Comments on HB2459
House Judiciary Committee
Submitted by Hal Scoggins, Outside Counsel on behalf of the Northwest Credit Union Association

Credit unions are not-for-profit financial cooperatives, organized to meet the needs of their members. They are democratically owned and controlled institutions, governed by its members. Oregon's 59 credit unions serve over 2 million members – your constituents. Credit unions provide the financial services consumer need and want – home loans, car loans, business loans, savings and checking accounts, financial counseling and financial education programs.

HB 2459 is an attempt to provide a remedy for situations in which a subordinate lienholder has foreclosed on a property or received a deed-in-lieu of foreclosure and is unable to obtain payoff information from the senior lienholder in order to clear title to the property. As currently drafted, however, this is a case in which the cure is worse than the disease. The Northwest Credit Union Association (NWCUA) supports efforts to remove obstacles that prevent borrowers and other interested parties from obtaining balance and payoff information from a senior lienholder. Some changes to this bill are needed in order to achieve that goal without interfering with rights and processes that are already established in Oregon law.

1. HB 2459 should not apply when a non-judicial foreclosure is underway. ORS 86.786 and 86.789 already provide a mechanism for owners, occupants, junior lienholders, and other interested parties to obtain cure and payoff information from the foreclosure trustee when a non-judicial foreclosure has been initiated. If there is a problem with that process, it should be amended rather than creating a separate process that preempts it.

2. There is no reason for postponement of an established foreclosure sale date. When a lienholder forecloses, it is required to give notice to owners, occupants, and subordinate lienholders. These notices are given months before a sale date and include information about amounts necessary to cure the default and discontinue the foreclosure. And as noted above, existing statutes already provide a mechanism to obtain this information from the foreclosure trustee (who will not experience the same difficulties that other parties might have in contacting the servicer and obtaining updated information).

3. The delay requirement is too vague to be useful. While we do not believe a delay requirement is appropriate, if there is a delay requirement it should be for a specific number of days, not for a "reasonable" time. Establishing a requirement for delay without specifying the period simply invites litigation over what is a "reasonable" period.

4. The proposed treatment of a lien information statement as a payoff statement conflicts with existing law. Section 7 provides that the recipient of a lien information statement may treat that statement as a payoff statement as defined in ORS 86.157. However, it creates a different process for payoff than that established for payoffs under ORS 86.157, and does not allow for amendments that could be needed to reflect new lender expenditures for property maintenance or repairs or other expenditures required to safeguard the property. Instead, it requires the lienholder to release the lien if an authorized party pays the amounts shown in the payoff statement within 30 days after the statement. Rather than create a separate process, the statement should simply be treated as a payoff statement under ORS 86.157 and subject to the process specified in ORS 86.157.