

A-Engrossed
House Bill 4204

Ordered by the House June 26
Including House Amendments dated June 26

Sponsored by Representative KOTEK; Representatives FAHEY, KENY-GUYER (at the request of Joint Committee on the First Special Session of 2020)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

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

Requires lenders to defer payments if lender and borrower do not otherwise agree on loan mitigation, deferral or other foreclosure avoidance measure and permits borrower to pay deferred amounts at end of loan term. Provides that lender may adjust escrow impound payment and take into account deficiencies or shortages that result from deferring borrower's payments.

Requires borrower to provide notice to lenders if borrower cannot make periodic installment payment. Specifies notice requirements for residential and commercial borrowers.

Prohibits lenders from collecting various fees, penalties and charges during emergency period and from undertaking specified practices.

Requires courts to dismiss foreclosure proceedings brought during emergency period without prejudice.

Permits borrower that suffers ascertainable loss of money or property because lender took prohibited action to bring action for actual damages.

Requires lender to provide written notice to borrower of borrower's rights for accommodation under Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to strategies to protect Oregonians from the effects of the COVID-19 pandemic; and de-
3 claring an emergency.

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

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

6 (a) **The provisions of this section might affect the terms and conditions of certain con-**
7 **tracts into which residents of this state have entered.**

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

13 (c) **Even if a provision of this section has the effect of undermining a contractual bar-**
14 **gain, interfering with a party's reasonable expectations or preventing a party from safe-**
15 **guarding or reinstating the party's rights, the provision is appropriate and reasonable as a**
16 **means by which to implement the significant and legitimate public purpose of responding to**
17 **the declaration of a state of emergency issued by the Governor on March 8, 2020.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **(2) As used in this section:**

2 **(a) "Borrower" means a mortgagor of real property, a grantor, as defined in ORS 86.705,**
3 **a purchaser in a land sale contract, a person that enters into a retail installment contract**
4 **with, or gives a security interest to, a lender for subject property and a successor in interest**
5 **to the mortgagor, grantor, purchaser or person. For the purposes of this paragraph, "suc-**
6 **cessor in interest" means a person to whom a borrower has transferred an interest in sub-**
7 **ject property under any of the following circumstances:**

8 **(A) The transfer occurs by devise, descent or operation of law at the borrower's death;**

9 **(B) A relative of the borrower receives the transfer as a result of the borrower's death;**

10 **(C) The spouse or children of the borrower become owners of the subject property;**

11 **(D) The transfer results from a decree of dissolution of marriage, a legal separation**
12 **agreement or an incidental separation agreement under which the spouse of the borrower**
13 **becomes an owner of the subject property; or**

14 **(E) The transfer does not relate to rights to occupy the subject property, but the subject**
15 **property becomes trust property in an inter vivos trust in which the borrower remains a**
16 **beneficiary.**

17 **(b) "Emergency period" means a period that begins on March 8, 2020, and ends on Sep-**
18 **tember 30, 2020, except that the Governor may specify a later date by executive order not**
19 **later than 30 days before September 30, 2020.**

20 **(c) "Financing agreement" means:**

21 **(A) A contract under which a borrower must make payments to a lender to satisfy an**
22 **obligation that is secured by a mortgage, a trust deed, a land sale contract or a lien or other**
23 **security interest in subject property; and**

24 **(B) A retail installment contract, as defined in ORS 83.010, for which the subject matter**
25 **is personal property that is used as a residence.**

26 **(d) "Foreclosure avoidance measure" has the meaning given that term in ORS 86.707.**

27 **(e) "Forfeiture remedy" has the meaning given that term in ORS 93.905.**

28 **(f) "Lender" means a beneficiary or trustee, both as defined in ORS 86.705, a mortgagee,**
29 **as defined in ORS 87.005, a seller in a land sale contract, a licensee, as defined in ORS**
30 **86A.303, a retail seller, as defined in ORS 83.010, in a retail installment contract for subject**
31 **property or an agent, affiliate or employee of a beneficiary, trustee, mortgagee, seller, retail**
32 **seller or licensee.**

33 **(g) "Subject property" means:**

34 **(A) Real property located in this state; and**

35 **(B) Personal property that is used as a residence in this state.**

36 **(h) "Trust deed" has the meaning given that term in ORS 86.705.**

37 **(i) "Trustee" has the meaning given that term in ORS 86.705.**

38 **(3)(a) During the emergency period, a lender may not treat as a default a borrower's**
39 **failure to make a periodic installment payment or to pay any other amount that is due to**
40 **the lender on or in connection with an obligation that is subject to a financing agreement if**
41 **at any time during the emergency period the borrower notifies the lender that the borrower**
42 **will not be able to make the periodic installment payment. In lieu of treating the failure to**
43 **pay as a default, and only if the lender and borrower do not otherwise agree to modify, defer**
44 **or otherwise mitigate a loan, including by agreeing to a foreclosure avoidance measure in**
45 **accordance with ORS 86.726, 86.729, 86.732, 86.736, 86.741 and 86.744, the lender shall:**

1 (A) Defer from collecting the periodic installment payment during the emergency period;
2 and

3 (B) Permit the borrower to pay an amount the borrower owes to the lender as a result
4 of a deferral under this subsection at the scheduled or anticipated date on which full per-
5 formance of the obligation is due.

