

House Bill 4137

Sponsored by Representative HOLVEY; Representatives BAILEY, BEYER, BUCKLEY, DEMBROW, DOHERTY, FREDERICK, HARKER, HOYLE, KENY-GUYER, KOTEK, NATHANSON, TOMEI, WITT (Pre-session filed.)

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**.

Charges mortgage loan servicer with duty of good faith and fair dealing toward borrower. Describes extent of duty.

Requires servicer to respond to and take action concerning borrower's qualified correspondence within certain time limits. Requires servicer to implement policies and procedures that enable servicer to respond to borrower promptly.

Requires servicer to credit payments to borrower's mortgage loan account on certain date. Prohibits servicer from charging late fee until after servicer credits payment to borrower's account.

Requires servicer to provide borrower with certain statements of account at fixed times and at borrower's request. Prescribes timing for and content of statements.

Requires servicer to maintain schedule of fees and charge only fees that are reasonable, that are for services rendered or costs incurred, that are authorized by mortgage loan agreement and that are not prohibited by law.

Requires servicer to inform borrower of and explain borrower's options for mortgage loan modification or other assistance in certain circumstances. Provides exceptions.

Requires servicer to submit certain reports to Director of Department of Consumer and Business Services and to keep certain books, records and other materials.

Prohibits servicer from violating provisions of Act and from taking or failing to take certain other actions. Provides that violation is unlawful practice subject to enforcement under Unlawful Trade Practices Act.

Becomes operative January 1, 2013.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to regulating mortgage loan servicers; creating new provisions; amending ORS 646.608; and
3 declaring an emergency.

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

5 **SECTION 1. As used in sections 1 to 13 of this 2012 Act:**

6 (1) **"Authorized representative" means a person that a borrower designates in a signed**
7 **writing as the borrower's representative.**

8 (2) **"Borrower" means an individual who is obligated to repay a mortgage loan under a**
9 **residential mortgage loan agreement.**

10 (3) **"Computation year" means a recurring 12-month period that begins on the date or**
11 **anniversary date of the borrower's first payment under the terms of a mortgage loan**
12 **agreement.**

13 (4) **"Home Affordable Modification Program" means the program that the United States**
14 **Department of the Treasury established under the authority of 12 U.S.C. 5211 and 5219.**

15 (5) **"Lender" means a person that extends a mortgage loan or credit to a borrower under**
16 **the terms of a mortgage loan agreement or is entitled to all or a portion of the principal,**
17 **interest and fees due from the borrower under the terms of the mortgage loan agreement.**

18 (6) **"Mortgage loan" means a loan or extension of credit that a borrower agrees to secure**
19 **by giving a mortgage, trust deed or an equivalent lien interest in residential real property.**

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 (7) "Mortgage loan agreement" means a contract or other arrangement under the terms
2 of which a borrower obtains and agrees to repay the principal of a mortgage loan, along with
3 interest and fees, by a certain maturity date.

4 (8) "Mortgage loan modification" means a consent, waiver, forbearance or other amend-
5 ment of a material term of the mortgage loan agreement for a specific period of time or for
6 the remaining term of the mortgage loan agreement to:

- 7 (a) Change the interest rate applicable to a mortgage loan;
- 8 (b) Reduce or waive a payment of principal or interest due on a mortgage loan;
- 9 (c) Extend the maturity date for a mortgage loan; or
- 10 (d) Otherwise agree not to enforce a provision of the mortgage loan agreement.

11 (9)(a) "Qualified correspondence" means a writing that a borrower sends to a servicer
12 and that:

- 13 (A) Relates to the borrower's mortgage loan;
- 14 (B) Identifies or enables the servicer to identify the borrower's name and mortgage loan
15 account; and
- 16 (C) States reasons that the borrower believes the account is in error or asks for infor-
17 mation or action related to the account.

18 (b) "Qualified correspondence" does not include correspondence that the servicer re-
19 ceives from the borrower more than one year after the servicer no longer services the
20 mortgage loan.

21 (10) "Residential real property" means real property located in this state upon which four
22 or fewer improvements designed for residential occupancy are situated.

23 (11) "Servicer" means a person that a lender authorizes, with respect to a mortgage loan,
24 to:

- 25 (a) Collect payments, fees or penalties from the borrower;
- 26 (b) Create, keep and maintain records;
- 27 (c) Pay insurance premiums, property taxes or other fees or expenses related to the
28 residential real property that are necessary to protect the lender's security interest in the
29 residential real property;
- 30 (d) Receive and respond to communications from the borrower related to the mortgage
31 loan; or
- 32 (e) Perform other duties or functions that are set forth in the authorization the lender
33 gives to the person.

34 **SECTION 2.** (1)(a) Except as provided in paragraph (b) of this subsection, a person may
35 not conduct business as a servicer in this state unless the person registers with the De-
36 partment of Consumer and Business Services under this section.

