

## Oregon Law Center Concerns about Dash 9 amendments to SB 558

- 1) **The Dash 9s would make this program an “opt-in” program rather than an “opt-out” program.** (See page 1, line 11, Page 2, lines 17-26, and related) This would significantly undermine the success potential of the model, for both parties.
  - a. Under SB 558 with the Dash 11s, the homeowner gets information from the neutral third party service provider that a date has been set for mediation, and the borrower must send in a fee by the deadline in order to participate in the mediation. If the borrower does not meet the deadline (opts-out), the mediation is canceled, and neither party must appear.
  - b. Under the Dash 9s, the borrower would get notice from the bank about the possibility of seeking mediation, and must then submit paperwork (opt in) to request a meeting.
  - c. Programs that are opt-out have triple the participation rates and success rates of opt-in programs.
  
- 2) **The Dash 9s would more than double the exemption level, to exclude all beneficiaries that *complete* (as opposed to *commence*) more than 200 foreclosures in a calendar year.** (See page 1, line 20) This would exclude the majority of foreclosures in Oregon from the law.
  - a. Under current law, lenders initiating 250 or more Oregon foreclosures in a calendar year are required to offer mediation. This exemption is too broad, will push more cases into the courts, and allows a loophole through which some of the nation’s largest lenders can escape. Under current law, only the five or six largest banks in the nation will have to participate. Roughly 40% of struggling homeowners of struggling homeowners will be excluded from having an opportunity to meet with their lender before losing their homes.
  - b. For example:
    - (i) A recently published article, using Realtytrac's data, reported that Suntrust and HSBC are two of the 10 banks doing the most foreclosures nationally.  
<http://247wallst.com/2013/03/12/banks-foreclosing-on-the-most-homes/>
    - (ii) In 2011, the Federal Reserve board issued enforcement actions and substantial penalties against Suntrust, HSBC, and Beneficial, for violations.
    - (iii) Suntrust, HSBC, and Beneficial all filed exemptions from our mediation program in 2012 and in 2013.  
[http://www.doj.state.or.us/consumer/pages/foreclosure\\_mediation.aspx](http://www.doj.state.or.us/consumer/pages/foreclosure_mediation.aspx)
  - c. We do not want the law to be subject to manipulation and avoidance from large lenders who sell off or assign loans to smaller companies so that they can avoid coverage of the law.
    - (i) We have heard from non-profit housing counselors across the state that they are seeing concerning practices from a variety of newer/smaller servicing companies that are popping up and taking over troubled loans from the larger companies.
    - (ii) For example, Bank of America recently sold off much of its troubled Countrywide loan portfolio to smaller servicers.

- d. The number of foreclosures *commenced* rather than *completed*, is the right marker to use. Use of the number completed would significantly increase the exemption, and heighten all of the above concerns.
  - e. The exemption ought to apply to and be designed to cover state agencies, non-profits, any beneficiary doing 100 or fewer foreclosures in a year. Credit unions, community banks, and state agencies like the Department of Veterans Affairs, who generally go fewer than 25 foreclosures in a year, would all qualify for this exemption. The exemption at this level would protect Oregonians from the larger national servicers while honoring the practices of our Oregon credit unions, community banks, non-profits, and agencies.
- 3) **The Dash 9s would erase the Attorney General’s enforcement and rulemaking authority.** (*See page 9, lines 3-16*) This would significantly undermine the success potential of the model.
- a. Under SB 558 with the Dash 11s, Section 6 of the bill allows the AG authority to enforce violations of the bill. This is a reasonable proposal to ensure implementation of the law. Without explicit enforcement authority, consumers cannot rely on compliance. The bill does not propose a private right of action.
  - b. Without rulemaking authority, the AG cannot implement a program that works. During rulemaking discussions about SB 1552, both sides were frustrated with the lack of rulemaking authority necessary to make the program work and responsive to the needs of both sides.
- 4) **The Dash 9s would delete entirely the availability of mediation for “At Risk” Borrowers who want to sit down with their lender prior to foreclosure.**
- 5) **Other significant technical concerns identified:**
- a. **Timelines** – too truncated to allow actual meaningful participation. SB 558 is already 15 days shorter than SB 1552
  - b. **Paperwork** – Banks are excused from producing paperwork necessary to facilitate negotiations
  - c. **Barriers** – Borrower must see a counselor before knowing what paperwork they need to provide, within a short timeline, and there is no out for lack of availability.
  - d. **Service** – provisions confusing, lack specificity, tenant rights reduced, postponement notices erased