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TESTIMONY IN SUPPORT OF SENATE BILL 558A
Before the
House Committee on Consumer Protection and Government Efficiency
May 7th, 2013

Chair Holvey, Vice-Chairs Lively and Richardson, and Members of the Committee:

On behalf of the Oregon Law Center, I submit this testimony in support of Senate Bill 558A, which proposes necessary and fair improvements to Oregon's foreclosure mediation procedures. Thank you for this opportunity to provide comments.

The Oregon Law Center's mission is to achieve access to justice for low-income communities of Oregon by providing a full range of the highest quality civil legal services. The vast majority of our clients have incomes at or below the federal poverty level, and work hard to provide the basic necessities for themselves and their family. During recent years of escalating economic crisis, we have seen a marked increase in the number of people eligible for our services. Homeowners and the formerly middle class have joined a list of groups more traditionally associated with poverty. An unfortunately increasing number of foreclosure cases can position homeowners between shelter and homelessness.

Many of our clients continue to struggle as a direct result of the foreclosure crisis. The stories we hear, and observe on a regular basis, are echoes of one another. Homeowners complain that they cannot reach their servicers, or cannot determine who their servicers are. Homeowners complain that their servicers lose documents, or inaccurately record payments or fees. Perhaps worst of all, homeowners engage in good faith in foreclosure avoidance negotiations, often going into default so as to qualify for participation, only to have the beneficiary foreclose on the home without adequate notice.

OLC's greatest concern in this area is making sure that struggling homeowners can rely on the existence of a fair and reliable process by which they can assess their options and determine next steps. Where possible and appropriate for both sides, we hope unnecessary foreclosures can be avoided. Where foreclosure is inevitable, we hope that can be efficiently identified with sufficient reliable notice that families can plan for transition to avoid crisis and chaos.

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For all these reasons, we supported 2012's SB 1552. That bill required mediation only in non-judicial foreclosure proceedings, which prior to July of 2012 was the principle means of filing foreclosure in Oregon. However, since July of 2012, lenders have chosen to foreclose nearly all trust deeds judicially, therefore avoiding mediation altogether. In order to ensure that vulnerable Oregonians have access to the benefit of a foreclosure mediation program, we must ensure that the program is available regardless of which process the lender chooses to use to foreclose.

SB 558A will expand the program to both judicial and non-judicial foreclosure filings. In addition, the bill includes technical amendments designed to make the program work well for both sides. These amendments were drafted after consideration of input received in advisory committee meetings with lenders, borrowers, mediators, housing counselors, and others. The Senate process in moving this bill forward was grueling, and heavily negotiated. The bill comes to you as engrossed with Dash 20 amendments from the Senate with a 22-7 vote, thanks to incredibly hard and good work of the bill sponsors and others.

As amended, SB 558A will provide critical and reasonable improvements to the current foreclosure mediation process to ensure that more homeowners have more accurate information about their options, and more timely notification of their next steps, regardless of whether the lender files judicially or non-judicially. Passage of this bill will provide significant procedural fairness protections for vulnerable homeowners, thereby preserving safety and stability for families and entire communities.

The availability of a robust foreclosure resolution process, facilitated by experienced mediators, allows borrowers and lenders the chance to exchange accurate information, explore foreclosure avoidance or mitigation options, and negotiate mutually acceptable agreements. In appropriate cases, the parties may be able to negotiate a settlement that allows the borrower to stay in their home. In other cases, home retention may not be possible or appropriate, and in these cases, the parties may reach agreement for a short sale, or a deed in lieu of foreclosure, and a graceful exit. In many cases, the process may allow the parties to avoid the necessity of filing a foreclosure action altogether, saving the borrower and the lender untold costs and expenses, and reducing the impact on our courts and sheriffs.

Foreclosure resolution programs deliver common sense benefits for banks, homeowners, and communities, and should be available prior to any residential foreclosure. The amended bill includes language designed to exempt credit unions and community banks, where borrowers have far less trouble communicating with their servicers. The exemption in the amended bill is drafted too broadly and therefore does not provide protection to as many homeowners in need of assistance as we would like.

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However, we remain supportive and urge passage of SB 558A as soon as possible so that critical relief can be delivered to individuals and communities immediately. As we learn more about the extent to which the exemption lets some of the larger servicers shirk the responsibility to meet with borrowers prior to foreclosure, we will bring these concerns back to you for further consideration.

An enforceable foreclosure resolution process applicable to judicial and non-judicial proceedings is the best way to speed up foreclosure timelines, avoid potential backlog in the courts, and create positive outcomes for both homeowners and investors. SB 558A accomplishes these changes, and simplifies and streamlines the administrative requirements for banks and homeowners making the process more efficient and less costly for all.

For these reasons, we respectfully urge passage of the bill.

Thank you for your work and for your consideration.

Sincerely,

Sybil Hebb