

## Effect of SB368 (2015) on Foreclosure Judgments on Residential Property

ORS 86.797 and ORS 88.010, and certain related statutes were amended by SB 368 in the 2015 term. Those amendments apply to pending cases, as well as new ones, and will require amendment and additional service of most residential foreclosure cases pending at the time of passage. Under (amended) ORS 86.797, “a judgment to foreclose a residential trust deed under ORS 88.010 may not include a money award for the amount of the debt against the grantor.” Complaints filed prior to the effective date of the Act, were required to seek a money judgment under (former) ORS 88.010; but, after the amendment to the statutes, residential real property foreclosure judgments cannot grant the relief sought because the legislature has prohibited the inclusion of a money award in those judgments. As a result, the court would be obliged to decline to grant judgment on the complaint as failing to allege a claim for the relief sought.

Under the amended statute, the court is to render judgment, if in favor of the plaintiff, in the form of a declaration; however, few if any complaints currently filed in residential mortgage cases ask for such relief. Therefore, in order to support a judgment, the complaints that do not seek declaratory relief at present, must be amended.

“A judgment for relief different in kind from or exceeding the mount prayed for in the pleadings may not be rendered unless reasonable notice and opportunity to be heard are given to any party against whom the judgment is to be entered.” ORCP 67 C. (In the case of multiple defendants, such as junior lienors, the declaratory relief is sought against *all* defendants; hence all must be served with the amended complaint seeking different relief.) A party in default must be served with the amendment in the manner of service of process. ORCP 9 A.

It follows that no new judgments for foreclosure of residential trust deeds, based on complaints not seeking declaratory relief, can be granted, without amendment and re-service as directed by ORCP 9A.

As to foreclosure of trust deeds or mortgages where a money judgment is allowed under the amended provisions, the judgment must provide for a deficiency judgment “if (b) the plaintiff requests the provision in the complaint.” ORS 86.797 (3) (b). (as amended, 2015). No deficiency judgment will therefore be allowed in any case, unless the plaintiff asks for one in the complaint.

In all cases the form of judgment must include a declaration of the amount the note is in default. ORS 88.010 (1) (a), and this raises the question whether such a declaration is additional or other relief, even in cases in which a money judgment is granted in cases other than residential trust deeds and mortgages. The resolution to this issue determines the availability of a judgment in such a case, based on a complaint which does not ask for a declaration (as well as a money judgment). The judges on the panel ~~has~~ have not yet been asked to consider this question.

The legislature has not altered the parties necessary for adjudication or method of service.