37 (b) A person may conduct business as a servicer in this state without registering with
38 the department only if:

39 (A) The person conducts business as a servicer substantially in compliance with the
40 provisions of sections 1 to 13 of this 2012 Act;

41 (B) The person proves to the Director of the Department of Consumer and Business
42 Services by clear and convincing evidence that the person did not know that this section
43 requires the person to register with the department; and

44 (C) The person registers with the department under this section within 90 days after
45 becoming aware of or receiving actual notice of the requirement to register under this sec-

1 tion.

2 (2) An applicant for registration as a servicer shall apply to the director in writing. The
 3 director by rule shall prescribe the form and contents of the application and the manner in
 4 which the applicant must apply. An application for registration at a minimum must:

5 (a) List the applicant's name, principal business address in Oregon and principal business
 6 address outside Oregon, if any;

7 (b) Name and list the residence addresses and business addresses for the applicant's of-
 8 ficers and directors, if the applicant is a corporation, or the applicant's members, if the ap-
 9 plicant is a partnership, limited liability company or other association;

10 (c) Identify the applicant's registered agent in Oregon and provide the registered agent's
 11 address, telephone number or other contact information; and

12 (d) Provide other information the director specifies by rule.

13 (3) At the time the applicant submits an application under this section, and each year
 14 thereafter, the applicant shall pay a fee in an amount the director prescribes by rule. The
 15 director shall set the fee at an amount that will enable the director to pay the annual ex-
 16 penses of administering sections 1 to 13 of this 2012 Act from the aggregated amount of fees
 17 the director collects under this section.

18 (4) Within 30 days after receiving an application under this section, the director shall
 19 issue and deliver to the applicant a certificate of registration that enables the registrant to
 20 conduct business as a servicer in this state if the director finds that the applicant has com-
 21 plied with the provisions of subsection (2) of this section and has paid the fee required under
 22 subsection (3) of this section.

23 (5) Each year a registrant shall apply to renew a certificate of registration under this
 24 section. In the application, the registrant shall update, supplement or otherwise correct the
 25 information the registrant provided in the previous application for registration. Unless the
 26 director finds that a registrant has failed to comply with the provisions of sections 1 to 13
 27 of this 2012 Act, or has failed to pay a fee required under subsection (3) of this section, the
 28 director shall renew the registrant's certificate of registration.

29 **SECTION 3.** (1) Notwithstanding the terms set forth in a lender's authorization to service
 30 a mortgage loan, a servicer engaged in business in this state has a duty of good faith and fair
 31 dealing toward a borrower. The duty arises in the servicer's communications, transactions
 32 and other dealings with the borrower and includes, but is not limited to:

33 (a) Safeguarding and accounting for moneys the servicer receives from or handles on
 34 behalf of the borrower;

35 (b) Following the borrower's reasonable and lawful instructions;

36 (c) Providing adequate trained personnel, telephone facilities and other resources neces-
 37 sary to respond promptly to the borrower's inquiries about the mortgage loan or mortgage
 38 loan agreement;

39 (d) Acting with reasonable skill, care and diligence;

40 (e) Providing an accurate statement of account in accordance with section 7 of this 2012
 41 Act;

42 (f) Providing a description of options available from the servicer for mortgage loan
 43 modification or other alternatives that enable a borrower who has defaulted on a payment
 44 to avoid foreclosure and otherwise continue with the mortgage loan agreement; and

45 (g) Evaluating, subject to the provisions of section 9 of this 2012 Act, options for a

1 mortgage loan modification or other assistance to a borrower who has defaulted on a pay-
 2 ment due if the mortgage loan modification or other assistance would enable the borrower
 3 to avoid foreclosure and otherwise continue with the mortgage loan agreement.

4 (2) In addition to the duties specified in subsection (1) of this section, a servicer has a
 5 duty to comply with the provisions of 15 U.S.C. 1601 et seq., 12 C.F.R. part 226 and the pro-
 6 visions of ORS 86.705 to 86.795, 86A.095 to 86A.198, ORS chapter 88 and the Bank Act that
 7 relate to mortgage loan servicing or that govern duties or functions of a lender, mortgagee
 8 or beneficiary or a trustee under a trust deed that the lender, mortgagee, beneficiary or
 9 trustee has authorized or delegated to a servicer to perform.

10 **SECTION 4.** (1) Within 20 business days after receiving qualified correspondence from a
 11 borrower, a servicer shall acknowledge in writing that the servicer received the qualified
 12 correspondence, unless the servicer takes action related to the qualified correspondence and
 13 communicates the results of the action to the borrower within the 20-day period.

14 (2) Within 60 business days after receiving qualified correspondence from a borrower and
 15 before taking action related to the qualified correspondence, a servicer shall, if appropriate:

16 (a) Correct errors in the borrower's account, credit the account for late charges or
 17 penalties and notify the borrower in writing of the corrections and credits; or

18 (b) Investigate the matter identified in the qualified correspondence and:

19 (A) Notify the borrower of the servicer's reasons for believing the account is correct and
 20 provide the borrower with the name of and contact information for an employee, office or
 21 department of the servicer that can assist the borrower;

22 (B) Provide the borrower with the information the borrower requests in the qualified
 23 correspondence; or

24 (C) Explain to the borrower why the servicer cannot provide the information the bor-
 25 rower requests in the qualified correspondence and provide the borrower with the name and
 26 contact information of an employee, office or department of the servicer that can assist the
 27 borrower.

