiary is required to submit documents or pay the fee, the grantor must pay their fee and submit documentation to the SP.
- If the grantor responds to the request for a resolution conference, pays the fee, and performs certain tasks, the beneficiary must participate in a resolution conference with the grantor to gain a certificate of compliance needed to initiate foreclosure. If the grantor does not pay the SP the fee or meet other requirements after receiving the notice, the SP cancels the resolution conference. Once the resolution conference is cancelled by the SP, the SP must issue a certificate of compliance to the beneficiary within 5 days. These provisions replace requirements in SB 1552 that required non-exempt lenders to provide notices to borrowers about mediation at least 60 days prior to filing a foreclosure.
- Similar to the “at-risk grantor” provision in SB 1552, the Bill allows a grantor to initiate a process resulting in a resolution conference with the beneficiary at any time, but requires the grantor to obtain certification from a housing counselor that the grantor is more than 30 days in default or that the grantor has a financial hardship under which the housing counselor believes the grantor may qualify for a FAM. Banks that are exempt under the Bill are not required to participate in a resolution conference with an “at-risk grantor” unless the bank so chooses.
- A certificate of compliance received by the beneficiary expires one year after it is issued, and the foreclosure must be commenced within this time period. HB 3389 (see above) provides that the certificate is only needed to commence a foreclosure and need not be unexpired when the foreclosure is completed.
- Penalties for non-compliance include enforcement action by the Attorney General under the Unlawful Trade Practices Act under ORS 646.607, subject to enforcement under ORS 646.632. Private rights of action for non-compliance, however, are specifically prohibited.
- The Bill requires the grantor to be present in person at the resolution conference, unless “compelling circumstances” prevent attendance. The beneficiary may send an agent to the resolution conference to participate in person if the agent has “complete authority to negotiate on the beneficiary’s behalf and commit the beneficiary to a

foreclosure avoidance measure” or, if the agent does not have such authority, to include a party by remote communication who does.

The foreclosure mediation program itself became operative on August 4, 2013. Temporary rules were finalized by the AG at the end of July and can be accessed by going to the following website: http://www.doj.state.or.us/consumer/pages/foreclosure_mediation_rules.aspx. Permanent rules concerning the program must be put into place by January 31, 2014. OBA will be participating and commenting on rules during the permanent rulemaking process as it unfolds during the fall. Bankers impacted by the foreclosure mediation program are strongly encouraged to notify OBA of potential concerns related to the foreclosure mediation program.

Reference: Chapter 304

Statutory Changes: Creates new provisions; amends numerous ORS provisions.

Effective Date: June 4, 2013

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Bank Operations

Legislation related to bank operations worked its way through the legislative session in 2013. Of particular note was a bill introduced by the OBA that made several technical changes to the Oregon Bank Act (see House Bill 2070 below). The bill sailed through the legislature and was promptly signed by the Governor. The changes in HB 2070 are a precursor to a more comprehensive review and updating of the Bank Act that will be undertaken by OBA in preparation for the 2015 session. The legislature also spent time examining the direct deposit of wages (see House Bills 2207 and 2683), further interchange regulation (House Bill 2379) and a variety of other bills. HB 2379 would have prohibited a person or entity that issues a credit card or debit card, or that provides service as a payment card network, from restricting or prohibiting a merchant from a) disclosing the amount of interchange transaction fees or network fees that the merchant pays to a person, b) specifying the minimum dollar amount for which a merchant will accept a credit card or debit card as payment in a retail transaction, or c) offering other persons discounts for using a payment method other than a credit card or debit card in a retail transactions. This bill failed to pass out of committee. The following are bills related to bank operations that passed during the 2013 session.

House Bill 2070: Bank Act Revisions

HB 2070, requested by the OBA, amended four statutes within the Oregon Bank Act. ORS 707.670 was amended to provide authority to the Director of the Department of Consumer and Business Services (DCBS) to determine the frequency in which a bank's board of directors must meet. Prior to the change, the law provided that meetings of a bank's board of directors must be held at least once every month. ORS 707.740 was amended to provide that a copy of a bank's audit report needs to be transmitted to the Director of DCBS only upon the request of the Director, and not automatically within five days of the report being recorded in the minute book of the banking institution. The change also removed the requirement that the report be a certified copy. ORS 708A.120 was updated to allow banks to make investments in limited liability companies, as well as corporations, under specified circumstances. Finally, ORS 708A.410 was changed to permit banks to allow depositors to make "inadvertent overdrafts" to their savings accounts. An overdraft of a savings account is deemed "inadvertent" if: a) the bank's bylaws or deposit agreement does not expressly provide for overdrafts; b) the overdraft results are from events or circumstances beyond the bank's control; and c) the overdraft is eliminated within fourteen days after the bank becomes aware of it. As indicated above, OBA will be conducting a comprehensive review of the Oregon Bank Act in anticipation of introducing legislation during the 2015 legislative session to update the Act.

