



WRIGHT FINLAY & ZAK<sup>LLP</sup>  
ATTORNEYS AT LAW

**Oregon Office**

121 SW Morrison, Suite 1100

Portland, Oregon 97204

(503) 479-8871

[www.wrightlegal.net](http://www.wrightlegal.net)

Direct Dial: 503-479-8871

Email: [tkullen@wrightlegal.net](mailto:tkullen@wrightlegal.net)

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*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 regulation of commercial and residential foreclosures in Oregon, and pending House Bill 4204.

This law firm's core practice area includes representing national, regional, and small loan servicers, investors, and originators in all aspects of mortgage banking and consumer finance matters, including litigation, transactions, and regulatory compliance.

We are writing to express the significant, adverse impacts that the proposed HB 4204 would have on both our clients and their customers in the state of Oregon, including:

- **Retroactive Effect**: By defining the "Emergency period" as beginning on March 8, 2020, and extending for 60 days after the declaration of a state of emergency is withdrawn, the proposed bill would retroactively void valid notices of default and would compel courts to involuntarily dismiss pending judicial foreclosures filed prior to the passage of the bill. The retroactive effect would unfairly punish those lenders and servicers who fully complied with existing state and federal regulations in commencing a foreclosure as authorized by contract and under Oregon law. The private right of action section allows a borrower to file suit for damages and recover attorneys' fees and costs based on collection and foreclosure activity by a lender that was not prohibited at the time it occurred.
- **Constitutional Concerns**: Both the Oregon Constitution (Section 21) and the U.S. Constitution (Article I, section 10, clause 1) have absolute prohibitions on ex post facto laws and impairments of contract rights. HB 4204 would be subject to immediate constitutional challenge for impairing the contract rights of, and imposing retroactive obligations on, Oregon lenders.
- **Applicability to Pre-Existing Defaults**: The statute does not effectively distinguish between defaults that were caused by COVID-related loss of income, and defaults that predated the state of emergency. The proposed bill is overly-broad and is unduly burdensome on those lenders and servicers looking to enforce the contractual and statutory rights to recover on their collateral under defaults that have nothing to do with the current pandemic or the related economic downturn.

- **No Exemption for Abandoned/Blighted Properties:** The proposed bill would conflict with the goals of the “Good Neighbor Law” (ORS 18.995), passed by the Oregon legislature in 2013, which requires Oregon lenders take responsibility for blighted, abandoned properties in foreclosure through community registration programs and financial penalties for non-compliance. Unlike the federal CARES Act, HB 4204 has no exemptions for abandoned properties, and therefore would further extend the adverse impacts on neighbors and communities by preventing lenders from obtaining possession of blighted properties through foreclosure.
- **Clouds on Title to Foreclosure Properties/Lack of Bona Fide Purchaser Defenses:** The proposed bill provides no exception for bona fide purchasers of foreclosure properties at trustee’s sales or sheriff’s execution sales, or for subsequent third party purchasers. The bill would create clouds on titles by retroactively declaring such transactions void (and not merely voidable upon proof of some cognizable harm), and thus would impose substantial burdens on property investors, title companies, and other parties with no connection to the mortgage lending business. These downstream consequences would prevent foreclosed, abandoned, and blighted properties from being put back to productive use in housing Oregonians in need of shelter during the pandemic.
- **Oregon Foreclosure Avoidance Program and Federal Moratoria:** Because most Oregon mortgages are given by government-supported entities and serviced by loan servicers subject to state and federal oversight, there are already robust consumer protections in place to provide Oregon homeowners reasonable opportunities to save their homes even in the face of short-term financial disruptions. Additional forbearance provisions (with funding from the federal government under the CARES Act) have provided an additional safety net for borrowers. And further, if all else fails, there is the Oregon Foreclosure Avoidance Program (“OFAP”), which compels most lenders to hold face-to-face meetings with their borrowers, with the goal of reaching a “foreclosure-avoidance measure,” before a foreclosure can commence. Imposing additional, unfunded obstacles on lenders seeking to recover their collateral when all else fails will only increase the cost of lending in Oregon and will delay the eventual economic recovery, without providing meaningful relief to borrowers who remain obligated to make up the missed payments.

We strongly encourage you to allow lenders and loan servicers 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 will add a second wave add-on effect just when the economy begins to recover. The problems that are postponed, but not solved, under an additional moratorium will not go away under the proposal, and will only be compounded when those bills eventually come due.

Thank you again for the opportunity to provide written testimony on the issue of commercial and residential foreclosure moratoria. If you have any question, please contact Tony Kullen at (503) 479-8871.

Very truly yours,

**WRIGHT, FINLAY & ZAK, LLP**

/s/ Tony Kullen, Esq.  
Managing Attorney, Oregon