

Requested by JOINT COMMITTEE ON THE FIRST SPECIAL SESSION OF 2020

**PROPOSED AMENDMENTS TO  
HOUSE BILL 4204**

1 On page 1 of the printed bill, delete lines 5 through 31 and delete pages  
2 2 through 4 and insert:

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

4 **“(a) The provisions of this section might affect the terms and con-**  
5 **ditions of certain contracts into which residents of this state have**  
6 **entered.**

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

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

20 **“(2) As used in this section:**

21 **“(a) ‘Borrower’ means a mortgagor of real property, a grantor, as**

1 **defined in ORS 86.705, a purchaser in a land sale contract, a person**  
2 **that enters into a retail installment contract with, or gives a security**  
3 **interest to, a lender for subject property and a successor in interest**  
4 **to the mortgagor, grantor, purchaser or person. For the purposes of**  
5 **this paragraph, ‘successor in interest’ means a person to whom a**  
6 **borrower has transferred an interest in subject property under any of**  
7 **the following circumstances:**

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

10 **“(B) A relative of the borrower receives the transfer as a result of**  
11 **the borrower’s death;**

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

14 **“(D) The transfer results from a decree of dissolution of marriage,**  
15 **a legal separation agreement or an incidental separation agreement**  
16 **under which the spouse of the borrower becomes an owner of the**  
17 **subject property; or**

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

21 **“(b) ‘Emergency period’ means a period that begins on March 8,**  
22 **2020, and ends on September 30, 2020, except that the Governor may**  
23 **specify a later date by executive order not later than 30 days before**  
24 **September 30, 2020.**

25 **“(c) ‘False claim’ has the meaning given that term in ORS 180.750.**

26 **“(d) ‘Financing agreement’ means:**

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

1       **“(B) A retail installment contract, as defined in ORS 83.010, for**  
2 **which the subject matter is personal property that is used as a resi-**  
3 **dence.**

4       **“(e) ‘Foreclosure avoidance measure’ has the meaning given that**  
5 **term in ORS 86.707.**

6       **“(f) ‘Forfeiture remedy’ has the meaning given that term in ORS**  
7 **93.905.**

8       **“(g) ‘Lender’ means a beneficiary or trustee, both as defined in ORS**  
9 **86.705, a mortgagee, as defined in ORS 87.005, a seller in a land sale**  
10 **contract, a licensee, as defined in ORS 86A.303, a retail seller, as de-**  
11 **fin ed in ORS 83.010, in a retail installment contract for subject prop-**  
12 **erty or an agent, affiliate or employee of a beneficiary, trustee,**  
13 **mortgagee, seller, retail seller or licensee.**

14       **“(h) ‘Subject property’ means:**

15       **“(A) Real property; and**

16       **“(B) Personal property that is used as a residence.**

17       **“(i) ‘Trust deed’ has the meaning given that term in ORS 86.705.**

18       **“(j) ‘Trustee’ has the meaning given that term in ORS 86.705.**

19       **“(3)(a) During the emergency period, a lender may not treat as a**  
20 **default a borrower’s failure to make a periodic installment payment**  
21 **or to pay any other amount that is due on or in connection with an**  
22 **obligation that is subject to a financing agreement if at any time**  
23 **during the emergency period the borrower notifies the lender that the**  
24 **borrower will not be able to make the periodic installment payment.**  
25 **In lieu of treating the failure to pay as a default, and only if the lender**  
26 **and borrower do not otherwise agree to modify, defer or otherwise**  
27 **mitigate a loan, including by agreeing to a foreclosure avoidance**  
28 **measure in accordance with ORS 86.726, 86.729, 86.732, 86.736, 86.741 and**  
29 **86.744, the lender shall:**

30       **“(A) Defer from collecting the periodic installment payment during**

1 the emergency period; and

2 “(B) Permit the borrower to pay the sum owed and due:

3 “(i) During a period that begins after the scheduled or anticipated  
4 date on which full performance of the obligation is due; and

5 “(ii) At the same interest rate specified in the financing agreement  
6 that was in effect before the emergency period began.

