

**Before the Senate Interim Committee on Consumer Protection and Public Affairs
Testimony of David E. Fennell on behalf of United Trustees Association**



**January 12, 2010
(Pertaining to SB 628 – 2009 and HB 3615 -- 2010)**

Thank you for the opportunity to appear before the Committee to discuss the observed effects of SB 628, enacted in 2009 pertaining to nonjudicial foreclosures. As you may recall, I testified before this Committee last year concerning SB 628. In doing so, I was appeared on behalf of United Trustees Association (“UTA”).

UTA’s membership is composed of entities and persons acting as trustees under real property deeds of trust, including employees of title companies, financial institutions, and independent trustee companies. Its members hail from nearly every state in which a nonjudicial, power of sale deed of trust foreclosure is provided for by statute or common law.

I am senior counsel in the firm of Routh Crabtree Olsen, P.S. (“RCO”), a law firm focusing on the rights of mortgage lenders to realize upon their security interest after an event of default. In addition to its main office in Bellevue, Washington, RCO has offices in Oregon, California and Hawaii and affiliate offices in Alaska, Arizona and Idaho. I am also an employee of Northwest Trustee Services, Inc., an affiliate of RCO that handles nonjudicial deed of trust foreclosures in seven states.

A member of the Oregon State Bar Association (admitted in 1984), I have been involved with all matters related to nonjudicial foreclosures in Oregon since 1985. During that time, I have served on various bar association committees charged with drafting, proposing and reviewing legislation aimed at amending the foreclosure process. I have also been involved with the processing of thousands of Oregon nonjudicial trust deed foreclosures over the course of my career.

After that rather lengthy introduction, I plan to keep my actual testimony brief and offer only the following:

1. SB 628 wasn't effective until nearly October of 2009. The new law has only been in effect three months, nearly a month less than it takes to complete a nonjudicial foreclosure in Oregon. Thus not one foreclosure file to which the new law applies is legally ripe for foreclosure sale yet.
2. Oregon was only one of probably twenty or more states last year to amend its foreclosure laws. Mortgage loan servicers have been working

feverishly to bring their systems and procedures into compliance with the new laws. Some are succeeding more quickly than others. Many, though, stopped referring foreclosure files in a given state until they could bring their systems and procedures into compliance with a given state's new laws.

3. Given the new law's very recent effective date and the mortgage loan servicers' reduction of foreclosure referrals to a slow trickle pending adaptation of their systems and procedures to bring them into compliance with the new law, I really cannot testify as to the new law's real world effectiveness except to say that, in cases where the borrower has returned the request for modification consideration form, the loan servicers have been conscientious in timely responding to the requests with one of the three responses mandated by SB 628, namely that the request is approved, that the request is denied or that more information is needed from the borrower.
4. SB 628 seems to open a conduit of communication between the borrower and the loan servicer, but it is not clear yet to what extent borrowers will avail themselves of that communication opportunity. Just as importantly, it is not yet clear that, given other conduits available, this one is even necessary.

I welcome your questions.