

**OREGON MORTGAGE LENDERS ASSOCIATION**

**FINAL  
LEGISLATIVE REPORT**

**2009 OREGON LEGISLATIVE SESSION**

**PREPARED BY:  
Markee & Associates, Inc.**

## 2009 Oregon Legislative Session

### LEGISLATIVE ACTIVITY SUMMARY

<u>POSITION</u>	<u>PASSED</u>	<u>FAILED</u>	<u>TOTAL</u>
S-1	1	0	1
S-2	1	2	3
S-3	1	3	4
<b>Total Support</b>	<b>3</b>	<b>5</b>	<b>8</b>
O-1	2	10	12
O-2	0	6	6
O-3	1	8	9
<b>Total Oppose</b>	<b>3</b>	<b>24</b>	<b>27</b>
Neutral	33	30	63
N/P	3	3	6
<b>Total</b>	<b>42</b>	<b>62</b>	<b>104</b>

### KEY

S-1	Support	Highest Priority
S-2	Support	Medium Priority
S-3	Support	Low Priority
O-1	Oppose	Highest Priority
O-2	Oppose	Medium Priority
O-3	Oppose	Low Priority
Neutral	Read bill, just track	
N/P	Have not assigned a priority on bill	

**OREGON MORTGAGE LENDERS ASSOCIATION  
FINAL LEGISLATIVE REPORT  
2009 REGULAR LEGISLATIVE SESSION  
BY: JIM MARKEE, MARKEE & ASSOCIATES, INC.**

The 2009 regular session of the Oregon Legislature adjourned sine die at 9:45 pm on June 30, 2009. The session was dominated by budget and fiscal issues as the nation's recession continued to have a dramatic impact on Oregon's economy. With no sales tax, and a high dependency on income taxes to fund government services in Oregon, the legislature found it very difficult to balance the state's budget as Oregon's unemployment rate rose to over 12%. As a result, the ensuing budget for the next biennium will see cuts to services and tax increases for both individuals and businesses. With Democrats holding a strong three-fifths majority in both Houses of the legislature, a democratic Governor, and Democrats holding every other statewide office in Oregon, this legislative session also saw a push for more consumer protection measures, labor legislation, and many bills that the business lobby felt were anti-business. Twenty-seven consumer protection bills were passed by this legislature, many of them aimed at the financial sector. Government jobs were held in higher regard than private sector jobs by this legislature. Cuts in numbers of state employees are being held to a minimum through measures that raised fees and taxes in many areas. The legislature did manage to fund a transportation package that will bring many road improvement projects to communities across the state, paid in part by increases to vehicle fees. While the business lobby was concerned with the introduction of many bills they felt were anti-business, the democratic leadership failed to enact some of these proposals in spite of their overwhelming majority. However, some passed that will impact businesses across the state.

The corporate minimum tax was raised, as well as the corporate excise tax, in HB3405. The current corporate minimum tax is \$10.00 for all corporations, regardless of how they are organized. Under the provisions of HB3405, the corporate minimum goes to \$150.00 for S corporations and partnerships, and for C corporations the minimum is based on Oregon sales (gross receipts attributable to Oregon business) according to the following schedule:

Under \$500,000.00	\$150.00
\$500,000.00 to \$1 million	\$500.00
\$1 million to \$2 million	\$1,000.00
\$2 million to \$3 million	\$1,500.00
\$3 million to \$5 million	\$2,000.00
\$5 million to \$7 million	\$4,000.00
\$7 million to \$10 million	\$7,500.00
\$10 million to \$25 million	\$15,000.00
\$25 million to \$50 million	\$30,000.00
\$50 million to \$75 million	\$50,000.00
\$75 million to \$100 million	\$75,000.00
\$100 million or more	\$100,000.00

The corporate excise tax was also raised in HB3405. Under present law, the excise tax on corporations is 6.6%. The tax increases to 7.9% on taxable earnings in excess of \$250,000.00 for tax years 2009 and 2010, and is reduced back to 7.6% for tax years 2011 and 2012. The 7.6% rate for years after 2012 will apply to taxable earnings in excess of \$10 million. Under the provisions of this bill, C corporations will pay the greater of the excise tax calculated on their taxable income or the minimum tax calculated on their Oregon sales. The bill also increases the Secretary of State corporate filing fees from \$50.00 to \$100.00 for domestic corporations and to \$275.00 for foreign corporations.