Reference: Chapter 104

Statutory Changes: Amends ORS 707.670, 707.740, 708A.120, and 708A.410.

Effective Date: January 1, 2014

House Bill 2207: Direct Deposit of Wages for State Employees

HB 2207 provides that payment of state payroll and itemized statements of payroll deductions are to be provided to recipients via electronic deposit to the financial institution specified by the recipient unless the recipient requests to receive payment by check or to receive a paper statement of itemized deductions. The bill applies to state employees. A similar bill was crafted for private employees (see House Bill 2683 below).

Reference: Chapter 369

Statutory Changes: Creates new provisions; amends ORS 292.026, 292.032, 292.033, 652.110, and 652.610.

Effective Date: June 13, 2013

House Bill 2528: Removes Loan Cap for Repayment of Interest

Current Oregon law provides that on real estate loan agreements of \$100,000 or less, if the borrower must pay taxes, insurance or similar charges on an installment basis to the lender, the lender must pay interest on the amounts so paid. This bill would remove the \$100,000 cap, making the interest payable requirement applicable to all such real estate loan agreements.

Reference: Chapter 200

Statutory Changes: Amends ORS 86.205.

Effective Date: January 1, 2014

House Bill 2590: Clarification of UCC as to Certain Fund Transfers

HB 2590, introduced at the request of the Oregon Law Commission in support of the National Conference of Commissioners on Uniform State Laws, amends ORS 74A.1080. Article 74A provides rules governing commercial wire transfers. Section 74A.1080 currently provides that chapter 74A does not apply to transfers that are governed in whole or in part by the federal Electronic Fund Transfer Act (EFTA). The federal Dodd-Frank Act amended the EFTA, and under these amendments, the EFTA will govern “remittance transfers” – transfers requested by a consumer to a person in a foreign country where the transfer is initiated by a person or financial institution that provides remittance transfers for consumers in the ordinary course of business. Once these provisions took effect, chapter 74A would not govern remittance transfers, even if they are not “electronic fund transfers” as defined in the EFTA. HB 2590 adds language stating that Article 74A applies to funds transfers that are “remittance transfers” under EFTA unless the transfer is an “electronic fund transfer” as defined in the EFTA.

Reference: Chapter 23

Statutory Changes: Amends ORS 74A.1080.

Effective Date: April 2, 2013

House Bill 2683: Direct Deposit of Wages for Private Employees

HB 2683, introduced at the request of Associated Oregon Industries will permit employers to pay wages through direct deposit (without discount) into an employee's Oregon financial institution account. This can be done without agreement between the employee and employer. The bill provides, however, that an employer shall pay wages due to an employee by check upon written or oral request of the employee.

Reference: Chapter 380

Statutory Changes: Amends ORS 652.110.

Effective Date: January 1, 2014

Senate Bill 183: Notices from the Department of Revenue

SB 183 allows the Department of Revenue (DOR) to give notice by a method other than regular mail, where notice by regular mail is required, if: a) the DOR enters into an agreement with the person entitled to notice indicating that the person has affirmatively indicated that the DOR may use means other than regular mail; and b) the DOR is not expressly prohibited by law from using another means of notification.

Reference: Chapter 298

Statutory Changes: Creates new provisions.

Effective Date: October 7, 2013.

Senate Bill 184: Service of a Notice of Garnishment by the State or County Tax Collector

Certain state agencies and county tax collectors can issue notices of garnishment, as an alternative to garnishing by means of a writ of garnishment. Under current law, the notice of garnishment must either be delivered in person to the garnishee or sent to the garnishee by certified mail. SB 184 also permits delivery of the notice of garnishment to the garnishee by ordinary first class mail or by any other delivery method to which the garnishee has agreed. The caveat is that the garnishor can seek sanctions against the garnishee for non-compliance only if the notice was personally delivered or sent to the garnishee by certified mail.

Reference: Chapter 472

Statutory Changes: Creates new provisions, amends ORS 18.854.

Effective Date: June 24, 2013.

Senate Bill 185: Department of Revenue Warrants and Notice of Garnishment

SB 185 pertains to warrants of garnishment issued by the Oregon Department of Revenue (DOR). The bill provides that the DOR can garnish merely by sending the garnishee the notice of garnishment, and is not required to deliver the warrant or a true copy of the warrant to the garnishee. In addition, the bill provides that the person issuing the notice of garnishment no longer has to sign the notice. The notice of garnishment, however, must include the name of the person issuing the notice on behalf of the DOR.

