

House Bill 4204

Sponsored by Representative KOTEK (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 **as introduced**.

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

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.**

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

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

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

25 (c) **"Financing agreement" means a contract under which a borrower must make pay-**
26 **ments to a lender to satisfy an obligation that is secured by a mortgage, a trust deed, a land**
27 **sale contract or a lien or other security interest in subject property.**

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

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

30 (f) **"Lender" means a beneficiary or trustee, both as defined in ORS 86.705, a mortgagee,**
31 **as defined in ORS 87.005, a seller in a land sale contract, a licensee, as defined in ORS**

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 86A.303, or an agent, affiliate or employee of a beneficiary, trustee, mortgagee, seller or
 2 licensee.

3 (g) "Subject property" means real property or personal property that is used as a resi-
 4 dence.

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

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

7 (3)(a) During the emergency period, a lender may not treat a borrower's failure to make
 8 a periodic installment payment or any other amount that is due on or in connection with an
 9 obligation secured by a mortgage, trust deed, land sale contract or other lien or security
 10 interest on subject property as a default if the borrower notifies the lender that the borrower
 11 will not be able to make the periodic installment payment within 30 days after the periodic
 12 installment payment is due. In lieu of declaring a default, and unless the borrower and lender
 13 agree to modify, defer or otherwise mitigate a loan, including by agreeing to a different
 14 foreclosure avoidance measure in accordance with ORS 86.726, 86.729, 86.732, 86.736, 86.741
 15 and 86.744, the lender shall:

16 (A) Defer or forbear from collecting the periodic installment payment during the emer-
 17 gency period; and

18 (B) Waive or modify the payment terms or other terms of the obligation in a manner
 19 that permits the borrower to pay the sum owed and due:

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

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

25 (b) A borrower does not need to provide a notification to a lender under paragraph (a)
 26 of this subsection more than once. A borrower may provide the lender with documentation
 27 or other evidence that the borrower's failure to pay is a direct or indirect result of condi-
 28 tions that prompted the Governor's declaration of emergency on March 8, 2020, including
 29 evidence of a loss of income caused by restrictions the state or a local government imposed
 30 to respond to the emergency declaration.

31 (c) A lender may not:

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

36 (B) Treat in any manner the borrower's failure during the emergency period to make a
 37 periodic installment payment or other amount due on or in connection with the obligation
 38 as an ineligibility for a foreclosure avoidance measure;

39 (C) Require or charge for an inspection, appraisal or a broker opinion of value, not oth-
 40 erwise required in the absence of a default;

41 (D) Initiate cash management not already in existence before the effective date of this
 42 2020 special session Act;

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

45 (F) Take control of the operating revenue from real property secured by the financing

1 document unless the control was established prior to the effective date of this 2020 special
2 session Act;

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

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

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

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

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

12 (c) Enforce a forfeiture remedy; or

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

15 (5) Notwithstanding ORS 18.920, 18.924, 86.764 and 93.915 and except as provided in sub-
16 section (10) of this section, a notice given during the emergency period of a trustee's sale,
17 of a default under a contract for the conveyance of real property or of an execution sale of
18 subject property is hereby withdrawn. After the emergency period expires:

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

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

25 (c) A notice of default under a contract for the conveyance of real property withdrawn
26 under this subsection may again be given as provided in ORS 93.915 and the appropriate time
27 period specified in ORS 93.915 must elapse before a lender may enforce a forfeiture remedy.

28 (d) A lien foreclosure on personal property that is used as a residence may proceed in
29 accordance with the procedures that apply to such foreclosures.

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

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

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

43 (8) A borrower that suffers an ascertainable loss of money or property because a lender
44 took an action prohibited under subsection (3) of this section may bring an action in a circuit
45 court of this state to recover the borrower's actual damages. A borrower who prevails in the

1 action may also recover the borrower's court costs and attorney fees.

2 (9) Within 15 days following the effective date of this 2020 special session Act, each lender
3 authorized to do business in this state must notify all of the lender's borrowers of a
4 borrower's rights for accommodation under this section.

5 (10) This section does not:

6 (a) Apply to judgments of foreclosure and sale or writs of execution issued before the
7 emergency period began or to a trustee's sale for which notice was given before the emer-
8 gency period began.

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

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

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

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