Individuals with earnings over \$125,000.00 will see their taxes increase from the current 9% to 10.8% on the excess over \$125,000.00, and 11% on any excess over \$250,000.00 through 2011. For the 2012 tax year, the tax on any excess over \$125,000.00 is reduced to 9.9% permanently. For couples filing jointly, the amounts of income applicable are doubled. All this was accomplished in HB2649.

The tax increases contained in these bills raise a significant amount of money. Corporate tax increases contained in HB3405 will increase general fund revenue by \$261 million for the 2009-2011 biennium, \$270 million for the 2011-2013 biennium and \$231 million for the 2013-2015 biennium. For the 2009-2011 biennium, \$93 million is attributable to the minimum tax increase on C corporations, \$109 million is from the increased excise tax, \$18 million is from the increased minimum tax on S corporations, and about \$30 million is from increased Secretary of State filing fees. The personal tax increases raise \$472 million, bringing the total increase to \$733 million for next biennium.

In addition to the wide array of generally anti-business bills, there were many consumer protection bills introduced this session that were aimed directly at the financial sector. At times it seemed we had a target on our backs. OMLA took a very active role on these measures as did the other members of the United Financial Lobby, including the Oregon Bankers Association, The Oregon Credit Union League, The Oregon Association of Mortgage Professionals, and The Oregon Financial Services Association. Lobbyists for all these groups met weekly at the OBA offices to discuss legislation and strategy. Working together with this group and our other allies was a necessity, and proved very fruitful. OMLA's legislative committee reviewed over 200 bills this session. The committee deleted some of those bills, but took an active role with 104. We wound up supporting twelve bills, opposing 27 bills, taking a neutral position on 63 bills and tracking but taking no position on another 6 bills. Clearly our most important efforts this session were in trying to stop bad things from happening to the mortgage industry. Within the range of bills we were involved with, we actually opposed 35 bills in their original form. We were able to successfully achieve amendments to eight of these bills to alleviate our concerns and changed our position to neutral on the amended bills. This left the 27 we opposed in their final form. Three of these 27 bills passed. Two them were substantially amended, but the committee did not review them in their final form, and the third was a low priority for the association. These three bills are listed below.

**HB2585**, as introduced, repealed section 32 K of the Oregon Rules of Civil Procedure which prohibits class action lawsuits for the minimum statutory damages under Oregon's unfair trade practices act. The effect of this bill is to allow such lawsuits. The United Financial Lobby successfully obtained amendments to this bill to provide that for any class action brought under the UTPA a plaintiff would be required to show reckless or knowing conduct on the part of the defendant. With the amendment, the bill probably creates a better situation for lenders than the current law provides.

**HB3111**, as introduced, allowed only a prevailing plaintiff to be allowed attorney fees in an unlawful trade practices lawsuit, unless the defendant could show that the action was frivolous. The bill also increased the minimum statutory damages under the unlawful trade practices act from the present \$200.00 to \$500.00. The bill was successfully amended to remove the provisions increasing the minimum statutory damages, and to provide that a defendant could still be awarded attorney fees in such cases if the court finds that there was no reasonable basis for bringing the action. This is a much lower standard than showing the case was frivolous. As passed, we believe the bill will have little impact on our members.

**SB328** grants the Attorney General enforcement power over the Oregon Unlawful Debt Collection Practices Act. Under current law, the only remedy for violations of this act is a right of private action by the debtor. The bill passed but our opposition was a low priority for the association.

Of the 12 bills we supported, only 2 were passed into law. This is not surprising given the make-up of the legislature and the fact that we had to spend so much time opposing generally bad ideas.

**HB2189** was strongly supported by the association. It was introduced at the request of the Oregon Department of Consumer and Business Services, and contains provisions to implement federal legislation requiring states to license residential loan originators. Your committee successfully obtained amendments to the bill to more closely align it with the federal law, and also obtained an important amendment to require knowing conduct where criminal penalties are involved. The bill was passed with our support in the final hours of the session.

