

U.S. Bank clears path for Legislature by showing that mortgage mediation can work



By The Oregonian Editorial Board

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Lenders are running out of excuses for dodging [Oregon's foreclosure mediation program](#). The Legislature should speed up the pace of acceptance by passing legislation that would make technical fixes and close loopholes in a hastily amended bill that escaped last year's short session on the last day.

To date, only eight cases have traversed the mediation program. Two banking companies -- U.S. Bank (three cases) and Capital One (one case) -- have used the program and, gasp, they found that mediation works.

"We see the mediation process as being very effective," Malia Wasson, U.S. Bank's president for Oregon and Southwest Washington, told [The Oregonian's Elliot Njus](#). "We get quick answers and conclusions, which is of course what our borrower wants." Jonathan Conant, a Florida mediator who is helping administer the mediation program, said Capital One also was satisfied with the resolution of the case it submitted to mediation.

[U.S. Bank](#) and [Capital One](#) are large companies with diverse operations and don't necessarily have the same needs as some of the smaller lenders who have expressed concerns about the potential cost and paperwork burden of the mediation program. And, admittedly, eight cases is a small sample size, but the companies' experiences show that mediation can work for both borrowers and lenders.

The bills before the Legislature address some of lenders' most legitimate reservations. [Senate Bill 558](#), sponsored by Sens. [Brian Boquist, R-Dallas](#); [Diane Rosenbaum, D-Portland](#); and [Lee Beyer, D-Springfield](#), would streamline document and notification requirements. Consumer advocates accept those changes, which were sought by lenders.

Other aspects of the legislation, which also is backed by Attorney General Ellen Rosenblum, will spark healthy debate as bills move through the Senate and House. Probably the most contentious issue is extension of the mediation program to judicial foreclosures, a move opposed by the Oregon Bankers Association. Lawmakers should not back down. Most lenders have been able to dodge the mediation requirement by foreclosing through the court system.

It's unclear whether the surge in judicial foreclosures since last summer came because of the mediation bill or because of a court ruling that prevented lenders from using a mortgage tracking system called [Mortgage Electronic Registration Systems](#). The MERS decision has been appealed to the Oregon Supreme Court.

Regardless of what the Supreme Court eventually decides, the mediation program should apply to all foreclosures. Borrowers face the same issues regardless of which legal process

lenders use. And, as the experiences of U.S. Bank and Capital One show, mediation can benefit lenders as well as borrowers.

Meanwhile, every day legislation languishes in committee delays relief for homeowners who are struggling to stay in their homes as the housing market and economy slowly recover.

Oregon Appeals Court Rules Against MERS! Niday vs. GMAC

From Oregon Live

The Oregon Court of Appeals struck a blow to the mortgage industry in Oregon Wednesday, ruling that its controversial document-registry system could not be used to skirt state recording law in out-of-court foreclosures.

In a decision with implications beyond the Mortgage Electronic Registration Systems Inc., the state's second-highest court also held Wednesday that a lender must ensure a complete ownership history of the mortgage is filed in county records before it can foreclose outside a courtroom.

But the court found that the Oregon Trust Deed Act requires the party that receives loan payments to publicly record all changes in mortgage ownership before starting a so-called nonjudicial foreclosure. MERS does not take loan payments and does not qualify as a "beneficiary" of a trust deed, so the digital registry cannot be used to avoid the recording requirement, the court ruled.

"A beneficiary that uses MERS to avoid publicly recording assignments of a trust deed cannot avail itself of a nonjudicial foreclosure process that requires that very thing—publicly recorded assignments," the court ruled. Judge Lynn Nakamoto wrote the decision.