

- **Resolution Conference Required Prior to Judicial or Non-Judicial Residential Foreclosure Proceeding** - 2012's SB 1552 required mediation only in non-judicial foreclosure proceedings. Since July of 2012, lenders have chosen to foreclose nearly all trust deeds judicially, avoiding mediation altogether. SB 558A gives borrowers the right to a pre-foreclosure meeting with their lender *regardless* of which process the lender selects. *Section 2(1)(a)*
- **Resolution Conference Required Prior to Initiation of Foreclosure Proceedings** - 2012's SB 1552 required mediation after the foreclosure process started. SB 558A requires the conference as a pre-requisite to initiating a foreclosure. *Section 2(1)(a)*
 - Saves both lenders and homeowners from the costs that result from commencing avoidable foreclosures.
 - Reduces the number of cases that get filed with the courts.
 - Eliminates delays once the foreclosure process begins.
- **Exemption Narrowed and Streamlined-** Under current law, only certain types of lenders initiating 250 or more Oregon foreclosures in a calendar year are required to offer mediation. This exemption is too broad, and will push more cases into the courts. SB 558A extends the mediation requirements to all lenders doing 175 or more residential foreclosures in Oregon per calendar year. *Section 2(1)(b)(A)*
 - Exemption applies to any beneficiary that did 175 residential foreclosures or less in Oregon in the preceding year.
 - A beneficiary that is a trustee must count all foreclosures commenced in the capacity as trustee towards the limit.
 - This exemption would apply to state agencies, non-profits, any beneficiary doing 175 or fewer foreclosures in a calendar year.
 - To file for exemption, an affidavit is submitted to the Attorney General either by January 31, or at the time of the foreclosure filing. An exemption filed by January 31 is good for the entire calendar year. *Section 2(1)(b)(A)(i)(ii) and (B)*
 - Exemption applies to the Pre-Foreclosure Mediation Program as well as to the At-Risk Borrower Program. *Section (2)(1)(b) and (d)*
- **Resolution Conference Preparation Schedule** - *Section (2)(2) and(3) and Section 3*
 - Process is initiated when a beneficiary contacts the service provider and pays a processing fee.
 - Within 10 days of receiving the request, the service provider mails notice to the parties providing a range of dates within which the conference will be scheduled if the borrower meets the payment deadline.
 - The notice describes the fees involved, the documents that must be exchanged, and the borrower's duty to consult with a housing counselor unless there is no appointment available before the mediation date.
 - Within 25 days of the date the notice is sent, the borrower must:
 - Pay the service provider a fee, not to exceed \$200;
 - Provide specified documents to the service provider.

- 25 days after the borrower's information is made available, the beneficiary must:
 - Pay a fee, not to exceed \$600;
 - Provide specified documents to the service provider.
 - SB 558A narrows the scope of documents that a lender must provide to those documents that are essential to evaluate and negotiate foreclosure avoidance measures.
 - SB 558A provides more time for lenders to review borrower documents prior to the conference.
 - The conference will be cancelled if grantor does not pay the fee in time.
 - SB 558A streamlines the process, provides shorter timelines for completion, and facilitates earlier sharing of appropriate information.
- **Resolution Conference Required for At-Risk Borrowers** – A borrower who is at risk of foreclosure may request a resolution conference with the beneficiary if the beneficiary has not sought a resolution conference or begun a foreclosure proceeding. *Section 2(3)*
 - “At risk” is defined as more than 30 days in default OR in “financial hardship” that may qualify the borrower for a foreclosure avoidance measure.
 - The at-risk borrower must consult with a housing counselor and obtain certification that the borrower meets the definition of “at risk.”
- **Resolution Conference Available for Exempt Beneficiaries** – If an exempt beneficiary would like to use the resolution conference program, it may do so, without waiving the exemption. *Section 2(4)*
- **Resolution Conference: Section 4**
 - Beneficiary must attend in person, or send an agent who has authority to negotiate and commit to agreements, or who can have contact with a person who has that authority.
 - If there is an agreement, it must be reduced to writing.
 - At the close of the conference, the facilitator submits a final report to the service provider.
 - Grantor must appear in person unless compelling circumstances prevent personal appearance. Grantor may have attorney or housing counselor present.
 - Conference can be postponed in limited circumstances.
 - Facilitator shall submit a summary report to the service provider.
- **Certificate of Compliance: Section 5**
 - The service provider sends the beneficiary that complied with the program a certificate of compliance within 5 days of:
 - Receiving a final report from the facilitator after beneficiary compliance;
or
 - Cancelling the resolution conference due to borrower non-payment.
 - The certificate is good for one year from the date of issuance.