**HB 2256** was also supported by OMLA, and was passed into law. This bill requires the Department of Housing and Community Development to adopt rules establishing a threshold amount for grants, above which grants will be subject to review and approval of the State Housing Council. This bill brings safeguards to these grants.

Our greatest challenge by far this session was the 35 bills introduced that we opposed. Perhaps our greatest accomplishment of the session was our work on the 24 bills that did not pass. Listed below are some of the more important bills that died.

**HB2071** would have increased fees for recording documents with the county clerk. This was one of several bills increasing these fees that died.

**HB2092** was another bill to raise county clerk recording fees.

**HB 2288** would have extended the statute of limitations from 10 to 12 years for an action for recovery of real property.

**HB2388** would have required a city or county to obtain and review a comprehensive economic impact study before approving or disapproving an application for a permit to construct a retail facility larger than 75,000 square feet.

**HB2473** would have permitted counties to impose a real estate transfer tax for affordable housing programs.

**HB2696** would have made like real estate exchanges totally taxable.

**HB2737** would have eliminated the \$10.00 limit on a county's ability to charge a land corner preservation fee that is added to document recording fees. The passage of this bill would have meant that counties could add any amount they wanted for this purpose.

**HB2746** would have required escrow agents to arrange for interpreter services at the closing of real estate transactions for single family dwelling transactions if the buyer was non-English speaking.

**HB2844** was another bill to increase county recording fees.

**HB2960** dealt with foreclosures and put onerous burdens on lenders at and before foreclosure, including \$25,000.00 civil penalties for violations of the provisions of the bill, which required additional notice to debtors in multi-languages.

**HB2969** provided that only prevailing consumers could be awarded attorney fees in cases brought against a mortgage lenders. A lender would have been denied attorney fees for defending such cases even if he won and the case was shown to be without merit.

**HB3090** was a complex bill dealing with homeowner associations and contained provisions that would have put homeowner association liens ahead of first mortgages.

**HB3408** would have allowed local governments to impose a real estate transfer tax

**SB386** would have made a debt collection violation an automatic unfair trade practice, even if it was a simple mistake. The bill also would have made servicers of mortgage loans subject to the federal debt collection act under state law.

**SB396** would have allowed local governments to impose a real estate transfer tax. (As you can see, this was one of several bills attempting to accomplish this.)

**SB811** contained provisions putting a homeowner association lien ahead of the first mortgage.

**SB820** would have terminated the semi-independent nature of the Appraiser Certification and Licensure Board.

There were more, 24 in all, bills opposed by OMLA that died, but this list gives you a flavor of what our session looked like. We faced what seemed like a never ending array of bad ideas, each of which someone wanted passed into law. Your committee and your lobby team spent hours upon hours fighting this legislation. In some cases, your committee developed a strategy of working with the proponents of a bill which contained provisions we opposed, in an attempt to develop a final bill that would be acceptable to our members. There were eight major bills we originally opposed that were amended to alleviate most or all of our concerns. We then withdrew our opposition, changed our position to neutral, and allowed the bills to pass in their amended form. This was accomplished through the hard work of several committee members. Chris Ambrose volunteered many hours to service on work groups involving several of these bills. Listed below are the eight bills in this category.

**HB2188** was introduced at the request of the Oregon Department of Consumer and Business Services. Prior to the legislative session, we served on a workgroup put together by DCBS on mortgage lending. Chris Ambrose and Eric Wiley, both OMLA members, also served. The workgroup's task was to determine if any legislation should be introduced into the 2009 legislative session regarding mortgage lending in Oregon. After a month of work, the workgroup could not agree on any potential legislation, and since Congress and the federal regulators were enacting new regulations, we argued that we should take a wait and see approach here in Oregon. DCBS however, wanted to move something forward and this bill was their effort in that regard. The bill in its original form contained provisions requiring Oregon mortgage brokers to basically do underwriting of negative amortization loans themselves, regardless of what the lender might do or require. It also contained provisions preventing a lender from being granted attorney fees in cases where a consumer brought an action against the lender that was simply without merit. After mustering enough votes in the Senate to kill the bill in its original form, we negotiated amendments that deleted the attorney fee provisions and amended the other provisions to only require verification of income and assets. The bill passed with our amendments.

