SB 1556 -9 STAFF MEASURE SUMMARY

Senate Committee On Rules

Prepared By: Josh Nasbe, Counsel
Meeting Dates: 2/27

WHAT THE MEASURE DOES:
Prohibits counties from filing a lawsuit based on a provision in a trust deed that identifies a nominee or agent of the lender as the grantee or beneficiary of the loan, based on the recording of any document that contains this statement or based on the failure to record the transfer of an interest in a trust deed in circumstances where a document transferring the interest is provided to a person. Expressly prohibits county clerk from charging a fee for certain documents that are not presented for recording. Applies to all lawsuits for which the court has not entered a final judgment. Declares emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:
-9 Exempts cases that were commenced before January 1, 2018.

BACKGROUND:
Like a mortgage, a trust deed operates to secure repayment of a loan used to purchase real property. Unlike a mortgage, however, there are three parties in a traditional trust deed arrangement; a borrower, a trustee and a beneficiary. The trustee holds the lien created by the trust deed and, in the event of a default, may sell the property to secure repayment to the beneficiary.

The Mortgage Electronic Registration System (MERS) is an entity developed by the real estate finance industry to facilitate the sale of secured loans on the secondary market. While MERS internally tracks the transfer of these loans on the secondary market, many of these transactions are not recorded by the County Clerk. Additionally, MERS adds a fourth party to the traditional three-party arrangement, serving as an agent or nominee of the beneficiary of the loan. In 2012, Multnomah County filed a lawsuit against MERS, challenging the practice of not recording these loans. The suit was settled in 2017. Currently, 11 other Oregon counties have filed suit against MERS on the same basis.

Senate Bill 1556 prohibits a county from filing a lawsuit based on three identified events. First, a county may not sue based on a statement in a trust deed that the lender's nominee or agent (e.g. MERS) is also the grantee or beneficiary of the loan. Second, a county may not sue based on the fact that the county recorded a document that states the lender's nominee or agent is also the grantee or beneficiary of the loan. Third, a county may not sue on the basis of failing to record an instrument that transfers an interest in a trust deed, provided that a person has been provided with the document transferring the interest. In addition, Senate Bill 1556 expressly prohibits a county clerk from charging a fee for the failure to record a document that transfers an interest in a trust deed, provided that a person has been provided with the document.