

# House Bill 2960

Sponsored by COMMITTEE ON CONSUMER PROTECTION

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires creditor not later than 45 days before commencing action to foreclose mortgage or not later than 120 days before foreclosing trust deed to provide notice to borrower and to Department of Consumer and Business Services. Prescribes contents of notice and method of delivery. Requires creditor to provide notice in English language and language that borrower primarily speaks or reads.

Requires department to contact creditor and borrower to obtain information related to loan subject to foreclosure and to evaluate whether certain measures may enable borrower to avoid foreclosure. Authorizes department to delay by 30 days date on which creditor may commence action to foreclose mortgage or trust deed.

Provides that court shall dismiss action to foreclose mortgage that creditor commences in advance of date specified in department's notice and that court may sanction creditor if warranted.

Authorizes borrower to commence action for damages and department to assess civil penalty in amount not more than \$25,000 if creditor forecloses trust deed in advance of date specified in department's notice.

Sunset on date of convening of next regular biennial legislative session.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to methods to avoid foreclosure; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1, 2, 3, 4 and 5 of this 2009 Act:**

5 (1) **"Average prime offer rate" means an annual percentage rate that appears in a table**  
6 **published periodically by the Federal Reserve Board and that is derived from average interest**  
7 **rates, points and other loan pricing terms currently offered to borrowers by a representative**  
8 **sample of creditors for mortgage transactions that have low-risk pricing characteristics.**

9 (2) **"Borrower" means a grantor, as defined in ORS 86.705, or a person who is obligated**  
10 **to pay a debt secured by real property that the person uses as the person's principal dwell-**  
11 **ing.**

12 (3) **"Creditor" means a trustee, as defined in ORS 86.705, or an agent of the trustee, a**  
13 **person who holds a lien on real property created by a mortgage, or the person's agent, a**  
14 **servicer, as defined in 12 U.S.C. 2605(i), or any other person entitled by law to commence a**  
15 **foreclosure proceeding against a borrower to recover a debt secured by the borrower's**  
16 **principal dwelling.**

17 (4)(a) **"Higher priced mortgage loan" means:**

18 (A) **A loan secured by a borrower's principal dwelling for which the annual percentage**  
19 **rate exceeds the average prime offer rate for a comparable loan, as of the date on which the**  
20 **creditor sets the interest rate, by 1.5 or more percentage points if the loan is secured by a**  
21 **first lien on the dwelling or by 3.5 or more percentage points if the loan is secured by a**  
22 **subordinate lien on the dwelling; or**

23 (B) **A loan with a variable rate that within two years after the closing date becomes a**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 higher priced mortgage loan described in subparagraph (A) of this paragraph when compared  
 2 to the average prime offer rate on the date on which the loan rate is adjusted.

3 (b) "Higher priced mortgage loan" does not include:

4 (A) A loan commonly known as a bridge loan, the terms of which specify that the ma-  
 5 turity period for the loan is less than 18 months and that the borrower may pay only interest  
 6 on the loan until a time when the entire unpaid loan balance is due and payable;

7 (B) A loan the proceeds of which the borrower uses to finance the initial construction  
 8 of a dwelling;

9 (C) A loan commonly known as a reverse mortgage, the terms of which specify that the  
 10 loan is secured by real property without recourse to the borrower's personal assets, provides  
 11 cash advances to the borrower based on the equity or value in the borrower's owner-occupied  
 12 principal dwelling, does not require the borrower to pay principal or interest until the entire  
 13 loan becomes due and payable and is made by a mortgage lender licensed or chartered under  
 14 the laws of this state or the United States; or

15 (D) A loan commonly known as a home equity line of credit, in which the amounts a  
 16 borrower borrows are recorded as debits from an account that is secured by an interest in  
 17 real property, interest on the account is computed periodically, the borrower may pay the  
 18 amount due on the loan in full at any time without penalty or may pay in installments that  
 19 are specified in the loan agreement and the terms of the loan agreement permit a borrower  
 20 to borrow discrete sums of money from time to time but set a maximum limit on the amount  
 21 of each discrete sum or on the outstanding amount of the entire loan.

22 **SECTION 2.** Sections 1, 2, 3, 4, 5, 7 and 9 of this 2009 Act apply only to foreclosure pro-  
 23 ceedings that a creditor commences following a borrower's default on a higher priced mort-  
 24 gage loan that the borrower received between January 1, 2005, and December 31, 2007, and  
 25 used to finance the borrower's purchase of a dwelling located in this state that the borrower  
 26 owns and occupies as the borrower's principal dwelling.