6 (b) After an escrow analysis and in accordance with the Real Estate Settlement Proce-
7 dures Act (12 U.S.C. 2601 et seq.), a lender may adjust the amount of any escrow impound
8 payment the borrower has an obligation to make under the financing agreement and may
9 take into account any shortage or deficiency that results from deferring payments under this
10 subsection.

11 (c) A borrower does not need to provide a notification to a lender under paragraph (a)
12 of this subsection more than once. If the subject property is a residence with four or fewer
13 dwelling units, the notification must attest that the borrower's failure to pay is a result of
14 a loss of income related to the COVID-19 pandemic. If the subject property is commercial
15 property or residential property with more than four dwelling units, the notification must
16 include financial statements or other evidence that demonstrates a loss of income related
17 to the COVID-19 pandemic and must disclose any funds the borrower received from the
18 United States Small Business Administration under the Paycheck Protection Program, as
19 implemented under the Paycheck Protection Program Flexibility Act of 2020 (P.L. 116-142)
20 or other state or federal relief programs.

21 (d) A lender may not, with respect to a financing agreement that is subject to paragraph
22 (a) or (b) of this subsection:

23 (A) Impose or collect charges, fees, penalties, attorney fees or other amounts that, but
24 for the provisions of this section, the lender might have imposed or collected from a bor-
25 rower for failing, during the emergency period, to make a periodic installment payment or
26 pay another amount due on or in connection with the borrower's obligation;

27 (B) Impose a default rate of interest that, but for the provisions of this section, the
28 lender might have imposed or collected from a borrower for failing, during the emergency
29 period, to make a periodic installment payment or pay another amount due on or in con-
30 nection with the borrower's obligation;

31 (C) Treat in any manner the borrower's failure during the emergency period to make a
32 periodic installment payment or pay another amount due on or in connection with the obli-
33 gation as an ineligibility for a foreclosure avoidance measure;

34 (D) Require or charge for an inspection, appraisal or a broker opinion of value, not oth-
35 erwise permitted in the absence of a default;

36 (E) Initiate cash management not already in existence before the effective date of this
37 2020 special session Act;

38 (F) Implement lockbox procedures not already in existence before the effective date of
39 this 2020 special session Act;

40 (G) Take control of the operating revenue from real property secured by the financing
41 document unless the control was established before the effective date of this 2020 special
42 session Act; or

43 (H) Declare a default based on the failure of a borrower to meet financial covenants due
44 to inadequate operating revenue resulting from the COVID-19 pandemic.

45 (4) Notwithstanding ORS 18.860 to 18.993, 86.752, 87.262, 87.272, 88.010 and 93.905 to 93.940,

1 and except as provided in subsection (10) of this section, a lender may not at any time during
2 the emergency period:

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

4 (b) Bring an action or suit to foreclose a mortgage or trust deed or to enforce an obli-
5 gation under a retail installment contract for subject property;

6 (c) Enforce a forfeiture remedy; or

7 (d) Bring an action or suit to foreclose a lien or other security interest on, or petition
8 for an order of foreclosure by advertisement and sale of, subject property.

9 (5) Notwithstanding ORS 18.920, 18.924, 86.764 and 93.915 and except as provided in sub-
10 section (10) of this section, if a lender initiated a foreclosure with respect to subject property
11 before the effective date of this 2020 special session Act, the period of time that must elapse
12 between the time a lender initiated the foreclosure and the time at which a trustee's sale,
13 forfeiture remedy or other foreclosure may occur is tolled during the emergency period. Af-
14 ter the emergency period expires, a trustee's sale may continue as if uninterrupted if the
15 lender complies with the provisions of ORS 86.782 (12), a lender may obtain a forfeiture
16 remedy if the lender complies with the provisions of ORS 93.918 and, for other types of
17 foreclosure proceedings, a foreclosure may continue if the lender complies with the require-
18 ments of applicable law.

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

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

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

32 (8) A borrower that suffers an ascertainable loss of money or property because a lender
33 took an action prohibited under subsection (3) of this section may bring an action in a circuit
34 court of this state to recover the borrower's actual damages. A borrower who prevails in the
35 action may also recover the borrower's court costs and attorney fees.

36 (9) Within 60 days following the effective date of this 2020 special session Act, each lender
37 authorized to do business in this state must provide written notice by mail to all of the
38 lender's borrowers of a borrower's rights for accommodation under this section.

39 (10) This section does not:

40 (a) Apply to judgments of foreclosure and sale, writs of execution or notices of a
41 trustee's sale that:

42 (A) Were issued or given before the emergency period began;

43 (B) Occur in connection with a tax foreclosure proceeding under ORS 312.010 to 312.120
44 or 312.130 to 312.240; or

45 (C) Occur after a person has recorded a notice of intent to abandon real property under

1 **ORS 93.770 (2)(a) or a judicial order that authorizes an abandonment of real property under**
2 **ORS 93.770 (2)(b); or**

3 **(b) Relieve a borrower of the duty to repay the full amount of any obligation that is**
4 **subject to a waiver, deferral, modification or forbearance under the provisions of this sec-**
5 **tion.**

6 **SECTION 2. Section 1 of this 2020 special session Act is repealed 90 days after the expi-**
7 **ration of the emergency period as defined in section 1 of this 2020 special session Act.**

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

11