OREGON BANKERS ASSOCIATION

The Voice of Oregon Banking • Since 1905

LC 45 & 85: PROPOSED COMMERCIAL AND RESIDENTIAL FORECLOSURE MORATORIUMS

Co-Chair Courtney, Co-Chair Kotek, and members of the Joint Interim Committee on the First Special Session of 2020, thank you for the opportunity to provide written testimony related to the issue of commercial and residential foreclosure. The Oregon Bankers Association is the full-service trade association representing FDIC-insured banks, large and small, throughout the State of Oregon. Our membership is extremely concerned about legislative efforts to impose commercial and residential foreclosure moratoriums on our state. For the reasons stated below, now is not the time to take the damaging step of implementing these moratoriums.

Banks Are Working with Their Borrowers to Find Solution to Avoid Foreclosure

Bank understand the challenges facing Oregonians and Oregon businesses during the COVID-19 pandemic and are using every tool they have to assist them. Whether in the form of special emergency loan programs, payment deferrals, loan modifications, reduced loan rates, fee waivers, or other forms of debt restructuring, banks are in the trenches with their customers fashioning individualized solutions. The last thing banks want is for their customers to go into foreclosure. Foreclosure generally means a substantial loss for both the bank and its customer.

It is important to note that there is <u>no notable uptick</u> in foreclosures on either the residential or commercial side. Foreclosure is always a last resort. It takes months to get to the point of foreclosure, and even longer during the pandemic due to payment forbearance efforts.

Regulators, including the Oregon Division of Financial Regulation, the FDIC, and the Office of the Comptroller of the Currency, appreciate the need for bank flexibility and responsiveness and have issued bulletins supporting banks efforts to work with their customers to provide payment forbearance and loan modifications.

A foreclosure moratorium can lead property owners to believe that they do not need to make their mortgage loan payments. This creates a bigger problem down the line since the only way to address concerns about being able to make a loan payment is by seeking forbearance and assistance from one’s lender/servicer. A moratorium can create a bigger problem than it aims to solve by providing a false sense of security.

Residential Borrowers

Help is available for residential borrowers both through federal programs and through programs unique to individual banks.

For Example, the CARES Act, which passed Congress in March, provides that government-backed mortgages are eligible a for a forbearance period of six-months with a second six-month forbearance period available if requested by the borrower. These loans constitute more than half the mortgage loans in Oregon.

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On Wednesday June 17, 2020, the Federal Housing and Finance Agency issued a bulletin announcing that Fannie Mae and Freddie Mac "will extend their single family moratorium on foreclosures and evictions until at least August 31, 2020." The current moratorium was set to expire on June 30, 2020.

Individual banks that portfolio their loans are in an excellent position to work with their customers to provide assistance, often beyond what is provided in the CARES Act for government-backed loans.

Commercial Borrowers

Commercial loans are agreements between lenders and business people. They are tailored for a particular business. Borrowers work with their banks to secure lending based on their unique business plan, including risk of loss, credit worthiness and projected cash-flow lending, amongst other things. Bans are working with their borrowers to fashion ways to deal with the challenges brought about by the COVID-19 crisis.

Commercial lending is the lifeblood of the majority of banks in Oregon. Some of Oregon's smallest banks – which are themselves small businesses – depend primarily on such loans for their income and ability to operate. How long should they be expected to go without income as small businesses themselves?

Issuing a blanket moratorium that includes the vast array of commercial real estate loans in Oregon will have a devastating impact on commercial real estate lending. In short, such a mandate would render such loans unsecured. Many banks have said they would only be able to make such loans to "A credits" – those with substantial resources to repay without consideration of property as collateral – for the duration of any such foreclosure moratorium. This would hamper economic recovery when availability of credit is most needed. We are not in a credit crisis right now. We should be careful not to create one.

Contract Rights and Preemption

The Legislature is constrained on the actions it can take related to foreclosure moratoriums. Federal preemption by the Office of the Comptroller of the Currency means that loan terms or modification requirements in state law would not apply to federally-chartered banks, which include all of the largest banks and several regional and smaller banks headquartered or doing business in Oregon. In essence, this means that any mandate of loan terms wouldn't impact the majority of loans made in Oregon. The Office of the Comptroller of the Currency confirmed this again in OCC Bulletin 2020-62 issued on June 17, 2020.

Federal preemption is not the only limitation. State mandated modifications of contract terms or mandatory forbearance, even if on a temporary basis, abrogates the contract rights of the parties and is prohibited by the Oregon and U.S. Constitutions.

We strongly encourage you to allow banks to continue to work with their borrowers to find solutions to problems brought about by the COVID-19. A foreclosure moratorium will not solve the problem and could only lead to a credit crisis right when Oregon starts to emerge from our current challenges. Thank you again for the opportunity to provide written testimony on the issue of commercial and residential foreclosure moratoriums. If you have any question, please contact Paul Cosgrove at (503) 799-5679 or Tim Martinez at (503) 510-9019.

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