



## ALEX CUYLER

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DATE: February 12, 2019  
TO: Senate Committee on Judiciary  
RE: SB 380, relating to trust deeds

Dear Chair Prozanski and members of the Committee:

The Lane County Board of Commissioners was adamantly opposed to this measure when it was introduced in 2018 as SB 1556 and remains adamantly opposed to SB 380 as introduced. This measure is nothing less than part of a national effort to run roughshod over the unique authorities' counties has had since statehood to accurately maintain property ownership records.

These records are updated every day to ensure accuracy for a myriad of purposes, including for example the imposition of property taxes within Lane County which benefit each of the 83 taxing districts which provide critical services with that tax revenue.

We hope this Committee will proceed very cautiously when it comes to contemplating what it would mean to eliminate a county's ability to seek justice within a court of law. This particular issue is exceedingly complex and the presence of several Oregon lawsuits brought by counties over this issue is not unique. It is being played out across the United States with uncertain and varied outcomes for each side.

We would ask that the Committee contemplate the following:

- This measure usurps separation of powers and remedy provisions afforded by the Oregon Constitution. When initially brought in 2018 it clearly targeted an existent lawsuit filed in the Multnomah Circuit Court that 10 Oregon Counties brought against Mortgage Electronic Registration Systems, Inc. The lawsuit sought a remedy to damages the MERS system caused to county records that are statutorily directed to accurately identify any party asserting a lien on real property.
- In addition to MERS, which is a membership organization including mortgage banks, title companies, and title insurance companies, this measure would preclude Oregon's counties from bringing suit against ANY organization that seeks to similarly by-pass the county recording function. The Legislature's has authority over recording fees charged at County offices and in 2017 raised those fees significantly. While the upside of that action was to provide new revenue for housing projects, the downside it is that it creates additional incentive to offer services that can by-pass county property recordation.
- While no individual is required to record a mortgage in Oregon, it is the **ONLY** record that provides that individual with a **perfected** mortgage. In a mortgage loan transaction, perfecting a lien establishes a lender's priority against other creditors and gives it the right to foreclose if the borrower defaults on re-payments. Perfecting a mortgage ensures a host of rights to both the borrower and the owner of the loan. At least one county in Oregon has refused to record property transactions where MERS is the listed mortgagee and other counties may take similar action. If the Legislature believes it is good policy to ensure counties may not sue MERS, then please amend this bill to ensure MERS may not sue a county.