

## SIGNIFICANT LIMITS ON FORECLOSURES AND DEFAULT ACTIONS IN OREGON

### What Does the New Law Say?

HB 4204 was signed into law by Oregon's Governor Brown on June 30, 2020 . This law places crippling limits on the default remedies of real estate lenders.

### Which Borrowers Are Protected by the New Law?

The protections apply to all commercial and residential borrowers whose loans are secured by real property located in Oregon or by personal property used as a residence in Oregon.

### What is the Emergency Period During Which the New Protections Apply?

The law applies retroactively to an "emergency period" beginning on **March 8, 2020** and ending on **September 30, 2020**. The Governor may extend the period by executive order.

### What Kind of Notice is a Lender Required to Give to its Borrowers?

All lenders authorized to do business in Oregon must provide notice of the protections afforded by HB 4204 by mail to "all of the lender's borrowers" within 60 days following passage of the Act (August 29, 2020).

### What Are the New Law's Limits on Default?

During the emergency period, a lender may not treat as a default a borrower's failure to make payments if at any time during the emergency period the borrower notifies the lender, in the form described below, of its inability to make a periodic installment payment or to pay any other amount, and must, absent other mutual agreement:

- **Defer** collecting loan payments.
- **Permit** the borrower to pay the deferred amount at the scheduled date when full performance of the obligation is due, such as the scheduled maturity date. (A lender may adjust impounds already required in loan documents in accordance with the Real Estate Settlement Procedures Act, taking into account such deferrals.)
- **Not charge** fees, charges, penalties, attorneys' fees, or other amounts that the lender would otherwise be able to charge upon the borrower's default.
- **Not charge** a default rate of interest that the lender would otherwise be able to charge upon the borrower's default .
- **Not treat** a borrower's failure to make payments of any amounts due under the loan as disqualifying the borrower from foreclosure avoidance measures (defer or forbear from collecting one or more payments, modify payment or other loan terms, accepting a deed in lieu of foreclosure, conducting a short sale, and/or providing other assistance allowing the borrower to avoid foreclosure).
- **Require or** charge for an inspection, appraisal or broker's price opinion that is not otherwise allowed if there is no default.
- **Not initiate** cash management or impose a lockbox to the extent attributable to non-payments protected by the Act (unless already in place before the effective date).
- **Not take control** of operating revenue from real property securing the loan (unless control was established before the effective date).
- **Not declare a default** because the borrower fails to meet financial covenants as a result of inadequate operating revenues caused by the COVID-19 pandemic.
- **Not foreclose** judicially or non-judicially (or otherwise enforce a foreclosure remedy).

### What Kind of Notice Must a Borrower Give to a Lender to Gain Protections Under the New Law?

A borrower need only give one notification.

**Loans Secured by a 1-to-4 Family Dwelling.** The Borrower only needs to make a simple statement that the Borrower's failure to make loan payments is a result of loss of income related to the COVID-19 pandemic.

**Loan Secured by Multi-Family Dwellings (5 + Units) and Commercial Properties.** In addition to the above, the Borrower's the notice must:

- Include financial statements or other evidence that demonstrates a loss of income related to the COVID-19 pandemic, and
- Must disclose any funds that the borrower received from the United States Small Business Administration under the Paycheck Protection Program or other state or federal relief programs.

### What Happens to Foreclosures That Were Initiated Before the Effective Date?

The period of time between initiating a foreclosure and the time when a foreclosure may occur is tolled during the emergency period.

After the emergency period expires:

- A trustee's sale may continue if the lender sends an amended notice of sale by registered or certified mail to certain persons, including the borrower (or borrower's successor in interest), a person that has a lien or record of the trust deed, and a person that requests notice.
- A lender may obtain a forfeiture remedy if the lender gives written amended notice of default by certified mail with return receipt requested, to the last-known address of the purchaser, an occupant of the property, and any person who has filed a request for a copy of any notice of default served on or mailed to the purchaser.
- For other types of foreclosure proceedings, a foreclosure may continue if the lender complies with legal requirements.

### Can an Oregon Court Issue a Foreclosure Judgment During the Emergency Period?

No

A court must dismiss without prejudice any foreclosure action started during the emergency period.

### Can a Trustee's Sale Occur During the Emergency Period?

No.

A trustee's sale during the emergency period is void.

### Can a Borrower Sue a Lender That Violates the New Law?

Yes.

Borrowers have the right to sue a lender to recover actual damages and attorneys' fees for violations of this new law.

### Does the New Law Apply to Foreclosure Judgments or Notices of Trustee's Sale That Were Issued Before the Emergency Period?

No

### Does the New Law Apply to Foreclosure Judgments or Notices of Trustee's Sale in Connection With Tax Foreclosures?

No

### Does the New Law Apply to Foreclosure Judgments or Notices of Trustee's Sale Where a Borrower Has Recorded a Notice of Intent to Abandon the Property?

No.

### Does a Borrower Still Have to Make All Loan Payments to the Lender After the Emergency Period?

Yes