Reference: Chapter 405

Statutory Changes: Creates new provisions, amends ORS 18.855.

Effective Date: June 13, 2013

Senate Bill 396: Modification to Exemptions and Execution Provisions

SB 396 exempts from execution a debtor's right to assets held in, or the right to receive payments under, a medical savings account or health savings account authorized under section 220 or 223 of the Internal Revenue Code. The bill was amended late in the session to also include a provision that would allow an Oregon resident filing for bankruptcy to claim either the exemptions established by federal law or exemptions established by state law. If a resident uses any of the federal exemptions provided in section 522(d) of the Bankruptcy Code for purposes of a bankruptcy petition, the resident may not use any of the exemptions given under state law. If a resident uses any of the exemptions given under state law for purposes of a bankruptcy petition, the resident may not use any of the federal exemptions provided in section 522(d) of the Bankruptcy Code. The provisions related to the use of federal exemptions in bankruptcy does not apply to executions.

As a side note, consumer advocates also sought to amend the bill to substantially increase the homestead exemption in Oregon to between \$125,000 to \$175,000. These amendments, however, were not included in the bill that passed the legislature.

Reference: Chapter 597

Statutory Changes: Creates new provisions; amends ORS 18.300, 18.345, 18.845 and 18.896.

Effective Date: July 1, 2013

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Human Resources

The 2013 session once again witnessed the introduction of a number of human resource related measures. As has been the case in recent sessions, several of these measures sought the further expansion of family leave laws. OBA, in partnership with its business partners, was able to stop the majority of these onerous and costly measures. Bills related to paid sick leave were also introduced during the session, but were not enacted (House Bill 3390 & Senate Bill 801). Other bills concerning human resources that were introduced included a bill that would have established a short-term disability insurance program (House Bill 2645), a bill that would have extended the statute of limitations for filing a civil complaint based on an alleged unlawful practice (Senate Bill 394), and a measure that would have expanded worker wage claims and created a new super-priority lien against an employer's personal and real property to secure payment of that claim (Senate Bill 573). These bills died at adjournment. The following are some of the human resource measures that passed the legislature during the session.

House Bill 2654: Employee Social Media Passwords

HB 2654 prohibits an employer from requiring or requesting that an employee or applicant for employment provide access to a personal social media account, add the employer to a social media contact list or to allow the employer to view the employee's or applicant's personal social media account. The bill prohibits retaliation by an employer against an employee or applicant for refusal to provide access to social media accounts or to add an employer to a contact list. At the request of OBA and other stakeholders, the bill was amended to include language to protect broker dealers and their ability to comply with federal regulation.

Reference: Chapters 204

Statutory Changes: Creates new provisions.

Effective Date: January 1, 2014

House Bill 2950: Family Leave to Deal with a Death in the Family

HB 2950 permits eligible employees to take family leave to deal with the death of a family member including attending the funeral of a family member, making arrangements necessitated by the death of a family member or for grieving the death of a family member. Under ORS 659A.150, a "family member" is the employee's spouse, biological, adoptive or foster parent or child, grandparent or grandchild, parent-in-law or person with whom the employee was or is in a relationship of *in loco parentis*. The bill limits the period of leave to two weeks that must be completed within 60 days of the date on which the employee receives notice of the death of a family member. The bill also requires that the leave be counted toward the total period of authorized family leave (twelve weeks) within any one-year period.

Reference: Chapter 384

Statutory Changes: Amends ORS 659A.156, 659A.159, 659A.162, 659A.165, 659A.177 and 659A.186.

Effective Date: January 1, 2014

House Bill 3436: Establishing the Oregon Retirement Savings Task Force

HB 3436 as originally introduced would have created the Oregon Retirement Savings Investment Board and directed the board to develop recommendations for establishing the Oregon Secure Retirement Plan for individuals and employees in the private sector. The proposal failed to garner enough support to move out of committee and was drastically narrowed. The amended version that ultimately passed created a task force, the Oregon Retirement Savings Task Force. The purpose of the task force is to develop recommendations for increasing the percentage of Oregonians saving for retirement or enrolled in a retirement plan, and for increasing the amount of those individual's savings. The task force must report back to the legislature with its recommendations on or before September 1, 2014.

Reference: Chapter 714

Statutory Changes: Creates new provisions.

Effective Date: August 1, 2013

Senate Bill 1: Leave for Veterans on Veterans Day

SB 1 requires employers to provide paid or unpaid time off for Veterans Day to employees who are veterans. Time off is required if the employee would otherwise have to work on that day and the employee provides the employer: a) at least 21 days notice that the employee intends to take time off for Veterans Day, and b) documents showing that the employee was a veteran as defined in ORS 408.225. Employers are required to notify the employee fourteen calendar days before Veterans Day whether the employee will be provided time off and whether it is paid or unpaid. The bill provides that if the time off would cause the employer to suffer "significant economic or operational disruption, or an undue hardship as defined in ORS 659A.121", the employer is not required to provide the time off.