**HB2306** increased the homestead exemption from the present \$30,000.00 for an individual and \$39,600.00 for a couple, to \$40,000.00 for an individual and \$50,000.00 for a couple. The amendment of this bill creating these provisions was a compromise to provisions in another bill that would have raised the homestead exemption to \$125,000.00.

**HB2436** was a bill that increased county document recording fees by \$15.00 for the purpose of supporting low income housing programs through the Oregon Housing and Community Services Department. While some of our members partner on these projects, we had taken a position to oppose all new increases to document fees. We eventually agreed to withdraw our opposition to this bill with the understanding between our allies and legislative leadership that none of the other many bills increasing these fees would move forward. This bill was then passed into law and all the other bills increasing these fees died.

**HB2626**, introduced by Representative Jules Koppel-Bailey, sets up an elaborate program through the Department of Energy, for an energy efficiency and sustainable technology loan program for the purpose of encouraging investments in energy efficiency, renewable energy, and energy conservation. The program will start with a pilot project. The bill originally contained provisions allowing the lien created by these loans to come ahead of the first mortgage. This provision was successfully amended out of the bill before it passed.

**HB3004**, sponsored by Representative Clem of Salem, originally eliminated deficiency balances on most second mortgages. Under present law, there is no deficiency allowed on a first mortgage upon foreclosure and sale where the sale is for less than the amount owed. However, a lender would still be allowed to sue on a second under the current law. In its final form, this bill will prohibit the collection of a deficiency on a second if both the first and second were taken out in conjunction with the purchase of the dwelling, and were both with the same lender at purchase, and they both remained with the same lender at foreclosure. As amended, this bill will not apply to many instances. Again, we were actively engaged in the negotiations on this bill with the United Financial Lobby.

**SB241** deals with judicial foreclosures. As introduced, the bill would have extended notice provisions to tenants, following any foreclosure. As passed, it only clarifies that FED proceedings are the appropriate remedy to obtain possession of property after judicial or non-judicial foreclosures.

**SB628**, introduced by Senator Bonamici of Beaverton, would have required mandatory mediation between borrowers and lenders upon foreclosure, using professional mediators paid by the lender. Chris Ambrose led our fight on this bill, and through his efforts working in tandem with representatives of the Oregon Financial Services Association and the Oregon Credit Union League, the bill was successfully amended to only require an additional notice to the borrower at foreclosure, and to grant the borrower a meeting to discuss their options and possible modifications if requested. Chris did his usual great job on this bill.

**SB952** was also introduced by Senator Bonamici. In its original form, it would have required a buyer of a foreclosed commercial residence to allow the renters to stay in the dwelling for up to six months if they had a lease, and thirty days if no lease was in place. Again, with the help of Chris Ambrose and other members of the United Financial Lobby, we obtained amendments to reduce the period down to sixty days for those with a lease. As we had anticipated, shortly after completing this negotiation, Congress enacted a federal law requiring ninety days. The federal law will supersede the state law, so SB952 will have little impact as passed.

As another legislative session comes to a close, OMLA can look back on another successful year, thanks to the hard work of its legislative committee. Your legislative committee, headed by Chair Bob Hefty, just did an outstanding job this session. The committee met with your lobby team every other week throughout the session. They reviewed a tremendous number of bills, discussed details of support or opposition, and helped create strategies to defeat, pass, or amend bills as necessary to the association's best interests. This year, the committee met jointly with the OAMP legislative committee, joining forces with them on a variety of issues where the two associations had like interests. This partnership also worked well, and we were more successful as a result. Legislative committee members Chris Ambrose and Eric Wiley took a particularly active role, serving on work groups and testifying in hearings when needed. The whole committee deserves praise for a job well done, in perhaps the toughest legislative session we have ever had to face. On the following pages is a complete synopsis of all the legislation we were involved with on behalf of the Oregon Mortgage Lenders Association during the 2009 legislative session. If you wish to view the complete text of any particular bill and are viewing this report electronically, simply click on the appropriate bill number. Otherwise, you may view the text of any bill at the Oregon legislative website at: [www.leg.state.or.us](http://www.leg.state.or.us). It is our pleasure to serve as your government affairs team in Oregon's political arena, and we look forward to a continued mutually beneficial relationship.

