

## OREGON LAW CENTER

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### TESTIMONY IN SUPPORT OF SENATE BILL 558

Before the

Senate General Government, Consumer, and Small Business Protection Committee  
February 27<sup>th</sup>, 2013

**Chair Shields, Vice-Chair George, and Members of the Committee:**

On behalf of the Oregon Law Center, I submit this testimony in support of Senate Bill 558, which proposes necessary and fair improvements to Oregon's foreclosure mediation procedures. Thank you for this opportunity to provide comments.

The Oregon Law Center's mission is to achieve access to justice for low-income communities of Oregon by providing a full range of the highest quality civil legal services. The vast majority of our clients have incomes at or below the federal poverty level, and work hard to provide the basic necessities for themselves and their family. During recent years of escalating economic crisis, we have seen a marked increase in the number of people eligible for our services. Homeowners and the formerly middle class have joined a list of groups more traditionally associated with poverty. An unfortunately increasing number of foreclosure cases can position homeowners between shelter and homelessness.

Many of our clients continue to struggle as a direct result of the foreclosure crisis. The stories we hear, and observe on a regular basis, are echoes of one another. Homeowners complain that they cannot reach their servicers, or cannot determine who their servicers are. Homeowners complain that their servicers lose documents, or inaccurately record payments or fees. Perhaps worst of all, homeowners engage in good faith in foreclosure avoidance negotiations, often going into default so as to qualify for participation, only to have the beneficiary foreclose on the home without adequate notice.

OLC's greatest concern in this area is making sure that struggling homeowners can rely on the existence of a fair and reliable process by which they can assess their options and determine next steps. Where possible and appropriate for both sides, we hope unnecessary foreclosures can be avoided. Where foreclosure is inevitable, we hope that can be efficiently identified with sufficient reliable notice that families can plan for transition to avoid crisis and chaos.

For all these reasons, we supported 1552. But that bill required mediation only in non-judicial foreclosure proceedings, which prior to July of 2012 was the principle means of filing foreclosure in Oregon. However, since July of 2012, lenders have chosen to foreclose nearly all trust deeds judicially, therefore avoiding mediation altogether. In order to ensure that vulnerable Oregonians have access to the benefit of a foreclosure mediation program, we must ensure that the program is available regardless of which process the lender chooses to use to foreclose.

SB 558 will expand the program to both judicial and non-judicial foreclosure filings. In addition, the bill includes technical amendments designed to make the program work well for both sides. These amendments were drafted after consideration of input received in advisory committee meetings with lenders, borrowers, mediators, housing counselors, and others.

SB 558 will provide critical and reasonable improvements to the current foreclosure mediation process to ensure that all homeowners have more accurate information about their options, and more timely notification of their next steps, regardless of whether the lender files judicially or non-judicially. Passage of this bill will provide significant procedural fairness protections for vulnerable homeowners, thereby preserving safety and stability for families and entire communities.

**Key Changes from SB 1522:**

1. Expands the timing of the program to before a foreclosure is commenced, so that it will be available to borrowers regardless of which method of foreclosure the lender chooses.
2. Better defines what is meant by an "At-Risk" Borrower, and requires an At-Risk Borrower to meet with a housing counselor to determine eligibility.
3. Expands the Lender exemption to all beneficiaries, but narrows it to those doing 100 or fewer foreclosures in a calendar year.
4. Streamlines the program so that it is leaner and more efficient:
  - a. The Lender or an At-Risk Borrower initiates the resolution conference by submitting a request for conference to the Service Provider.
  - b. The Service Provider handles the notices, fees, document exchange, and scheduling.
  - c. Reduces the notice burden on Lenders. Eliminates the need to serve other persons who would not be parties to the resolution conference.
5. Provides rulemaking authority to the Department of Justice to implement the program
6. Provides the Attorney General with enforcement authority for violations of clear obligations.