Reference: Chapter 28

Statutory Changes: Creates new provisions.

Effective Date: April 4, 2013

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General Issues

As mentioned previously more than 2500 bills were introduced during the 2013 session. While it is difficult to summarize every bill that could be captured in a “general issues” section, the following represent bills impacting the banking industry. The following is a collection of general issue bills that passed during the session that may impact banking.

House Bill 2205: Elder Abuse Prevention

HB 2205 is a follow up bill to HB 4084 concerning elder abuse prevention that passed during the 2012 February session. OBA was an active participant on the Elder Abuse Prevention Task Force in 2011 and 2012 that helped formulate HB 4084 which helps facilitate better communication between banks and law enforcement on matters related to elder abuse prevention.

In 2013 OBA again played a major role on the Elder Abuse Prevention Task Force and the creation of HB 2205. The portions of the bill applicable to the banking industry address the production of bank records to law enforcement. The bill provides that when a financial institution's customer records are subpoenaed in connection with an elder or incapacitated person abuse investigation, the institution will have a reasonable period, but no more than ten business days, in which to produce the records. Originally, a shorter time period was sought given the time-sensitive nature of most elder abuse investigations. A compromise, however, was struck at ten business days. The bill mandates that when a financial institution provides customer records for an elder or incapacitated person abuse investigation, it must also provide an affidavit or declaration from the records custodian. The affidavit or declaration is designed to make the records admissible as evidence without requiring the banker to attend the legal proceeding. The bill also expands the list of those considered "mandatory reporters" of elder abuse. Bankers, however, were not included on that expanded list as advocated by OBA.

Reference: Chapter 352

Statutory Changes: Creates new provisions; amends numerous ORS provisions.

Effective Date: June 11, 2013

House Bill 2225: Removal of Or. Business Retention and Expansion Program Sunset

HB 2225 removes the January 1, 2022 sunset date for the Oregon Business Retention and Expansion Program (BREP). The BREP was created by Senate Bill 219 in 2011 with the purpose of creating a forgivable loan program within Business Oregon to certified employers so as to allow for expanded operations and increased hiring.

Reference: Chapter 572

Statutory Changes: Creates new provisions; amends Section 11, Chapter 549, Oregon Laws 2011.

Effective Date: January 1, 2014

House Bill 2296: Benefit Company

HB 2296 permits the creation of, or conversion of another business entity into, a benefit company that has the purpose of providing a general public benefit and possible specific public benefits. A "general public benefit" is defined as "a material positive impact on society and the environment, taken as a whole, from the business and operations of a benefit company. HB 2296 specifies the approval requirements from holders of equity interests in a benefit company. The bill prescribes the requirements for and duties of a benefit governor (a director of a benefit company) and specifies the limits on a benefit governor's liability. The bill also requires an annual benefit report be given to each of the holders of an equity interest in the benefit company and to have the report posted on the company website.

Reference: Chapter 269

Statutory Changes: Creates new provisions.

Effective Date: January 1, 2014

House Bill 2323: Amendments to the Oregon Growth Board

HB 2323 builds on the work done during the 2012 session on House Bill 4040 (2012) establishing the Oregon Growth Board (OGB). The function of the OGB essentially remains the same under HB 2323. There are, however, several housekeeping changes that were included in HB 2323. The bill repeals the sunset date relating to the OGB and Oregon Growth Fund (OGF) that was to take effect on June 30, 2013. HB 2323 requires the OGB to adopt rules for evaluating the performance of investments made by the OGB. The OGB is also required to report annually to the Legislative Assembly regarding implementation and administration of the OGB and investments made by board. The bill allocates lottery money (approximately \$1.9 million was included in the bill) to the Oregon Business Development Department and to the OGF to carry out its functions and duties.

Reference: Chapter 732

Statutory Changes: Creates new provisions; amends numerous ORS provisions.

Effective Date: August 14, 2013

House Bill 2524: Construction Licensing Exemptions

HB 2524 limits the exemption from construction contractor licensing requirements for surety companies, commercial lending institutions, holding companies of a commercial lending institution, subsidiaries of a commercial lending institution, subsidiaries of a holding company of a commercial lending institution, real estate managers, and suppliers of workers. These entities (and others set forth in the statute) remain exempt from licensure requirements if the entity arranges for the completion, repair or remodel of a structure -- in which the company, institution, holding company or subsidiary holds a legal or security interest -- by one or more licensed contractors. At the request of the OBA, the bill also increased the maximum amount for work of a casual, minor or inconsequential nature that is exempt from licensing requirements. The exemption doubled from \$500 to \$1,000.