28 (3)(a) During the 60-day period described in subsection (2) of this section, the servicer
 29 may not provide to a consumer reporting agency, as defined in 15 U.S.C. 1681a, adverse in-
 30 formation about a payment that is the subject of qualified correspondence.

31 (b) The prohibition set forth in paragraph (a) of this subsection does not affect the
 32 servicer's ability to pursue a remedy that the lender or the mortgage loan agreement au-
 33 thORIZES the servicer to pursue.

34 (4)(a) In addition to the requirements set forth in subsections (1) to (3) of this section,
 35 a servicer shall develop, implement and maintain policies and procedures for responding to
 36 a borrower's qualified correspondence, inquiries and complaints promptly and appropriately.

37 (b) In order to meet the requirement set forth in paragraph (a) of this subsection, the
 38 servicer shall provide at a minimum:

39 (A) Trained personnel sufficient to respond to a reasonable and expected amount of cor-
 40 respondence from borrowers;

41 (B) A designated employee to whom a borrower may direct correspondence, an inquiry
 42 or a complaint;

43 (C) A designated telephone number that a borrower can call toll-free or collect to make
 44 inquiries or communicate a complaint related to the borrower's mortgage loan to the em-
 45 ployee specified in subparagraph (B) of this paragraph during regular business hours at the

1 servicer's location; and

2 (D) A designated electronic method, or means other than a telephone, by which a bor-
 3 rower may make an inquiry or communicate a complaint related to the borrower's mortgage
 4 loan.

5 (5) A servicer shall provide on each statement of account the servicer sends to the bor-
 6 rower at the borrower's request or in accordance with section 7 of this 2012 Act:

7 (a) An address to which the borrower can direct qualified correspondence;

8 (b) The name of the employee, the telephone number and a description of the electronic
 9 method or means for communicating with the servicer that is required under subsection
 10 (4)(b) of this section; and

11 (c) Contact information for the Department of Consumer and Business Services by means
 12 of which the borrower may file a complaint about the servicer, together with the servicer's
 13 certification or license number or other identification, if any, of an authorization from an
 14 agency of this state under which the servicer may service mortgage loans in this state.

15 (6) Within 15 days after receiving a written request from the borrower or the authorized
 16 representative, a servicer shall provide the borrower or the authorized representative with
 17 the name, address and contact information for the person that, as of the date on which the
 18 borrower or the authorized representative made the request, is the lender, the mortgagee,
 19 the beneficiary, the trustee under the trust deed or another person to which all or a portion
 20 of the payment is due under the mortgage loan agreement.

21 **SECTION 5.** (1) A servicer that receives moneys from a borrower for the servicer to hold
 22 in escrow to pay insurance premiums, property taxes or other fees or expenses that are
 23 necessary to protect the lender's security interest in the residential real property that se-
 24 cures the mortgage loan shall make the payments in accordance with 24 C.F.R. 3500.17. The
 25 servicer's failure to make a payment as required under this subsection, in addition to any
 26 liability or penalty provided under 24 C.F.R. 3500.17, is an unlawful practice under ORS
 27 646.608 that is subject to enforcement under ORS 646.638.

28 (2) A servicer shall disclose payments the servicer made under subsection (1) of this
 29 section clearly and conspicuously on the next periodic statement of account the servicer
 30 provides to the borrower.

31 (3) If a servicer advances the servicer's own funds to pay an insurance premium, tax or
 32 other fee or expense described in subsection (1) of this section because of a deficiency in the
 33 borrower's escrow account that does not result from a default on a payment for the mort-
 34 gage loan, the servicer shall analyze the escrow account to determine the reason for and
 35 extent of the deficiency in the escrow account before seeking repayment from the borrower
 36 of the amount the servicer advanced.

37 **SECTION 6.** (1)(a) Except as provided in subsection (5) of this section, a servicer shall
 38 accept all payments the servicer receives for a mortgage loan from the borrower at the ad-
 39 dress to which the servicer instructed the borrower to send payments. The servicer shall
 40 credit the payments to the borrower's account, or treat the payments as credited, on the
 41 business day on which the servicer received the payment if the borrower provides sufficient
 42 information to credit the account.

43 (b) Except as provided in paragraph (c) of this subsection, the servicer shall credit a
 44 payment the servicer receives toward the principal and interest due on the mortgage loan
 45 before crediting the payment toward insurance premiums, taxes or fees.

1 (c) If failing to credit a payment or a portion of a payment toward property taxes may
 2 result in an imposition or foreclosure of a tax lien on the residential real property that se-
 3 cures the mortgage loan, the servicer shall credit the payment or a portion of the payment
 4 toward the property taxes in an amount sufficient to avoid the lien or the foreclosure. The
 5 servicer shall notify the borrower of the servicer's action within five days after taking the
 6 action and shall request that the borrower pay an additional amount sufficient to keep the
 7 borrower's mortgage loan account current.