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The availability of a robust foreclosure resolution process, facilitated by experienced mediators, allows borrowers and lenders the chance to exchange accurate information, explore foreclosure avoidance or mitigation options, and negotiate mutually acceptable agreements. In appropriate cases, the parties may be able to negotiate a settlement that allows the borrower to stay in their home. In other cases, home retention may not be possible or appropriate, and in these cases, the parties may reach agreement for a short sale, or a deed in lieu of foreclosure, and a graceful exit. In many cases, the process may allow the parties to avoid the necessity of filing a foreclosure action altogether, saving the borrower and the lender untold costs and expenses, and reducing the impact on our courts and sheriffs.

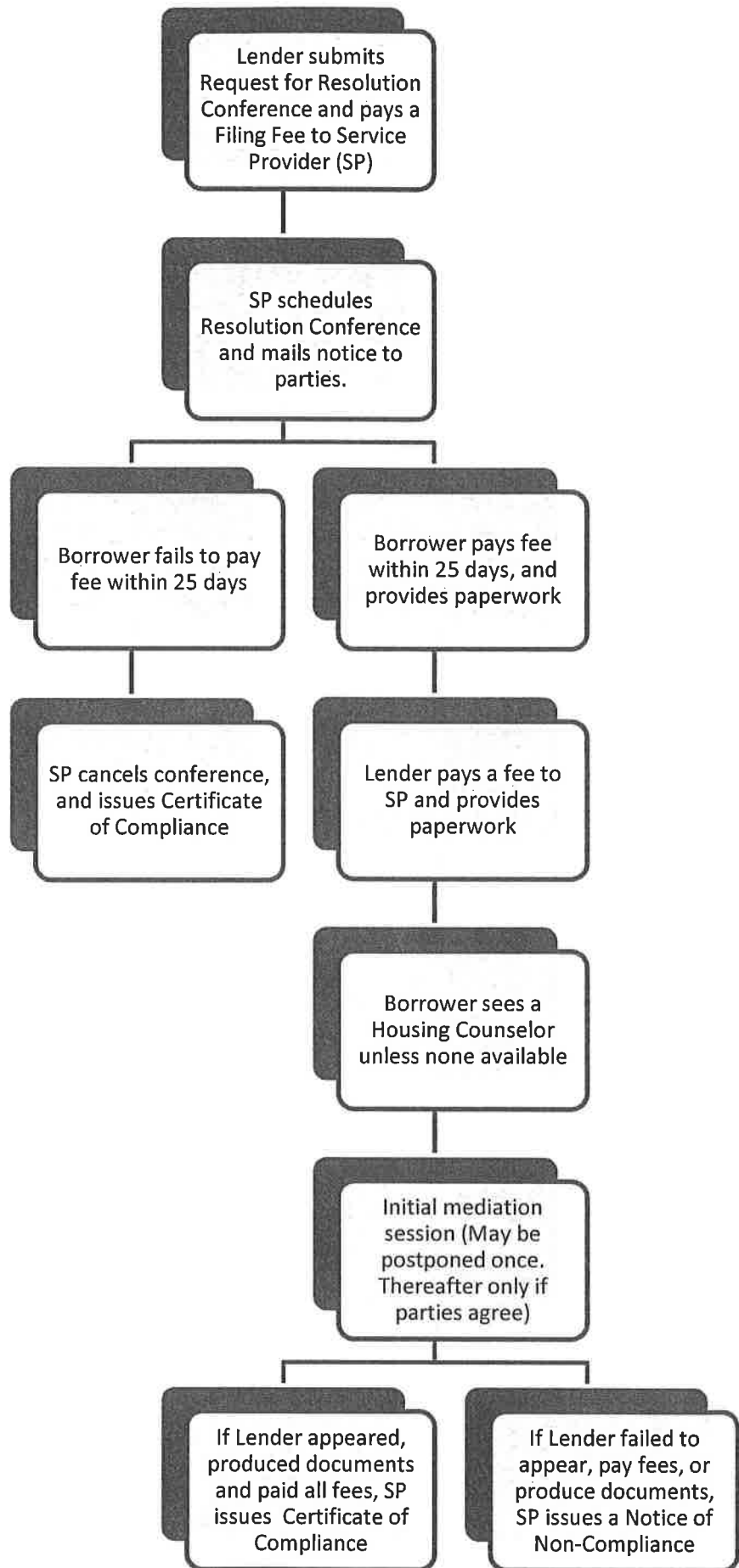
An enforceable foreclosure resolution process applicable to judicial and non-judicial proceedings is the best way to speed up foreclosure timelines, avoid potential backlog in the courts, and create positive outcomes for both homeowners and investors. SB 558 accomplishes these changes, and simplifies and streamlines the administrative requirements for banks and homeowners making the process more efficient and less costly for all. For these reasons, we respectfully urge passage of SB 558.

