



DEPARTMENT OF JUSTICE
CIVIL ENFORCEMENT DIVISION

MEMORANDUM

DATE: February 26, 2013

TO: Honorable Chip Shields, Chair
Senate Committee on General Government, Consumer and Small Business
Protection, Members

FROM: Ellen Rosenblum, Attorney General
Aaron Knott, Legislative Director

SUBJECT: SB 558

RECOMMENDED ACTION

This testimony is presented in support of SB 558. We recommend that the Senate Committee on General Government, Consumer and Small Business Protection approve SB 558 with a do pass recommendation.

BACKGROUND ON THE FORECLOSURE AVOIDANCE MEDIATION PROGRAM

- For most of the last four years, the foreclosure rate has been more than three times what it was in 1933, at the height of the Great Depression. And, by many estimates, we are not yet halfway through the devastation of lost homes, displaced families, and gutted neighborhoods. In 2012, the Department of Justice received nearly 800 foreclosure-related complaints, a record number, alleging delays, frustration and feelings of unfairness with the outcome of the foreclosure process.
- In 2012, the Oregon Legislature created the Foreclosure Avoidance Mediation Program by passing Senate Bill 1552, which became law on April 12, 2012 and became operative on July 11, 2012. This program allows a face-to-face meeting between a homeowner and lender to determine whether there may be an alternative to foreclosure, providing better substantive outcomes and a more efficient and effective process for the homeowner and lender.
- Lenders and homeowners need timely access to good information to make decisions that are in their best interests. This program provides fast, web-based access to all key documents and eliminates confusion about what documents are required or whether all documents necessary for lender consideration have been submitted. Program staff, housing counselors and facilitators aid the participants in getting the answers they need to achieve a good outcome in mediation.

- Over the last few months, it has become clear that this program requires substantive modification to be fully effective and guarantee meaningful participation from both lenders and homeowners.

HOW SENATE BILL 558 WILL PROTECT HOMEOWNERS

- **Closes the judicial foreclosure loophole.** At the time of SB 1552's passage, the vast majority of foreclosures were carried out through the non-judicial foreclosure process and the law only required mediations in non-judicial foreclosures. Since the operative date of SB 1552, lenders have overwhelmingly transitioned to the judicial foreclosure method, bypassing mediation requirements.
- **Provides a clear, fair definition of which at-risk borrowers may request mediation with their lender.** Under SB 558, homeowners who are at risk of losing their homes may proactively mediate with their lender if the homeowner meets with a housing counselor and the housing counselor certifies that either: 1) the homeowner is more than 30 days in default on their loan or 2) the homeowner has a financial hardship that the housing counselor believes may qualify them for a foreclosure avoidance measure.
- **Gives the Department of Justice needed enforcement powers.** Of the almost 300 requests for mediation by at-risk homeowners, lenders have failed to respond in 83% of cases, in violation of SB 1552. DOJ needs a mechanism to enforce the law where lenders exhibit a clear pattern of noncompliance.
- **Eases the burden on the judicial system.** By requiring lenders to offer mediation prior to filing a judicial foreclosure action, homeowners and lenders may resolve issues without resorting to the court system.
- **Helps prevent unnecessary foreclosures.** By facilitating informed communication between homeowners and their lenders, the program can help parties avoid foreclosure altogether. The first mediations have showed promising results, with the majority resulting in agreements aimed at either home retention and or allowing an exit that was acceptable to the homeowner.
- **Allows more Oregonians to retain their largest and most important financial asset: their home.**

DOJ CONTACT

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