Reference: Chapter 378

Statutory Changes: Creates new provisions; amends ORS 701.010.

Effective Date: January 1, 2014

House Bill 2700: "Aggie Bond" Program

HB 2700 directs the Oregon Business Development Department (OBDD), in consultation with the Oregon Department of Agriculture and potential lenders, to create the "Beginning and Expanding Farmer Loan Program". The program is similar to "aggie bond" programs in other states. The purpose of the program is to facilitate the making of loans to beginning farmers and to finance the acquisition of approved agricultural projects. HB 2700 provides OBDD authority to adopt rules for the operation of the program, to define terms and to establish an application process for the program, and set criteria and eligibility standards for beginning farmers and lenders to participate in the program. The bill authorizes the State Treasurer to issue revenue bonds upon the request of the OBDD to finance agricultural projects determined eligible for financing. Before revenue bonds may be issued for the program, an agricultural project must be determined to be eligible for a loan and the beginning farmer must be qualified by a lender to receive the loan.

Reference: Chapter 742

Statutory Changes: Creates new provisions.

Effective Date: October 7, 2013

House Bill 2834: Revised Uniform Law on Notarial Acts

HB 2834 repeals most of ORS Chapter 194 (governing notaries public) and replace it with the Revised Uniform Law on Notarial Acts, which was drafted by NCCUSL and adapted for Oregon enactment by an Oregon Law Commission task force. The bill does a number of things, including the following:

- Updates the rules regarding notarization of electronic instruments;
- Permits the use of (but does not mandate the acceptance of) expired passports and other government identification documents to identify an individual, so long as the expiration occurred not more than 3 years before the performance of the notarial act;
- Allows notaries to refuse to perform a notarial act if the notary is not satisfied that the individual is competent or is signing knowingly and voluntarily, or if the individual has failed to provide sufficient information or identification to confirm the person's identity (so long as refusal to notarize is not prohibited by other law);
- Provides statutory forms for notarial acknowledgments;
- Revises the rules regarding notarial journals, requiring retention of the journal for 10 years after the performance of the last notarial act recorded in the journal, and requiring delivery of the journal to the Secretary of State when a notary's commission is revoked, or upon the death or incapacity of the notary;
- Makes it voluntary to record certain actions, such as protests of commercial paper and administering an oath or affirmation in the journal;
- Replaces ORS 194.070 with a new section pertaining to the protest of commercial paper by notaries. A notary could protest such paper if the notary is: a) an officer or employee of a financial institution, trust company or investment company; b) an individual serving under the direct supervision of an officer or employee of any of such institutions; or c) an active member of the Oregon Bar or someone serving under the direct supervision of an Oregon lawyer. The new section prohibits notaries from protesting commercial paper owned or held for collection by a financial institution, trust company or investment company if the notary is individually a party to the paper;
- Repeals ORS 194.100 and replaces with language pertaining to the powers of a notary who is a shareholder, director, officer, employee, member or partner of a business entity. Such a notary may take an acknowledgment of any party to an instrument executed to or by the entity, and administer an oath to any other shareholder, director, officer, employee, member or partner or any agent of the entity; but may not take the acknowledgment of an instrument executed to or by the entity if the notary is a party to the instrument, either individually or as a representative of the entity;
- Provides for disposition of a notary's record of commercial protests upon the notary's departure from office; and
- Revises the provisions regarding fees that may be charged by notaries, generally limiting the fee to \$10 per notarial act, and requiring fee-charging notaries to display (in English) the list of fees.

Reference: Chapter 219

Statutory Changes: Creates new provisions; amends numerous ORS provisions.

Effective Date: May 23, 2013

House Bill 3459: Creation of the Office of Small Business Assistance

HB 3459 creates the Office of Small Business Assistance in the Oregon Secretary of State's office. The bill has been touted as a mechanism to help facilitate interactions between small businesses and state agencies. Among other things, the office will: assist small business with inquiries and requests to state agencies related to administrative, regulatory and enforcement functions; provide small business the opportunity to comment and offer feedback on state agency audits, inspections, or compliance related efforts; and assist in dispute resolution between small business and state agencies. A "small business" is a prospective, new or established business with 100 or fewer employees that is or will be established in Oregon.

Reference: Chapter 699

Statutory Changes: Creates new provisions; amends ORS 56.041.