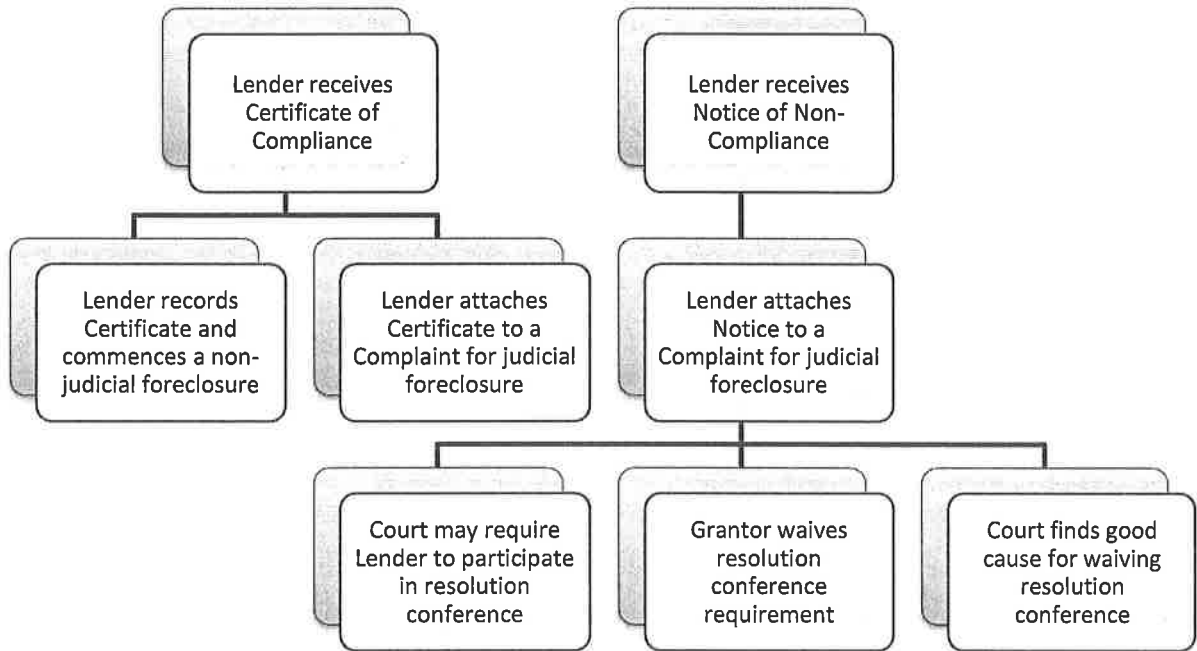
Thank you for your work and for your consideration of this important bill.

Sincerely,

Sybil Hebb

**SB 558  
Outline**





Oregon Judicial Department

**Foreclosure Case Filings as Percent of Total Circuit Court Filings**  
(Calendar Year 2011)

		Circuit Court Case Filings					
	Foreclosures	General Civil*	Foreclosure Filing %	All Cases Except Violations	Foreclosure Filing %	All Cases	Foreclosure Filing %
CY 2011							
Jan - June	363	33,034	1.10%	169,426	0.21%	275,897	0.13%
July - Dec	1,267	35,963	3.52%	168,521	0.75%	276,704	0.46%
<b>TOTAL</b>	<b>1,630</b>	<b>68,997</b>	<b>2.36%</b>	<b>337,947</b>	<b>0.48%</b>	<b>552,601</b>	<b>0.29%</b>

\*General Civil includes all cases classified as "civil" on the OJIN system except landlord/tenant (FED). Does not include domestic relations, juvenile, mental health, offense, probate, or small claims filings.