

Senate Bill 558A

Improvements to Foreclosure Avoidance Mediation Program

Senate Bill 558A comes from the Senate with a 22-7 vote. It makes technical improvements to Oregon's foreclosure mediation law and ensures that homeowners have access to a resolution conference with the lender prior to either judicial or non-judicial foreclosure proceedings. The bill as amended contains the following elements:

Substantive Provisions:

- **Resolution Conference Required Prior to Judicial or Non-Judicial Foreclosure Proceeding** – 2012's SB 1552 required mediation only in non-judicial foreclosure proceedings. Since passage, 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.
- **Resolution Conference Required Prior to Initiation of Foreclosure Proceedings** – 2012's SB 1552 required mediation after the foreclosure process started, not as a pre-requisite to initiating foreclosure. SB 558A's pre-foreclosure resolution conferences save lenders and homeowners from the cost and credit damage that result from commencing avoidable foreclosures and reduce the burden on the courts. For unavoidable foreclosures, the change in timing eliminates delays once the process begins.
- **Exemption Narrowed** – Under current law, only those lenders initiating 250 or more Oregon foreclosures in a calendar year are required to offer mediation. This exemption allows some of the largest lenders and servicers to avoid the responsibility to meet with a borrower to explore alternatives to foreclosure and will push more cases into the courts. SB 558A extends the requirements to lenders doing 175 or more foreclosures in Oregon per calendar year.
- **At-Risk Borrower Conferences** – Clarifies that at-risk homeowners can initiate a pre-foreclosure conference only if a housing counselor certifies that the borrower is more than 30 days in default or suffering a financial hardship that is likely to qualify the borrower for a foreclosure avoidance measure.
- **Sanctions** – Gives the Attorney General, not individual borrowers, authority to pursue sanctions against a lender who fails to comply with specific requirements of the law.

Technical Amendments to Ease Compliance for Banks:

- **Simplified Document Requirements** – Narrows the scope of documents the lender must provide to those that are essential to evaluate and negotiate foreclosure avoidance measures and provides more time for lenders to review borrower documents prior to the conference.
- **Simplified Notice Provisions** – Changes the manner of giving notice of a conference to reduce the burden on lenders while providing adequate notice to borrowers.
- **Rulemaking Authority** - Clarifies the scope of the Attorney General's authority to promulgate rules to implement the program.
- **Dual Track Protections** – Clarifies that the dual track protections apply only to residential foreclosures, specifies that there is no affirmative obligation to evaluate borrowers who have not been thru mediation, allows banks to "substantially" comply with the plain language requirements, and shortens the statute of limitations for borrowers to bring suit.
- **Fees** – Caps mediation fees that may be charged to the Bank.

