

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Without Recommendation as to Passage, but with Amendments, and Be Printed Engrossed and Rescind the Subsequent Referral to the Committee on Judiciary and Be Referred to the Committee on Rules
Vote:	5 - 0 - 0
Yeas:	Baertschiger, George, Monnes Anderson, Prozanski, Shields
Nays:	0
Exc.:	0
Prepared By:	Channa Newell, Administrator
Meeting Dates:	4/10, 4/17

WHAT THE MEASURE DOES: Specifies negotiation, transfer, or assignment of note does not change designation of beneficiary of trust deed for foreclosure purposes. Clarifies definition of “residential trust deed” and “trust deed.” Specifies properly recorded trustee’s deed is adequate evidence of sufficient filing, but concludes recording is conclusive in favor of purchaser for value in good faith who relies upon trustee’s recording. Prohibits person designated as beneficiary from acting as trustee under trust deed, unless person is federal agency. Allows third party to rely upon designation of agent or nominee in trust deed or separate document unless termination of designee is properly recorded or third party had actual notice of termination. Identifies original beneficiary through recording of trust deed. Applies to all foreclosures by advertisement and sale commenced before, on, or after effective date. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Need to separate foreclosure mediation discussion from MERS discussion
- Oregon Court of Appeals decision in *Niday v. GMAC*
- Desire to delay legislation until Supreme Court decision issued on *Niday v GMAC*
- Effects of amendment and need for further negotiation and refinement

EFFECT OF COMMITTEE AMENDMENT: Replaces the original measure.

BACKGROUND: The Mortgage Electronic Registration Systems, Inc. (MERS) is an entity that bundles and sells mortgages to investors. MERS does not record every assignment of a trust deed with the county clerk and does not collect loan payments. In 2009, a trustee service provider issued a notice of default against a homeowner and scheduled a foreclosure sale on behalf of a MERS member. The homeowner sued to block the foreclosure sale, saying that MERS had failed to provide evidence that it had interest in the property. Eventually, the Oregon Court of Appeals held that since MERS cannot take loan payments, could not show its interest in the loan, and the mortgage holder had not recorded its assignment of the trust deed, MERS cannot be considered a beneficiary and so cannot foreclosure on the home. The decision of the Court of appeals in *Niday v GMAC* has been appealed to the Oregon Supreme Court.

Senate Bill 804-A updates Oregon’s trust deed recording statutes to address the issues raised by the Oregon Court of Appeals in the *Niday v GMAC* decision.