Effective Date: July 29, 2013

Senate Bill 246: Establishment of OR Industrial Site Readiness Program

SB 246 requires the Oregon Business Development Department (OBDD) to establish and administer the Oregon Industrial Site Readiness Program (OISRP). The OISRP is designed for purposes of entering into tax reimbursement arrangements with, or to make loans to, qualified project sponsors for development of certified, regionally significant industrial sites. The bill allows OBDD to forgive portions of loans where the project sponsor contracts with an eligible employer. Loan forgiveness, however, is limited to the lesser of the percentage of eligible site preparation costs or the estimated incremental income tax revenues. There is a cap for the program of not more than \$10 million per year of the authorized amount of tax reimbursement arrangements and loan amounts. Eligible employers and project sponsors must submit a report to OBDD of the annual amount of taxable income and total compensation paid to employees. The Oregon Department of Administrative Services must certify to the Department of Revenue, the Legislative Revenue Officer and the Legislative Fiscal Officer the annual amount of estimated incremental income tax revenues beginning with the tax year following the fifth tax year in which project sponsor was qualified. The Department of Revenue must transfer 50 percent of the certified estimated incremental income tax revenues to the OIRSP Fund.

Reference: Chapter 763

Statutory Changes: Creates new provisions; amends ORS 285C.635 and 316.502.

Effective Date: October 7, 2013

Senate Bill 520: Technical Changes to Credit Union Statutes

SB 520 is the credit union industry's "technical fix" bill. The bill makes a number of changes to Oregon's credit union law. The bill does a variety of things:

- It revises the "wild card" statute, providing that Oregon state credit unions will have the powers and authorities available to federal credit unions and will, in addition, have the powers possessed by an out-of-state credit union doing business in Oregon upon review and approval of the Department of Consumer and Business Services (DCBS). A credit union that wants to exercise wild card authority must first give forty-five days written notice to the Director of DCBS of the credit union's intent to exercise the power.
- The bill deletes subsections from ORS 723.276 that permit the directors to employ a president, general manager or similarly titled officer and to appoint a security officer.
- Similarly, 723.296 is amended to delete authority for the board to perform other duties directed by the members and to perform or authorize actions not inconsistent with the chapter and not specifically reserved by the bylaws to the members.
- 723.512 is amended to increase from \$15,000 to \$100,000 the amount of a wholly or partially unsecured loan a credit union is permitted to make to a member.
- 723.840 is revised to modify certain provisions limiting the liability of credit union officers and directors. Part of these changes appear to be modeled after corresponding provisions in the Oregon Bank Act.
- The bill repeals 723.332, which authorizes a credit union's supervisor committee to call a special membership meeting to consider violations of the chapter, the articles or bylaws, or any action alleged to be unsafe or unauthorized.

Reference: Chapter 480

Statutory Changes: Amends ORS 181.871 and numerous ORS Chapter 723 provisions.

Effective Date: January 1, 2014

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PUBLIC FUNDS

During the 2013 session lawmakers once again modified the statutes related to public funds. Compared to prior years, however, there were few measures that passed related to the treatment of public funds. The following are public funds measures that passed during the 2013 session.

House Bill 2140: Investment of Funds in Commingled Investment Pool

HB 2140 authorizes the discrete investment of funds of political subdivisions in any commingled investment pool established by the State Treasurer for investment of funds of state agencies or local governments. HB 2140 would enable local governments to access the Oregon Intermediate Term Pool which they are currently not able to access.

Reference: Chapter 192

Statutory Changes: Amends ORS 294.035.

Effective Date: May 22, 2013

Senate Bill 351: Tribal Investments in Local Government Investment Pool

SB 351 allows tribal governments to join other Oregon governmental entities and utilize the Oregon Short Term Fund for deposits. The fund is administered by the Oregon State Treasury. The bill, however, does not include tribes in the ORS Chapter 295 framework relating to public funds depositories.

Reference: Chapter 338

Statutory Changes: Amends numerous ORS provisions.

Effective Date: June 6, 2013.

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REAL ESTATE

Several measures came before the 2013 legislature with respect to real estate that were not related to the foreclosure issue. As discussed previously, a wide variety of foreclosure related bills, including bills to address Oregon's problematic foreclosure mediation program, were introduced in 2013. The following bills are real estate related matters, unrelated to foreclosure, that passed during the session.

House Bill 2061: Appraisal Management Company Payment to Appraisers

HB 2061 addresses the timeframe in which an appraisal management company (AMC) must make payment to an independent contractor appraiser. Bill supporters initially sought payment to appraisers within 30 days after the appraiser provides the completed appraisal report to the AMC. OBA successfully advanced a compromise amendment that set the timeframe for payment at 45 days, more reflective of timeframes utilized in other states.

Reference: Chapter 364

Statutory Changes: Creates new provisions; amends ORS 674.225.

Effective Date: January 1, 2014

House Bill 2239: Mortgage Loan Licensure for Subsidiaries

Current Oregon law (ORS 86A.100) provides that a bank holding company or financial holding company will not be considered a "mortgage banker" or "mortgage broker" merely because it holds a financial institution or its subsidiaries, as long as the appropriate regulatory authority is exercising control over or regulating or supervising lenders within the entity in their mortgage banking activities.

