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House Committee on Consumer Protection and Government Efficiency
Testimony of Kelly Harpster in Support of SB 558 A
May 6, 2013

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

Thank you for the opportunity to testify today. My name is Kelly Harpster, and I am an attorney in private practice. Over the past few years, I have represented homeowners with mortgage and foreclosure issues. For the past year, I have served on the Advisory Committee to the Foreclosure Avoidance Mediation Program. I was part of the team that trained foreclosure mediators across the state and helped prepare housing counselors and attorneys for the program. I also have been intimately involved with efforts to improve the mediation program, which resulted in the bill before you today.

SB 558 A incorporates the best practices in foreclosure mediation into a real world statute. It builds on the bones of SB 1552, applying the product of months of discussion between stakeholders on the Advisory Committee and the vast body of literature detailing what works and what doesn't work. This bill carefully balances the needs of both homeowners and lenders.

SB 558 A abandons the flawed dual track process in SB 1552 and makes mediation the last step before a foreclosure is commenced. If the parties cannot reach an agreement, the lender can now move forward with the foreclosure process without further interruption.

The bill closes a gaping loophole that has resulted in very few mediations taking place since the *Niday* decision last summer by requiring lenders to participate regardless of the type of foreclosure they intend to pursue.

The bill shortens the timeline for the mediation process while using the time that remains more efficiently. Notices will now be mailed directly from the service provider, reducing the cost to lenders and ensuring that homeowners do not mistake the notice for just another dunning letter from a loan servicer.

Document requirements are streamlined and made consistent with the current rules, while the timing of the document exchange is revised to ensure that the conferences will be more productive. The bill eliminates many unnecessary requirements that lenders viewed as burdensome.

Homeowners still may initiate the process rather than waiting for the lender to do so, but they must see a housing counselor first. We hope this provision will help homeowners avoid the sea of scammers and get help early after a default rather than waiting until foreclosure is imminent and modifications are more difficult to do.

SB 558 A also clarifies the Attorney General's rulemaking authority, an area of concern among all stakeholders during the original rulemaking, and adds a specific enforcement mechanism that the Attorney General can employ if patterns of noncompliance develop.

Admittedly, the bill is not perfect. The most significant shortcoming: Many of the largest residential loan servicers in the United States, including those that have been repeatedly sanctioned for widespread illegal foreclosure and predatory servicing practices, may be exempt from participation. This loophole could impact thousands of struggling homeowners. The current exemption, which was the product of intense and difficult negotiations in the Senate, may be the best the Legislature could do in this session, but I strongly urge you to revisit the exemption next year and consider conforming the language to the "small servicer" exemption in the CFPB's mortgage servicing rules. Those rules will become effective in January, just in time for the next session.

With so many stakeholders involved—consumers, servicers, trustees, mediators, housing counselors, and agencies charged with implementation—it is impossible to draft a bill in which every provision pleases everyone. But to the extent reasonably possible, this bill incorporates the recommendations and requests of each stakeholder group while successfully balancing a host of competing interests.

By all accounts, we have weathered the first half of the foreclosure crisis with several years of distress still to come. SB 558 A will help the tens of thousands of Oregonians still struggling either to avoid foreclosure or, when they cannot, to negotiate a dignified exit, to the mutual benefit of homeowners, lenders, and our hardest hit communities.

I urge you to vote for passage of this bill.

Kelly L. Harpster
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