

HB 4204 -1, -2, -4 STAFF MEASURE SUMMARY

Joint Committee On The First Special Session of 2020

Prepared By: James Leyba, LPRO Analyst

Meeting Dates: 6/25

WHAT THE MEASURE DOES:

Directs lenders of loans securing real property, land sale contracts, and personal property used as residence, to refrain from treating missing installment payments by borrowers as a default during the period established by the Governor's declaration of a state of emergency, plus any extensions, and 60 days following.

Directs lender to defer or forbear payments during the emergency period, and to waive or modify loan terms so that the borrower can make payments of the owed balances in periodic payments following the maturity date, of the same amount, at the same interest rate, as was due during the emergency period. Establishes that a borrower does not need to provide notification to a lender more than once on an inability to make payments during the emergency period. Establishes that borrowers may provide lender with documentation and other evidence to demonstrate that their failure to pay is a direct or indirect result of conditions that prompted the Governor's declaration of emergency.

Establishes that lender may not assess charges, fees, or penalties to borrower or to determine borrower in eligible for foreclosure avoidance measures, for failing to make periodic installment payment or other amounts due during the emergency period. Establishes that lender may not require or charge for inspection, appraisal, or broker price opinion due to nonpayment, and may not initiate cash management or lockbox procedures not already in existence before the effective date of this legislative action. Restricts lender from taking control of operating revenue from real property unless control was established prior to the effective date of this legislative action. Prohibits lender from declaring a default based on the failure of a borrower to meet financial covenants due to inadequate operating revenue resulting from the COVID-19 pandemic or from imposing extra or excessive servicing fees, loan workout fees or other charges or practices.

Prohibits lender from foreclosing a trust deed, bringing an action or suit to foreclose a mortgage or trust deed, enforcing a forfeiture remedy, or bringing an action or suit to foreclose a lien or other security instrument during the emergency period. A trustee sale may not occur during the emergency period.

Requires lenders authorized to do business in Oregon notify their borrowers of borrower's rights for accommodation under this legislative action within 15 days of the effective date.

Establishes that legislation does not relieve a borrower of the duty to repay the full amount of any obligation that is subject to a waiver, deferral, modification, or forbearance under the provision of this legislation.

Defines 'emergency period' as period during which the Governor's state of emergency issued on March 8, 2020, and continues if extended and for an additional 60 days. Legislation is repealed 90 days after the expiration of the emergency period, unless otherwise extended.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1

Defines 'successor in interest' and 'false claim'. Modifies definition of 'financing agreement.' Establishes March 8, 2020 to September 30, 2020 as the 'emergency period'. Expands scope of financing agreements impacted by this

HB 4204 -1, -2, -4 STAFF MEASURE SUMMARY

legislation to include obligations subject to a financing agreement. Removes requirement that lender waive or modify payment terms or other terms of the obligation in order to permit the borrower to pay the sum owed and due during the emergency period. Establishes that if subject property is four or fewer dwelling units, that borrower must attest that their inability to pay is a result of government response to the COVID-19 pandemic, and if the subject property is commercial or more than five dwelling units, that financial statements or other evidence must be included. Prohibits lender imposition of default rate of interest. Prohibits action or foreclosure enforcement under a retail installment contract for subject property. Extends period in which lenders are required to provide written notice by mail to borrowers of borrower's rights for accommodation from 15 days to 60 days.

-2 Defines 'successor in interest.' Modifies definition of 'financing agreement.' Changes emergency period to begin on March 8, 2020 and end on September 30, 2020. Adds attorney fees that would otherwise have been assessed during emergency period to list of fees a lender may not impose. Establishes that lender foreclosure actions initiated prior to the emergency period are tolled during emergency period, and that trustee sales may continue without interruption following the emergency period. Removes requirement that lender waive or modify payment terms or other terms of the obligation in order to permit the borrower to pay the sum owed and due during the emergency period. Establishes that if subject property is four or fewer dwelling units, that borrower must attest that their inability to pay is a result of government response to the COVID-19 pandemic, and if the subject property is commercial or more than five dwelling units, that financial statements or other evidence must be included. Prohibits lender imposition of default rate of interest. Prohibits action or foreclosure enforcement under a retail installment contract for subject property. Extends time lenders must provide written notice to borrowers to 60 days after the effective date. Expands judgments, writs and notices exempted from this act.

-4 Modifies definition of 'financing agreement.' Changes emergency period to begin on March 8, 2020 and end on September 30, 2020. Adds attorney fees that would otherwise have been assessed during emergency period to list of fees a lender may not impose. Establishes that lender foreclosure actions initiated prior to the effective date of this special session act are tolled during emergency period, and that trustee sales may continue without interruption following the emergency period. Removes requirement that lender waive or modify payment terms or other terms of the obligation in order to permit the borrower to pay the sum owed and due during the emergency period. Establishes that if subject property is four or fewer dwelling units, that borrower must attest that their inability to pay is a result of government response to the COVID-19 pandemic, and if the subject property is commercial or more than five dwelling units, that financial statements or other evidence must be included. Prohibits lender imposition of default rate of interest. Prohibits action or foreclosure enforcement under a retail installment contract for subject property. Extends time lenders must provide written notice to borrowers to 60 days after the effective date. Expands judgements, writs and notices exempted from this act.

BACKGROUND:

The CARES Act, signed into law on March 27, 2020 established a national foreclosure moratorium for 60 days after March 18, 2020 for federally backed mortgages (i.e. Fannie Mae, Freddie Mac, FHA, VA, or USDA). This measure, passed in response to the COVID-19 pandemic, aims to prevent homeowners who have been financially impacted by the pandemic from losing their homes through foreclosure. Prior to this crisis, Oregon delinquency (0.2%) and foreclosure rates (0.6% and 0.2% as of December 2019) were significantly lower than figures reached (5.8% September 2011 and 3.2% respectively in August 2012) at the peak of the 2008-2013 financial crisis.

HB 4204 extends a moratorium on foreclosure activities across all lenders for residential and commercial real, land, and personal property during 'emergency period' .