8 (2) If a servicer specifies in writing requirements for the borrower to follow in making
 9 a payment but the servicer accepts a payment that does not conform to the servicer's re-
 10 quirements, the servicer shall credit the payment to the borrower's account as soon as is
 11 commercially practicable, but not later than five days after the servicer receives the pay-
 12 ment.

13 (3) If a regular periodic payment remains unpaid after the date on which the payment is
 14 due under the terms of the mortgage loan agreement, the servicer shall send, not later than
 15 17 days after the date on which the payment is due, a written reminder to the borrower that
 16 the payment is due.

17 (4)(a) A servicer may not impose a late fee for a payment a borrower makes after the
 18 date on which the payment is due if the servicer receives the payment within 15 calendar
 19 days after the payment is due. If the 15-day period ends on a Saturday, Sunday or holiday,
 20 the servicer shall extend the period until the next regular business day.

21 (b) A servicer shall credit a payment that a borrower makes after the date on which the
 22 payment is due to the borrower's account before the servicer charges a late fee for the
 23 payment.

24 (c) A servicer may not charge a late fee that exceeds the lesser of:

25 (A) The amount set forth as a late fee in the mortgage loan agreement; or

26 (B) Two percent of the amount that is due in a single, regular periodic payment under
 27 the terms of the mortgage loan agreement.

28 (d) The servicer may not deduct a late fee from:

29 (A) The borrower's escrow account or a surplus deposit to an escrow account, unless the
 30 borrower authorizes the servicer to do so; or

31 (B) A regular periodic payment the borrower makes under the terms of the mortgage
 32 loan agreement.

33 (e) A servicer may not impose a late fee for a borrower's failure to pay a previous late
 34 fee by the due date set for the previous late fee if the borrower pays the full amount of a
 35 regular periodic payment due under the terms of the mortgage loan agreement. The servicer
 36 may not charge more than one late fee for any single periodic payment that a borrower
 37 makes after the due date.

38 (5) If a servicer credits payments that the servicer receives to a borrower's account only
 39 on a specific date within each month or other period, the servicer shall credit a payment the
 40 servicer receives earlier to the borrower's account not later than the due date for the pay-
 41 ment or 30 days after receiving the payment, whichever date is earlier.

42 (6) If the servicer receives a payment that the servicer does not credit to the borrower's
 43 account or treat as credited to the borrower's account, the servicer shall notify the borrower
 44 in writing within 10 days after receiving the payment of the reasons why the servicer did not
 45 credit the payment or treat the payment as credited and the actions the borrower must take

1 to make the mortgage loan current. The sender shall send the notice by mail to the
 2 borrower's last known address.

3 (7) A servicer shall establish written policies and procedures to guide how the servicer
 4 processes payments that exceed or are less than the amount due for regular periodic pay-
 5 ments on the mortgage loan.

6 **SECTION 7.** (1)(a) At least once each year and not later than 30 days after the end of the
 7 computation year, a servicer shall provide a plain language statement of account to the
 8 borrower that shows, at a minimum:

9 (A) The balance of the unpaid principal on the mortgage loan as of the date of the
 10 statement of account;

11 (B) The amount of interest the borrower paid during the preceding 12 months; and

12 (C) The amounts the borrower deposited into the escrow account created under the
 13 terms of the mortgage loan agreement, if any, and the amounts the servicer disbursed from
 14 the escrow account.

15 (b) The portions of the statement of account that describe transactions related to the
 16 escrow account must comply with the provisions of 24 C.F.R. 3500.17(i).

17 (2) A servicer shall provide a borrower or the authorized representative with an accurate
 18 statement of account within 30 days after receiving a written request for a statement of
 19 account from the borrower or the authorized representative. In addition to the information
 20 required under subsection (1) of this section, the statement of account must show the date
 21 and amount of each payment made on the mortgage loan account for the previous 36 months
 22 or for a different period if the borrower or authorized representative specifies a different
 23 period.

24 (3) Not more than five days after receiving a request from a borrower or the authorized
 25 representative, a servicer shall provide the borrower or the authorized representative with
 26 a clear and accurate statement of the amount the borrower must pay as of the statement
 27 date in order to repay the entire outstanding balance of the mortgage loan.

28 (4) A servicer may not charge a borrower or the authorized representative a fee for
 29 providing a statement under this section, except that the servicer may charge a reasonable
 30 fee for providing more than one statement of account under subsection (2) of this section,
 31 or more than five statements under subsection (3) of this section, during a 12-month period.

32 (5) A servicer shall comply with the provisions of 24 C.F.R. 3500.17(f) if the servicer finds
 33 a surplus or deficiency in the borrower's escrow account. The servicer may apply a surplus
 34 in the escrow account to the principal balance if the borrower authorizes the servicer to do
 35 so.

36 **SECTION 8.** (1) A servicer shall establish, maintain and update at least every six months
 37 a schedule of common fees that the servicer charges or may charge in connection with a
 38 borrower's mortgage loan. The servicer shall provide a copy of the schedule of fees to the
 39 borrower or the authorized representative upon request.

40 (2) Fees that the servicer collects must be:

41 (a) Reasonable;

42 (b) For bona fide services that the servicer renders or for costs the servicer incurs;

43 (c) Expressly authorized in the mortgage loan agreement; and

44 (d) In accordance with applicable law.

