

D R A F T

SUMMARY

Establishes temporary limitations on lenders being able to enforce default remedies on obligations secured by mortgages, trust deeds, land sale contracts or other instruments.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to strategies to protect Oregonians from the effects of the COVID-19 pandemic; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) The Legislative Assembly finds and declares that:

(a) The provisions of this section might affect the terms and conditions of certain contracts into which residents of this state have entered.

(b) The effects of the provisions of this section are not substantial because the provisions have a limited scope and duration and are necessary to protect the public health, safety and welfare. For these reasons the provisions do not undermine a contractual bargain, interfere with a party's reasonable expectations or prevent a party from safeguarding or reinstating the party's rights.

(c) Even if a provision of this section has the effect of undermining a contractual bargain, interfering with a party's reasonable expectations or preventing a party from safeguarding or reinstating the party's rights, the provision is appropriate and reasonable as a means by which to implement the significant and legitimate public purpose of responding to the declaration of a state of emergency issued by the

Governor on March 8, 2020.

(2) As used in this section:

(a) “Borrower” means a mortgagor of real property, a grantor, as defined in ORS 86.705, a purchaser in a land sale contract or a person that gives a security interest to a lender in personal property that is used as a residence.

(b) “Emergency period” means any period during which the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is in effect, plus 60 calendar days.

(c) “Financing agreement” means a contract under which a borrower must make payments to a lender to satisfy an obligation that is secured by a mortgage, a trust deed, a land sale contract or a lien or other security interest in subject property.

(d) “Foreclosure avoidance measure” has the meaning given that term in ORS 86.707.

(e) “Forfeiture remedy” has the meaning given that term in ORS 93.905.

(f) “Lender” means a beneficiary or trustee, both as defined in ORS 86.705, a mortgagee, as defined in ORS 87.005, a seller in a land sale contract, a licensee, as defined in ORS 86A.303, or an agent, affiliate or employee of a beneficiary, trustee, mortgagee, seller or licensee.

(g) “Subject property” means real property or personal property that is used as a residence.

(h) “Trust deed” has the meaning given that term in ORS 86.705.

(i) “Trustee” has the meaning given that term in ORS 86.705.

(3)(a) During the emergency period, a lender may not treat a borrower’s failure to make a periodic installment payment or any other amount that is due on or in connection with an obligation secured by a mortgage, trust deed, land sale contract or other lien or security interest on subject property as a default if the borrower no-

1 tifies the lender that the borrower will not be able to make the peri-
2 odic installment payment within 30 days after the periodic installment
3 payment is due. In lieu of declaring a default, and unless the borrower
4 and lender agree to modify, defer or otherwise mitigate a loan, in-
5 cluding by agreeing to a different foreclosure avoidance measure in
6 accordance with ORS 86.726, 86.729, 86.732, 86.736, 86.741 and 86.744, the
7 lender shall:

8 (A) Defer or forbear from collecting the periodic installment pay-
9 ment during the emergency period; and

10 (B) Waive or modify the payment terms or other terms of the ob-
11 ligation in a manner that permits the borrower to pay the sum owed
12 and due:

13 (i) After the previously scheduled or anticipated date on which full
14 performance of the obligation is due; and

15 (ii) In a series of periodic installment payments, each of which is
16 the same amount, at the same interest rate, as applied to a periodic
17 installment payment that was due during the emergency period.

18 (b) A borrower does not need to provide a notification to a lender
19 under paragraph (a) of this subsection more than once. A borrower
20 may provide the lender with documentation or other evidence that the
21 borrower's failure to pay is a direct or indirect result of conditions
22 that prompted the Governor's declaration of emergency on March 8,
23 2020, including evidence of a loss of income caused by restrictions the
24 state or a local government imposed to respond to the emergency
25 declaration.

26 (c) A lender may not:

27 (A) Impose or collect a charge, fee, penalty or other amount that,
28 but for the provisions of this section, the lender might have imposed
29 or collected from a borrower for failing to make a periodic installment
30 payment or other amount due on or in connection with the borrower's
31 obligation during the emergency period;

1 (B) Treat in any manner the borrower's failure during the emer-
2 gency period to make a periodic installment payment or other amount
3 due on or in connection with the obligation as an ineligibility for a
4 foreclosure avoidance measure;

5 (C) Require or charge for an inspection, appraisal or a broker
6 opinion of value, not otherwise required in the absence of a default;

7 (D) Initiate cash management not already in existence before the
8 effective date of this 2020 special session Act;

9 (E) Implement lockbox procedures not already in existence before
10 the effective date of this 2020 special session Act;

11 (F) Take control of the operating revenue from real property se-
12 cured by the financing document unless the control was established
13 prior to the effective date of this 2020 special session Act;

14 (G) Declare a default based on the failure of a borrower to meet
15 financial covenants due to inadequate operating revenue resulting
16 from the COVID-19 pandemic; or

17 (H) Impose extra or excessive loan servicing fees, loan workout fees
18 or any other charge or practice that the lender would not undertake
19 in the absence of a default.