27 **SECTION 3.** (1) Not later than 45 days before commencing an action under ORS chapter  
 28 88 to foreclose a mortgage or on the same date on which a creditor gives the notice required  
 29 under ORS 86.740 (1), the creditor shall deliver a written notice to the borrower and send a  
 30 copy to the Department of Consumer and Business Services as provided in subsection (2) of  
 31 this section. The notice required under this subsection must:

32 (a) Identify the name, address, telephone number and other contact information for the  
 33 borrower;

34 (b) State that the creditor intends to commence an action to foreclose the mortgage or  
 35 to foreclose a trust deed by advertisement and sale and:

36 (A) Identify the circuit court in which the creditor intends to bring the action to fore-  
 37 close the mortgage or the county in which the creditor intends to foreclose the trust deed  
 38 by advertisement and sale; and

39 (B) Provide the date on which the creditor intends to take action;

40 (c) Itemize the amount in default and past due on the borrower's loan, the amount the  
 41 borrower must pay to bring the loan current and all associated costs and fees;

42 (d) Provide the account number or other information the creditor uses to identify the  
 43 loan;

44 (e) State that the borrower may contact the creditor or a housing counselor approved  
 45 by the United States Department of Housing and Urban Development to discuss options for

1 avoiding foreclosure and may contact the Oregon State Bar to obtain a referral to an attorney to represent the borrower's interests; and

2 (f) Provide the address, telephone number and other contact information for:

3 (A) The creditor or an agent of the creditor that the creditor has authorized to negotiate on the creditor's behalf;

4 (B) A housing counselor approved by the United States Department of Housing and Urban Development that is operating in this state;

5 (C) The Oregon State Bar's lawyer referral service; and

6 (D) The office or section of the Department of Consumer and Business Services that the department has designated for the purpose of receiving calls from borrowers related to sections 1, 2, 3, 4 and 5 of this 2009 Act.

7 (2) The creditor shall deliver the notice described in subsection (1) of this section:

8 (a) To the borrower by first-class mail with a certificate of mailing; and

9 (b) To the department electronically in a format the department prescribes by rule.

10 (3)(a) If the creditor knows or has reason to know that the borrower primarily speaks or reads a language other than the English language, the creditor shall provide the notice described in subsection (1) of this section to the borrower in the English language and in the language the borrower primarily speaks or reads.

11 (b) For purposes of this subsection, a creditor has reason to know that a borrower primarily speaks or reads a language other than the English language if the creditor has previously communicated with the borrower in the other language in the course of the loan transaction or in the course of servicing the loan.

12 (c) The department shall develop and distribute translated versions of the notice described in subsection (1) of this section in the three languages other than the English language that are most commonly spoken in this state.

13 **SECTION 4.** (1) Within three business days after receiving a notice in accordance with section 3 of this 2009 Act, the Department of Consumer and Business Services shall contact the creditor that sent the notice to ascertain the status of, payment history for and other information concerning the loan that the department deems necessary to evaluate:

14 (a) Whether additional time will enable the borrower to cure the default or pay all arrears or otherwise help to avoid foreclosure;

15 (b) Whether the creditor is willing to undertake loss mitigation efforts, renegotiate or alter loan terms or take other steps to enable the borrower to avoid foreclosure; and

16 (c) Whether other measures that are within the creditor's power or the department's authority, including initiating alternative dispute resolution procedures, would aid in avoiding foreclosure.

17 (2) Within five business days after receiving the notice described in section 3 of this 2009 Act, the department shall contact the borrower named in the notice if the borrower has not contacted the department. The department may request from the borrower information that enables the department to evaluate:

18 (a) Whether the borrower has the resources or other capacity necessary to cure the default or pay all arrears;

19 (b) The degree of interest the borrower has in remaining in the dwelling that is subject to foreclosure;

20 (c) Whether additional time will help the borrower avoid foreclosure; and

1 (d) Whether other measures that are within the department's authority or the borrow-  
 2 er's power, including initiating alternative dispute resolution procedures, would aid in  
 3 avoiding foreclosure.

4 (3) Information the department collects or receives from a creditor or borrower in ac-  
 5 cordance with this section is confidential and is not subject to disclosure under ORS 192.410  
 6 to 192.505. The department shall use due care to maintain the confidentiality of the infor-  
 7 mation.