45 **SECTION 9.** (1) A servicer's obligations under this section are subject to the servicer's

1 duties as set forth in section 3 of this 2012 Act, to the servicer's obligations to the lender
 2 under any authorization the lender gave to service the mortgage loan and to practices and
 3 procedures required by law or common among mortgage loan servicers.

4 (2)(a) If a borrower has failed to make a regular periodic payment on a mortgage loan
 5 for 60 days or longer or if a borrower requests a mortgage loan modification or other as-
 6 sistance with a mortgage loan, the servicer shall, within 10 days after the 60-day period has
 7 expired or the servicer receives the request from the borrower:

8 (A) Provide the borrower with a statement of the amount due on the mortgage loan as
 9 of the statement date;

10 (B) Describe the servicer's program for mortgage loan modification or other assistance
 11 the servicer offers that would enable the borrower to avoid foreclosure and otherwise con-
 12 tinue with the mortgage loan agreement;

13 (C) Describe the procedures the borrower must follow to apply for the program or the
 14 assistance; and

15 (D) Offer to negotiate in good faith with the borrower under the terms of the program
 16 or assistance in an attempt to avoid foreclosure.

17 (b) A description under paragraph (a)(B) or (C) of this subsection must:

18 (A) List the information the servicer will require the borrower to provide and specify
 19 that the borrower must provide the information within 30 days after the date of the
 20 servicer's communication under this subsection;

21 (B) List the consents, waivers, forbearances or approvals from third parties that the
 22 servicer must obtain before proceeding with the program or other assistance;

23 (C) State the average length of time the servicer takes to decide whether a borrower is
 24 eligible for the program or assistance; and

25 (D) List the actions the servicer, lender, mortgagee, beneficiary or trustee may take
 26 during the period in which the servicer is evaluating whether the borrower is eligible for the
 27 program or assistance, such as whether the borrower will continue to receive collection let-
 28 ters or foreclosure notices and whether collection efforts or the foreclosure process will
 29 continue or be suspended.

30 (3)(a) A servicer shall offer the borrower a mortgage loan modification if the servicer
 31 determines that:

32 (A) The borrower's financial condition does not permit the borrower to continue to make
 33 regular periodic payments in the amount specified in the mortgage loan agreement or to
 34 make up the amount of a deficiency in the payments due for the mortgage loan; and

35 (B) The net present value of the income stream that the servicer can expect from
 36 agreeing to a mortgage loan modification is more than the net present value of the income
 37 stream the servicer could expect if the servicer foreclosed the mortgage loan and sold the
 38 residential real property that secures the mortgage loan.

39 (b) The servicer shall retain in the servicer's records for the mortgage loan the policies
 40 and standards, formulae and calculations the servicer used to make a determination under
 41 paragraph (a) of this subsection. The information the servicer must retain under this para-
 42 graph is subject to the provisions of section 11 of this 2012 Act. To the extent that the in-
 43 formation may be considered a public record as defined in ORS 192.410, the information is
 44 confidential and is exempt from public disclosure under ORS 192.502.

45 (c) A servicer that agrees to a mortgage loan modification shall attempt in good faith to

1 structure the terms of the modified mortgage loan so that the borrower can afford to make
 2 regular periodic payments for a specified period or for the remaining term of the mortgage
 3 loan.

4 (4)(a) A servicer shall decide, within 45 days after receiving information the servicer
 5 needs from the borrower and the consents, waivers, forbearances or approvals the servicer
 6 needs from third parties, whether a borrower is eligible for a mortgage loan modification or
 7 other assistance that would avoid foreclosure.

8 (b) The servicer shall notify the borrower or the authorized representative in writing of
 9 the servicer's decision under paragraph (a) of this subsection. If the servicer agrees to a
 10 mortgage loan modification or other assistance, the notice shall describe in clear and plain
 11 language the material terms, costs and risks of the mortgage loan modification or other as-
 12 sistance. If the servicer does not agree to a mortgage loan modification or other assistance,
 13 the notice must:

- 14 (A) Describe the servicer's reasons and basis for the decision;
- 15 (B) Explain how the servicer calculated that the borrower was not eligible; and
- 16 (C) Specify other options, if any, that the servicer may consider to avoid foreclosure.

17 (c) A servicer complies with the requirement set forth in paragraph (b) of this subsection
 18 if the servicer provides the information specified for a borrower notice in Supplemental Di-
 19 rective 09-08, as in effect on the effective date of this 2012 Act, that the United States De-
 20 partment of the Treasury issued under the Helping Families Save Their Homes Act of 2009,
 21 P.L. 111-22, as in effect on the effective date of this 2012 Act.

22 (5) A servicer may not, as a condition of agreeing to a mortgage loan modification or
 23 other assistance with a mortgage loan, require a borrower to waive a legal claim or defense
 24 to which the borrower is entitled.

25 (6)(a) A servicer shall take reasonable steps to train the servicer's staff to provide in-
 26 formation about the servicer's programs for mortgage loan modification or other assistance
 27 and about other programs that may enable a borrower to avoid foreclosure.