- If the beneficiary did not comply with the requirements of the program, the service provider will not issue a certification, but will instead issue a notice explaining why no certificate will issue. A copy of this notice is provided to the Attorney General.
- **Attorney General Authority: Section 6**
 - The Attorney General shall enter into an agreement with a service provider to implement the program. Payment for the program is made from the fund established under SB 1552, which is where the fees paid by the parties are deposited.
 - Provides more flexible rulemaking authority to the Attorney General to implement the program.
 - Amends the program to provide the Attorney General with the authority to pursue sanctions against a lender who fails to comply with specific requirements of the law.
 - Specifies that the enforcement provisions do not provide a private right of action.
- **Technical Amendments: Sections 7 and 8**
 - Clarifies terms and definitions
 - Deletes provisions of SB 1552
 - Corrects cross-references to implement new bill.
- **Dual Track Protections: Section 9**
 - Clarifies Lender obligation: If a determination is made that the borrower is not eligible for a Foreclosure Avoidance Measure, the beneficiary must notify the borrower w/in 10 days of making that determination. The section does not impose an affirmative duty to make an assessment on the beneficiary.
 - Notice must be in plain English.
 - Copy of the notice is sent to the borrower and the Department of Justice.
 - Notice must be recorded before the foreclosure sale.
 - SB 558A relaxes the recording requirement from 20 days prior to the sale date down to 5 days prior to sale date.
 - SB 558 reduces the statute of limitations on actions filed for violation of this provision from 2 years down to one year.
 - Relaxes standard for assessment regarding violation.
- **Amendment to Non-Judicial Foreclosure Statute to Incorporate Program: Sections 10 and 11**
 - Corrects cross references to require filing of certificate of compliance or affidavit of exemption prior to finalization of a non-judicial foreclosure sale.
 - Deletes old language.

- **Amendments to Judicial Foreclosure Statute to Incorporate Program: *Section 12***
 - A complaint in a suit for residential foreclosure must attach a:
 - Certificate of compliance;
 - An affidavit of exemption; or
 - A notice from the service provider explaining why a non-exempt beneficiary did not receive a certificate of compliance.
 - The court may dismiss a suit without prejudice, or stay the proceedings, if there is no exemption, certificate, or non-compliance letter attached to the pleading.
 - Proceedings that were stayed may be re-instated upon provision of a certificate or an affidavit.

- **Enforcement: *Section 13 and 14***
 - Amends ORS 646.607 as consistent with Section 6 of the bill, to provide the Attorney General with enforcement authority for clear violations.
 - Specifies that a private right of action is not available for violations of the mediation requirements of the bill.

- **Sections 2a and 3 of SB 1552 (2012) Repealed: *Section 15***
 - Repeals sections of 1552 related to the notice of mediation that used to be the responsibility of the lender. These are no longer necessary because of the simplified structure of SB 558A. The service provider is now the one responsible for sending notices.

- **Effective dates: *Sections 16-19***
 - Section 16 provides that the bill becomes operative on the 61st day after its effective date, and allows the AG to take steps towards implementation prior to that date. Provides 30 rule draft circulation requirement.
 - Section 17 provides that the bill applies to proceedings filed on or after the effective date.
 - Section 18 allows the AG the authority to use mediation program funds to pay for remaining expenses of the mediation program.
 - Section 19 provides that the bill takes effect upon passage.