8 (4) The department shall complete the evaluations described in this section in a timely  
 9 manner, but not later than 15 business days after receiving the notice described in sub-  
 10 section (3) of this section. If after completing the evaluations the department reasonably  
 11 believes that additional time will aid the borrower in avoiding foreclosure, the department  
 12 shall:

13 (a) Notify the creditor that the creditor may not commence an action to foreclose a  
 14 mortgage or foreclose a trust deed by advertisement and sale until 30 calendar days after the  
 15 time otherwise provided by law for commencing the action or conducting the sale; and

16 (b) Notify the borrower that, notwithstanding the date, time and place of the sale set  
 17 forth in ORS 86.745, the date of the foreclosure proceeding specified in the notice described  
 18 in section 3 of this 2009 Act is extended by 30 calendar days, identify the new date for the  
 19 foreclosure proceeding or sale and provide the borrower with a copy of the notice the de-  
 20 partment sent to the creditor under paragraph (a) of this subsection.

21 (5) In consultation with and with the consent of both the creditor and borrower, the de-  
 22 partment may contact a housing counselor approved by the United States Department of  
 23 Housing and Urban Development for the purpose of seeking assistance, options and possible  
 24 solutions appropriate to the borrower's situation that might aid the borrower in avoiding  
 25 foreclosure. Notwithstanding the provisions of subsection (3) of this section, in consulting  
 26 with the housing counselor, the department with the borrower's consent may disclose to the  
 27 housing counselor information the department collected or received under this section.

28 SECTION 5. The Department of Consumer and Business Services shall develop a program  
 29 for the purpose of accumulating the expertise necessary for evaluating options for avoiding  
 30 foreclosures and otherwise implementing the provisions of sections 1, 2, 3, 4 and 5 of this  
 31 2009 Act. In developing the program, the department may seek and obtain advice, suggestions  
 32 and other input from housing counselors approved by the United States Department of  
 33 Housing and Urban Development, community organizations, other state agencies, creditors  
 34 and other knowledgeable persons.

35 SECTION 6. Section 7 of this 2009 Act is added to and made a part of ORS chapter 88.

36 SECTION 7. (1) A borrower, as defined in section 1 of this 2009 Act, has as an affirmative  
 37 defense in an action to recover a debt described in ORS 88.010 that the creditor, as defined  
 38 in section 1 of this 2009 Act, received a notice described in section 4 of this 2009 Act that  
 39 barred the creditor from commencing the action until 30 calendar days after the time oth-  
 40 erwise provided by law for commencing the action.

41 (2) If the court determines that the creditor had notice of the required delay, the court  
 42 shall dismiss the action without prejudice and may impose sanctions under ORCP 17 on the  
 43 creditor or other party that commenced the action.

44 SECTION 8. Section 9 of this 2009 Act is added to and made a part of ORS 86.705 to 86.795.

45 SECTION 9. (1) If a trustee has received a notice under section 4 of this 2009 Act, the

1 trustee may not foreclose a trust deed by sale until the date specified in the notice.

2 (2) Before the trustee's sale, the grantor has the right to cure a default in the manner  
3 specified in ORS 86.753.

4 (3) A grantor may commence an action against the trustee in the circuit court of the  
5 county in which the foreclosure sale occurred and is entitled to damages upon proof that:

6 (a) The trustee foreclosed the trust deed or conducted a sale in advance of the date  
7 specified in the notice described in section 4 of this 2009 Act;

8 (b) The grantor could and would have cured the default under ORS 86.753; and

9 (c) The grantor sustained actual damages as a result of the grantor's loss of the oppor-  
10 tunity to cure the default under ORS 86.753 in advance of the date specified in the notice  
11 described in section 4 of this 2009 Act.

12 (4) Upon receiving a complaint that a trustee has foreclosed a trust deed or conducted  
13 a sale before the date specified in the notice described in section 4 of this 2009 Act, the Di-  
14 rector of the Department of Consumer and Business Services may investigate the complaint  
15 and, if the director finds that the complaint has merit, may in accordance with ORS 183.745  
16 assess a civil penalty against the trustee in an amount not to exceed \$25,000. The proceeds  
17 of a civil penalty assessed under this subsection shall be collected and paid as provided in  
18 ORS 705.145.

19 SECTION 10. The Director of the Department of Consumer and Business Services may  
20 adopt rules to implement the provisions of sections 1, 2, 3, 4, 5 and 9 of this 2009 Act.

21 SECTION 11. Sections 1 to 10 of this 2009 Act are repealed on the date of the convening  
22 of the next regular biennial legislative session.

23 SECTION 12. This 2009 Act being necessary for the immediate preservation of the public  
24 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect  
25 on its passage.