28 (b) The servicer shall provide a borrower who has failed to make a regular periodic pay-
 29 ment on a mortgage loan for 60 days or longer, or a borrower who requests a mortgage loan
 30 modification or other assistance, with a list of not-for-profit housing counselors approved by
 31 the United States Department of Housing and Urban Development or an agency of this state.

32 (c)(A) The servicer shall provide the borrower or the authorized representative with:

33 (i) A current list of the servicer's employees who are authorized to discuss a program
 34 of mortgage loan modification or other assistance with the borrower or the authorized rep-
 35 resentative; and

36 (ii) A current list of supervisory employees whom a legal service provider or a repre-
 37 sentative of a state or federal agency may contact to review a servicer's performance or to
 38 intervene in a servicer's decision-making process under subsection (4)(a) of this section.

39 (B) The servicer shall provide toll-free telephone numbers, facsimile numbers and elec-
 40 tronic mail addresses for direct communication with the listed employees.

41 (7) A servicer shall develop and implement policies and procedures to identify as soon as
 42 possible borrowers and mortgage loans that are at risk of foreclosure. The policies and pro-
 43 cedures must include:

44 (a) An accounting system that alerts an employee, officer or department of the servicer
 45 that is responsible for initiating foreclosure proceedings when:

1 (A) The interest rate for a mortgage loan will reset, or a material term of a mortgage
 2 loan agreement will change, in the next 60 days; or

3 (B) A borrower fails to make a regular periodic payment on a mortgage loan;

4 (b) A procedure for sending delinquency notices, assessing late fees, processing partial
 5 payments, maintaining collection histories and reporting to a consumer reporting agency the
 6 borrower's failure to make a payment;

7 (c) A policy and procedure for analyzing why the borrower failed to make a regular pe-
 8 riodic payment on a mortgage loan; and

9 (d) A procedure by means of which the servicer's management can review and evaluate
 10 the servicer's decisions to offer a mortgage loan modification or other assistance or to pro-
 11 ceed with foreclosure.

12 (8) This section does not preclude a servicer from offering or accepting other options for
 13 avoiding a foreclosure, such as a short sale of the residential real property that secures the
 14 mortgage loan, a deed in lieu of foreclosure, a forbearance with respect to a payment due
 15 under the terms of the mortgage loan agreement or other assistance the servicer can pro-
 16 vide.

17 (9) A servicer shall use reasonable efforts to obtain consents, waivers, forbearances or
 18 approvals from third parties that are required under contract provisions or under law before
 19 the servicer can agree to a mortgage loan modification or other assistance with a mortgage
 20 loan.

21 (10) If a servicer complies with the regulations and guidelines set forth for the Home
 22 Affordable Modification Program, the servicer is presumed to have complied with the
 23 servicer's duties under section 3 (1)(f) and (g) of this 2012 Act.

24 **SECTION 10.** (1) A servicer shall compile and submit an annual report to the Director
 25 of the Department of Consumer and Business Services that contains the information the
 26 director specifies by rule. The servicer shall submit the report in a format and by a date that
 27 the director specifies by rule.

28 (2) An officer or director of the servicer shall attest under penalty of perjury to the ac-
 29 curacy of a report the servicer submits under this section.

30 **SECTION 11.** (1) A servicer shall keep books, records and other materials that enable the
 31 Director of the Department of Consumer and Business Services to determine during an in-
 32 vestigation or examination whether the servicer is complying with the requirements set
 33 forth in sections 1 to 13 of this 2012 Act. The books, records and other materials must re-
 34 cord, at a minimum:

35 (a) Payments the servicer received, disbursements the servicer made and the date of
 36 each transaction connected with each mortgage loan account;

37 (b) The principal balance of each mortgage loan account;

38 (c) The amount of the regular periodic payment and the date on which the regular peri-
 39 odic payment is due for each mortgage loan account;

40 (d) The service history for each mortgage loan the servicer is authorized to service, in-
 41 cluding mortgage loans the servicer acquired from another person; and

42 (e) The service history for mortgage loans for which a borrower has failed to make a
 43 regular periodic payment, including mortgage loans that are undergoing foreclosure.

44 (2) A servicer shall maintain a file for each mortgage loan that contains:

45 (a) Written correspondence the servicer sends to and receives from the borrower or the

1 authorized representative, including qualified correspondence and correspondence sent by
2 electronic mail or facsimile;

3 (b) Telephone logs and notes from telephone conversations between the servicer and the
4 borrower or the authorized representative; and

5 (c) Written correspondence and notes of other communications concerning the mortgage
6 loan between the servicer and:

7 (A) Another or previous servicer of the mortgage loan;

8 (B) The lender, mortgagee or beneficiary or the trustee under a trust deed for the resi-
9 dential real property that secures the mortgage loan; or

10 (C) A governmental body.

11 (3) The servicer shall periodically assess how well the servicer is performing the duties
12 required under sections 1 to 13 of this 2012 Act. The assessment must include an audit con-
13 ducted at least once each year that examines the servicer's payment processing functions
14 to ensure that the servicer properly credits payments to mortgage loan accounts. The
15 servicer shall keep a record of the results of the assessment and the audit and make the
16 record available to the director at the director's request.