20 (4) Notwithstanding ORS 18.860 to 18.993, 86.752, 87.262, 87.272, 88.010
21 and 93.905 to 93.940, and except as provided in subsection (10) of this
22 section, a lender may not at any time during the emergency period:

23 (a) Foreclose a trust deed by advertisement and sale;

24 (b) Bring an action or suit to foreclose a mortgage or trust deed;

25 (c) Enforce a forfeiture remedy; or

26 (d) Bring an action or suit to foreclose a lien or other security in-
27 terest on, or petition for an order of foreclosure by advertisement and
28 sale of, subject property.

29 (5) Notwithstanding ORS 18.920, 18.924, 86.764 and 93.915 and except
30 as provided in subsection (10) of this section, a notice given during the
31 emergency period of a trustee's sale, of a default under a contract for

1 the conveyance of real property or of an execution sale of subject
2 property is hereby withdrawn. After the emergency period expires:

3 (a) A notice of a trustee's sale withdrawn under this subsection
4 may again be given as provided in ORS 86.764 and the time period
5 specified in ORS 86.764 must elapse before a trustee's sale may occur.

6 (b) A notice of an execution sale withdrawn under this subsection
7 may again be given as provided in ORS 18.920 or 18.924, as appropriate,
8 and the time period specified in ORS 18.920 or 18.924, as appropriate,
9 must elapse before an execution sale may occur.

10 (c) A notice of default under a contract for the conveyance of real
11 property withdrawn under this subsection may again be given as pro-
12 vided in ORS 93.915 and the appropriate time period specified in ORS
13 93.915 must elapse before a lender may enforce a forfeiture remedy.

14 (d) A lien foreclosure on personal property that is used as a resi-
15 dence may proceed in accordance with the procedures that apply to
16 such foreclosures.

17 (6) Notwithstanding ORS 18.860 to 18.993 and 88.010 and except as
18 provided in subsection (10) of this section, during the emergency pe-
19 riod a court may not enter a judgment of foreclosure and sale or issue
20 a writ of execution with respect to subject property. A court shall
21 dismiss without prejudice any action or suit commenced during the
22 emergency period to foreclose a lien upon subject property.

23 (7)(a) Notwithstanding ORS 86.782 and except as provided in sub-
24 section (10) of this section, a trustee's sale may not occur during the
25 emergency period. Any purported trustee's sale during the emergency
26 period is void and does not transfer or foreclose any rights to subject
27 property.

28 (b) Notwithstanding ORS 18.860 to 18.993 and except as provided in
29 subsection (10) of this section an execution sale of subject property
30 may not occur during the emergency period. Any purported execution
31 sale during the emergency period is void and does not transfer or

1 foreclose any rights to subject property.

2 (8) A borrower that suffers an ascertainable loss of money or prop-
3 erty because a lender took an action prohibited under subsection (3)
4 of this section may bring an action in a circuit court of this state to
5 recover the borrower's actual damages. A borrower who prevails in the
6 action may also recover the borrower's court costs and attorney fees.

7 (9) Within 15 days following the effective date of this 2020 special
8 session Act, each lender authorized to do business in this state must
9 notify all of the lender's borrowers of a borrower's rights for accom-
10modation under this section.

11 (10) This section does not:

12 (a) Apply to judgments of foreclosure and sale or writs of execution
13 issued before the emergency period began or to a trustee's sale for
14 which notice was given before the emergency period began.

15 (b) Relieve a borrower of the duty to repay the full amount of any
16 obligation that is subject to a waiver, deferral, modification or
17 forbearance under the provisions of this section.

18 SECTION 2. Section 1 of this 2020 special session Act is repealed 90
19 days after the expiration of the emergency period as defined in section
20 1 of this 2020 special session Act.

21 SECTION 3. This 2020 special session Act being necessary for the
22 immediate preservation of the public peace, health and safety, an
23 emergency is declared to exist, and this 2020 special session Act takes
24 effect on its passage.