

January 18, 2012

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Oregon Department of Justice  
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Mr. Dubanevich:

The following are comments of the UTA concerning proposed Temporary Rule OAR 137-020-0800. The UTA is an association of trust deed trustees that handle both trust deed foreclosures and trust deed lien releases (reconveyances) in a number of states, including Oregon. UTA member trustees operate in Oregon under ORS 86.705 et seq.

The term “mortgage loan servicer”, as used in the proposed rule, could be interpreted broadly to include attorneys representing residential mortgage lenders in a broad spectrum of legal matters, including collection and foreclosure matters and loan servicing disputes. Similarly, a broad construction of the term could catch in its dragnet ORS Chapter 86 trustees handling nonjudicial foreclosure payoffs. For that matter, it could also include licensed escrows handling real estate transactions that involve either the disbursement of escrow funds to satisfy a residential mortgage loan or involve the making of a new residential mortgage loan.

Is such a broad interpretation of “mortgage loan servicer”, one that includes attorneys and ORS Chapter 86 trustees representing residential mortgage lenders and licensed escrow agents handling residential real estate closings intended? If not, we respectfully request that specific exclusions from the definition of “mortgage loan servicer” be granted in the temporary order to attorneys in the course of their representation of residential mortgage lenders, Chapter 86 trustees in the direct and incidental discharge of their statutory and related duties under ORS chapter 86 and licensed escrow agents.

If including attorneys, trustees and escrow agents in the definition of “mortgage loan servicer” is intended, we think it’s a bad idea for the following reasons:

1. Putting trustees and attorneys in harm’s way in the discharge of their legal and ethical duties could make it difficult for residential mortgage lenders to find competent trustees and legal counsel to assist them in pursuing their legal rights and remedies.
2. Chilling legal representation for any client class is against the traditions of our legal system.

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3. Attorneys, who are expected to be disinterested advisors, counselors and legal representatives lose their independent status and their ability to give competent advice and counsel when they become a potential target, a real party in interest even, in a matter in which they've simply been engaged to represent a lender client.

4. Similarly, a trustee, if deemed a "mortgage loan servicer", could be cowed by a threatening borrower into a position of paralysis that is unfair to the lender under the circumstances, putting the trustee in the middle of a battle that actually should remain between the real parties in interest, namely the borrower and the lender.

5. Putting escrow agents in harm's way in residential real estate transaction could chill escrow agents from handling closings that involve satisfaction of existing loans or making new ones.

Please consider carving out exceptions from the definition of "mortgage loan servicer", exceptions that would include lenders' attorneys, ORS Chapter 86 trustees and licensed escrow agents.

Thank you.

T. Robert Finlay, Esq., Wright, Finlay & Zak  
President, UTA

cc: David Fennell, Esq., Routh Crabtree Olsen