17 (4) The servicer shall collect, maintain and analyze information that enables the servicer
18 to evaluate the effectiveness of the servicer's collection operations and the overall perform-
19 ance of the servicer's portfolio of mortgage loans. The information must include data on the
20 rate of delinquent payments and foreclosures within the servicer's portfolio and an evalu-
21 ation of whether the servicer's operations discriminate against a borrower or class of bor-
22 rowers. The servicer shall compare the rates of delinquency and foreclosure within the
23 servicer's portfolio to similar data available from other servicers or the general mortgage
24 loan servicing market. To the extent that the servicer's rates of delinquency or foreclosure
25 vary from the general rates prevalent in the mortgage loan servicing market, the servicer
26 shall identify and implement actions to correct operations of the servicer that vary signif-
27 icantly from operations common among other servicers with delinquency and foreclosure
28 rates closer to the prevalent rates.

29 (5) The servicer shall submit to the director within 45 days after the end of each of the
30 servicer's fiscal quarters a quarterly financial report and certification of net worth in a
31 format prescribed by the director. Within 90 days after the servicer's fiscal year ends, the
32 servicer shall submit a financial statement that is prepared in accordance with generally
33 accepted accounting principles and is audited by an independent certified public accountant
34 in accordance with generally accepted auditing standards.

35 (6) The servicer shall file other reports as the director prescribes by rule.

36 (7) At the director's request, an officer or director of the servicer shall attest under
37 penalty of perjury to the accuracy of the materials the servicer maintains under this section.

38 **SECTION 12.** (1) A servicer may not:

39 (a) Fail to take timely action to respond to a borrower's qualified correspondence in ac-
40 cordance with section 4 of this 2012 Act.

41 (b) Fail to accept and credit a payment as provided in section 6 of this 2012 Act or to
42 correct an error related to an allocation of a payment, a statement of account or other re-
43 cords related to a borrower's mortgage loan.

44 (c) Fail to respond to a request the servicer receives under section 4 (6) of this 2012 Act.

45 (d) Impose or collect a fee that violates the provisions of section 8 (2) of this 2012 Act.

1 (e) Misrepresent or omit material information in communications with a borrower, such
 2 as the amount, reason for or terms of a payment or fee due under the mortgage loan
 3 agreement or as a result of a policy or practice of the servicer, the terms and conditions of
 4 the servicer's authorization to service the loan or the terms of the borrower's obligations
 5 under the mortgage loan agreement.

6 (f) Misrepresent or omit data or material information required under section 10 or 11 of
 7 this 2012 Act.

8 (g) Fail to notify a borrower if the servicer purchases insurance for residential real
 9 property that secures the borrower's mortgage loan.

10 (h) Purchase insurance for residential real property that secures a mortgage loan if the
 11 servicer has reason to know that the borrower has an effective homeowner's, hazard or flood
 12 insurance policy for the residential real property.

13 (i) Purchase or require a borrower to purchase insurance for residential real property
 14 that pays a total claim in an amount that exceeds the replacement cost for the residential
 15 real property.

16 (j) Fail to refund to the borrower an amount the servicer charged the borrower for an
 17 insurance premium the servicer purchased for residential real property that secures the
 18 borrower's mortgage loan after the borrower proves that the borrower had an effective in-
 19 surance policy in place for the residential real property for the period of time covered by the
 20 policy the servicer purchased.

21 (k) Require a borrower to make a payment in a manner that costs the borrower more
 22 than the cost of a cashier's or certified check or a check from an attorney's trust account.

23 (L) Refuse to communicate with an authorized representative that provides the servicer
 24 with written authorization to act as the authorized representative. This paragraph does not
 25 preclude a servicer from verifying that the authorized representative is acting on the
 26 borrower's behalf.

27 (2)(a) The Director of the Department of Consumer and Business Services may investi-
 28 gate a violation of this section and may impose a penalty or otherwise enforce the provisions
 29 of this section to the same extent as provided for a mortgage banker's violations of the
 30 provisions of ORS 86A.095 to 86A.198.

31 (b) The director may issue a subpoena or other process to the servicer to compel the
 32 servicer to produce books, records and other materials the servicer maintains under section
 33 11 of this 2012 Act or to compel the attendance of a witness or other person from whom the
 34 director requires testimony necessary to conduct an investigation or examination. The di-
 35 rector may examine the witness or other person under oath.

36 (c) If the director investigates or examines a servicer under this section, the servicer
 37 shall pay the director for the actual cost of the investigation or examination. The director
 38 may bring an action to recover the cost in a circuit court of this state.

39 (3) A violation of a provision of this section is an unlawful practice under ORS 646.608
 40 that is subject to enforcement under ORS 646.638.

41 **SECTION 13.** The Director of the Department of Consumer and Business Services may
 42 adopt rules that are necessary to implement the provisions of sections 1 to 13 of this 2012
 43 Act.

44 **SECTION 14.** ORS 646.608 is amended to read:

45 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-

1 ness, vocation or occupation the person does any of the following:

2 (a) Passes off real estate, goods or services as those of another.