HB 2239, introduced at the request of the Department of Consumer and Business Services (DCBS), narrows that provision, leaving bank and financial holding companies outside the "mortgage banker" or "mortgage broker" definitions only if they do not "do more than control a subsidiary or affiliate ... and do not engage in the business of a mortgage banker or mortgage broker." Thus, subsidiaries (and holding companies that do more than control a subsidiary) that act as mortgage bankers or brokers would have to be licensed under the bill. DCBS indicated that it believes that approximately seventeen 'banks' in Oregon with subsidiaries may, be impacted by the bill. A number of those entities, however, are not members of OBA. A survey of OBA member banks that may be impacted by the bill did not yield major concerns.

Reference: Chapter 268

Statutory Changes: Amends ORS 86A.100.

Effective Date: January 1, 2014

House Bill 2417: Recording Fees Increase for Veteran Housing

HB 2417 provides for a \$5 increase in the fees a county clerk can charge for recording or filing documents or instruments affecting title to real property. The additional money would go to the Housing and Community Services Department (HCS) for housing-related programs. The bill also requires that 25% of moneys deposited with (HCS) be dedicated for the expansion of the state's supply of housing for low and very low income veterans and families of veterans.

Reference: Chapter 646

Statutory Changes: Creates new provisions; amends ORS 205.323, 306.815, 458.610, 458.650, 458.655, and 458.665.

Effective Date: January 1, 2014

House Bill 2531: Modifies Definition of Appraisal Management Company

HB 2531 expands the definition of “appraisal management company” (AMC) to include companies ordering appraisals for purposes not related to mortgage loans or mortgage securities. This change reflects the variety of AMC's in the marketplace and should not impact AMCs that are primarily focused on providing appraisal management services to financial institutions.

Reference: Chapter 272

Statutory Changes: Amends ORS 674.200.

Effective Date: January 1, 2014

House Bill 2856: Mortgage Loan Originator Licensing Exemption

HB 2856 exempts from mortgage loan originator licensing requirements individuals who, as a seller during any 12-month period, offers or negotiates terms for not more than three residential mortgage loans that are secured by a dwelling unit that did not serve as the individual's residence, unless the United States Consumer Financial Protection Bureau determines, on or after the effective date of the bill, that the definition of loan originator in section 1503 of Title V of the Housing and Economic Recovery Act of 2008 includes such an individual. Individuals claiming this exemption may not at any time hold more than eight residential mortgage loans without meeting licensure requirements set forth in ORS 86A.203.

Reference: Chapter 281

Statutory Changes: Creates new provisions; amends ORS 86A.203.

Effective Date: June 4, 2013

House Bill 3013: Exemption for Appraisals from Public Records Disclosure

HB 3013 excludes real estate appraisals submitted to a housing authority, as defined by ORS 456.005, an urban renewal agency, as defined by ORS 457.010, or obtained by the Housing and Community Services Department from public records disclosure. There is a narrow exception in existing law that says that the exemption from disclosure can be overcome if the "public interest requires disclosure in a particular instance".

Reference: Chapter 325

Statutory Changes: Amends ORS 192.501 to 192.502.

Effective Date: January 1, 2014

Senate Bill 34: Limits on Dept. of Veterans Affairs Loans

SB 34 limits the number of loans an eligible individual may receive or assume from the Department of Veterans' Affairs to four loans. The prior threshold was two loans.

Reference: Chapter 227

Statutory Changes: Amends ORS 407.205.

Effective Date: May 23, 2013

Senate Bill 35: Modifies Limit on Loan Amount from Dept. of Veterans Affairs

SB 35 modifies the limit on the amount of home and farm loans made by the Department of Veterans' Affairs. The bill provides that loans may not exceed the maximum loan-to-value ratio or combined loan-to-value ratio permitted by the United States Department of Veterans Affairs for its Home Loan Guaranty Program (38 U.S.C. 370 et seq.). The prior standard provided that loans could not exceed 100 percent of the net appraised value on homes that are real property.

Reference: Chapter 228

Statutory Changes: Amends ORS 407.225 and 407.305.

Effective Date: May 23, 2013

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TAX AND FEE RELATED MEASURES

Tax and PERS reform were front-and-center during the 2013 legislative session. Efforts were made by majority Democrats in the House and Senate to advance a program of modest PERS reform in addition to tax increases. Republicans sought greater PERS cuts, coupled with a small business tax cut. Ultimately a 'grand bargain' of PERS reform and increased tax revenue did not materialize during the session (although discussion were ongoing which could lead to a special session). Republicans would not provide the additional votes on increased revenue (House Bill 2456). Democrats agreed to very modest changes to PERS (House Bill 822), but failed to agree on a package of small business tax cuts for "pass through" entities (Subchapter S entities, limited liability companies, self-employment and partnerships).