3 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
4 proval, or certification of real estate, goods or services.

5 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
6 ciation with, or certification by, another.

7 (d) Uses deceptive representations or designations of geographic origin in connection with real
8 estate, goods or services.

9 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
10 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
11 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

12 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
13 reconditioned, reclaimed, used or secondhand.

14 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
15 or that real estate or goods are of a particular style or model, if they are of another.

16 (h) Disparages the real estate, goods, services, property or business of a customer or another
17 by false or misleading representations of fact.

18 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or
19 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
20 a limitation of quantity.

21 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
22 or amounts of price reductions.

23 (k) Makes false or misleading representations concerning credit availability or the nature of the
24 transaction or obligation incurred.

25 (L) Makes false or misleading representations relating to commissions or other compensation to
26 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
27 stration purposes or in exchange for submitting names of potential customers.

28 (m) Performs service on or dismantles any goods or real estate when not authorized by the
29 owner or apparent owner thereof.

30 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
31 vides the information required under ORS 646.611.

32 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
33 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
34 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
35 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
36 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
37 tomer enters into the transaction.

38 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
39 cize a product, business or service.

40 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
41 not to deliver them as promised.

42 (r) Organizes or induces or attempts to induce membership in a pyramid club.

43 (s) Makes false or misleading representations of fact concerning the offering price of, or the
44 person's cost for real estate, goods or services.

45 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any

1 known material defect or material nonconformity.

2 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

3 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
4 ORS 698.640, whether in a commercial or noncommercial situation.

5 (w) Manufactures mercury fever thermometers.

6 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
7 law, or is:

8 (A) Prescribed by a person licensed under ORS chapter 677; and

9 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
10 on the proper cleanup of mercury should breakage occur.

11 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
12 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
13 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
14 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
15 graph, "thermostat" means a device commonly used to sense and, through electrical communication
16 with heating, cooling or ventilation equipment, control room temperature.

17 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
18 mercury light switches.

19 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

20 (bb) Violates ORS 646A.070 (1).

21 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

22 (dd) Violates the provisions of ORS 128.801 to 128.898.

23 (ee) Violates ORS 646.883 or 646.885.

24 (ff) Violates ORS 646.569.

25 (gg) Violates the provisions of ORS 646A.142.

26 (hh) Violates ORS 646A.360.

27 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

28 (jj) Violates ORS 646.563.

29 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

30 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
31 thereto.

32 (mm) Violates ORS 646A.210 or 646A.214.

33 (nn) Violates any provision of ORS 646A.124 to 646A.134.

34 (oo) Violates ORS 646A.095.

35 (pp) Violates ORS 822.046.

36 (qq) Violates ORS 128.001.

37 (rr) Violates ORS 646.649 (2) to (4).

38 (ss) Violates ORS 646A.090 (2) to (4).

39 (tt) Violates ORS 87.686.

40 (uu) Violates ORS 646.651.

41 (vv) Violates ORS 646A.362.

42 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

43 (xx) Violates ORS 180.440 (1) or 180.486 (1).

44 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

45 (zz) Violates ORS 87.007 (2) or (3).

- 1 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 2 (bbb) Engages in an unlawful practice under ORS 646.648.
- 3 (ccc) Violates ORS 646A.365.
- 4 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 5 (eee) Sells a gift card in violation of ORS 646A.276.
- 6 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 7 (ggg) Violates ORS 646A.430 to 646A.450.
- 8 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 9 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 10 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 11 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 12 subject of the violation.
- 13 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 14 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 15 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 16 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 17 (nnn) Violates ORS 646A.082.
- 18 (ooo) Violates ORS 646.647.
- 19 (ppp) Violates ORS 646A.115.
- 20 (qqq) Violates a provision of ORS 646A.405.
- 21 (rrr) Violates ORS 646A.092.
- 22 (sss) Violates a provision of ORS 646.644.
- 23 (ttt) Violates a provision of ORS 646A.295.
- 24 **(uuu) Violates a provision of section 5 or 12 of this 2012 Act.**
- 25 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
- 26 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 27 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
- 28 need not prove competition between the parties or actual confusion or misunderstanding.
- 29 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
- 30 torney General has first established a rule in accordance with the provisions of ORS chapter 183
- 31 declaring the conduct to be unfair or deceptive in trade or commerce.
- 32 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
- 33 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
- 34 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.
- 35 **SECTION 15. (1) Sections 1 to 13 of this 2012 Act and the amendments to ORS 646.608**
- 36 **by section 14 of this 2012 Act become operative on January 1, 2013.**
- 37 **(2) The Director of the Department of Consumer and Business Services may take any**
- 38 **action before the operative date specified in subsection (1) of this section that is necessary**
- 39 **to enable the director to exercise, on and after the operative date specified in subsection (1)**
- 40 **of this section, all of the duties, functions and powers conferred on the director by sections**
- 41 **1 to 13 of this 2012 Act and the amendments to ORS 646.608 by section 14 of this 2012 Act.**
- 42 **SECTION 16. This 2012 Act being necessary for the immediate preservation of the public**
- 43 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**
- 44 **on its passage.**