A variety of tax related measures were introduced during the session, but did not pass thanks to efforts by the business community in which OBA participated. A sampling of these measures include the following: a) House Bill 3161 that would have required corporations doing business in Oregon to file a tax disclosure statement with the Secretary of State that would have required the disclosure of sensitive and confidential information; b) House Bill 3367 that would have taxed bank-owned life insurance; c) House Bill 2303 that would have revised the corporate minimum tax for C-corporations by imposing a tax based on a combination of a taxpayer's fixed assets, and Oregon sales and payroll for the tax year; and d) several measures that would have created an Oregon sales tax. HJR 10 was also introduced, but failed to pass. That measure would have sought to amend the Oregon Constitution to allow bills for raising revenue to pass with a simple majority in both houses of the legislature.

Unfortunately, one tax measure that the OBA fully supported did not pass. House Bill 2486 was introduced at the request of the OBA and would have imposed corporate excise tax on state-chartered and interstate credit unions that hold public funds deposits exceeding \$250,000 or commercial loans aggregating in excess of ten percent of the credit union's assets. Although the bill did not pass, it provided OBA an opportunity to educate lawmakers on the inequity that exists as a result of the credit union tax exemption. OBA looks forward to continue working with legislators to address this issue both on the state and federal levels.

The following are some of the tax related measures that passed the legislature this session.

House Bill 2002: Report on Expiring Tax Credits

HB 2002 directs the Legislative Revenue Officer to submit a report for each tax credit scheduled to expire in the following even-numbered year. The bill provides that the report is to be submitted prior to the beginning of each odd-numbered year's regular session to the committee related to revenue. The committee is then supposed to analyze policy impacts and goals of each credit.

Reference: Chapter 676

Statutory Changes: Creates new provisions.

Effective Date: January 1, 2014

House Bill 3367: Limitation on Tax Credit for Political Contributions

HB 3367 as introduced would have provided for the taxation of corporate and bank-owned life insurance (BOLI). These provisions were removed from the bill late in the session and a variety of tax related measures were put in its place.

One of the measures with implications for those that give to Oregon BankPAC, the Oregon banking industry's political action committee, was a limitation on the tax credit for political contributions. Section six of the bill provides that a taxpayer may not claim the \$50 political contribution tax credit (\$100 for those filing a joint return) if the taxpayer has a federal adjusted gross income in excess of \$200,000 on a joint return or \$100,000 on any other type of return.

Reference: Chapter 750

Statutory Changes: Creates new provisions, amends numerous ORS provisions.

Effective Date: October 7, 2013

House Bill 3477: Removal of Tax Exemption for Out-of-State Institutions

HB 3477, as initially introduced would have repealed ORS 317.057 and 713.300. These sections were added to Oregon's corporate tax law and to the Oregon Bank Act in 1999 to allow extra-national and out-of-state banks and savings and loans to make Oregon mortgage loans without having to become full-fledged Oregon deposit-taking banks and without being subjected to double taxation on income derived from Oregon mortgage loans.

At the urging of the OBA, provisions to repeal ORS 713.300 were removed from the bill. The repeal of ORS 317.057, however, remained in the bill and was passed by the legislature. With the repeal of ORS 317.057, out-of-state banks and extra-national banks and foreign associations will be subject to Oregon taxes, license fees and charges in order to do business in Oregon.

Reference: Chapter 614

Statutory Changes: Amends ORS 317.057.

Effective Date: January 1, 2014

House Bill 3495: Facilitators and Like-Kind Exchanges

HB 3495 requires persons that facilitate like-kind exchanges to make certain notifications and to provide bonds or other securities. The bill would also prohibit exchange facilitators from taking certain actions. OBA successfully obtained an amendment to the bill that provides that a financial institution is not an 'exchange facilitator' unless the financial institution is engaged in a business in which, for a fee, the financial institution enters into agreements with clients for the purpose of performing services as a qualified intermediary or an exchange accommodation titleholder.

Reference: Chapter 392

Statutory Changes: Creates new provisions.

Effective Date: January 1, 2014

Senate Bill 307: Multistate Tax Compact

SB 307 withdraws Oregon from the Multistate Tax Compact by repealing the compact. The bill further enacts the Multistate Tax Compact without articles applicable to income tax and apportionment of business income for corporate tax purposes.

Reference: Chapter 407

Statutory Changes: Creates new provisions; amends ORS 314.606 and 305.655.

Effective Date: October 7, 2013

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