7 “(b) A borrower does not need to provide a notification to a lender  
8 under paragraph (a) of this subsection more than once. If the subject  
9 property is a residence with four or fewer dwelling units, the notifi-  
10 cation must attest, subject to the civil penalty provided for false  
11 claims in subsection (10) of this section, that the borrower’s failure to  
12 pay is a result of a loss of income related to a governmental agency’s  
13 action in response to the COVID-19 pandemic. If the subject property  
14 is commercial property or residential property with more than four  
15 dwelling units, the notification must include, subject to the civil pen-  
16 alty provided for false claims in subsection (10) of this section, finan-  
17 cial statements or other evidence that demonstrates a loss of income  
18 related to a governmental agency’s action in response to the COVID-19  
19 pandemic and must disclose any funds the borrower received from the  
20 United States Small Business Administration under the Paycheck  
21 Protection Program, as implemented under the Paycheck Protection  
22 Program Flexibility Act of 2020 (P.L. 116-142).

23 “(c) A lender may not:

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

30 “(B) Impose a default rate of interest;

1       “(C) Treat in any manner the borrower’s failure during the emer-  
2       gency period to make a periodic installment payment or other amount  
3       due on or in connection with the obligation as an ineligibility for a  
4       foreclosure avoidance measure;

5       “(D) Require or charge for an inspection, appraisal or a broker  
6       opinion of value, not otherwise required in the absence of a default;

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

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

11      “(G) Take control of the operating revenue from real property se-  
12      cured by the financing document unless the control was established  
13      before the effective date of this 2020 special session Act; or

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

17      “(4) Notwithstanding ORS 18.860 to 18.993, 86.752, 87.262, 87.272, 88.010  
18      and 93.905 to 93.940, and except as provided in subsection (11) of this  
19      section, a lender may not at any time during the emergency period:

20      “(a) Foreclose a trust deed by advertisement and sale;

21      “(b) Bring an action or suit to foreclose a mortgage or trust deed  
22      or to enforce an obligation under a retail installment contract for  
23      subject property;

24      “(c) Enforce a forfeiture remedy; or

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

28      “(5) Notwithstanding ORS 18.920, 18.924, 86.764 and 93.915 and except  
29      as provided in subsection (11) of this section, a beneficiary or trustee  
30      may give a notice of default or notice of a trustee’s sale, a seller in a

1 land sale contract may give a notice of default and a lienholder may  
2 give notice of an intent to foreclose a lien on subject property during  
3 the emergency period, but the period of time that must elapse before  
4 a trustee's sale of subject property may occur, before a seller may  
5 obtain a forfeiture remedy for subject property or before a lienholder  
6 may take any action to foreclose a lien on subject property is tolled  
7 during the emergency period.

8 “(6) Notwithstanding ORS 18.860 to 18.993 and 88.010 and except as  
9 provided in subsection (11) of this section, during the emergency pe-  
10 riod a court may not enter a judgment of foreclosure and sale or issue  
11 a writ of execution with respect to subject property. A court shall  
12 dismiss without prejudice any action or suit commenced during the  
13 emergency period to foreclose a lien upon subject property.

14 “(7)(a) Notwithstanding ORS 86.782 and except as provided in sub-  
15 section (11) of this section, a trustee's sale may not occur during the  
16 emergency period. Any purported trustee's sale during the emergency  
17 period is void and does not transfer or foreclose any rights to subject  
18 property.

19 “(b) Notwithstanding ORS 18.860 to 18.993 and except as provided in  
20 subsection (11) of this section, an execution sale of subject property  
21 may not occur during the emergency period. Any purported execution  
22 sale of subject property during the emergency period is void and does  
23 not transfer or foreclose any rights to the subject property.

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

30 “(9) Within 60 days following the effective date of this 2020 special

1 session Act, each lender authorized to do business in this state must  
2 provide written notice by mail to all of the lender's borrowers of a  
3 borrower's rights for accommodation under this section.

4 “(10) For the purposes of this section, and notwithstanding the re-  
5 quirement under ORS 180.750 to 180.785 that a person must present a  
6 claim to a public agency to be subject to a civil penalty for presenting  
7 a false claim, the Attorney General may bring a civil action in a cir-  
8 cuit court of this state against a borrower that presents a false claim  
9 under subsection (3)(b) of this section. The Attorney General may seek  
10 and obtain the penalty provided in ORS 180.760 if a court finds that a  
11 borrower has made a false claim under subsection (3)(b) of this sec-  
12 tion.

13 “(11) This section does not:

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

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

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

19 “(C) Occur after a person has recorded a notice of intent to abandon  
20 real property under ORS 93.770 (2)(a) or a judicial order that authorizes  
21 an abandonment of real property under ORS 93.770 (2)(b); or

22 “(b) Relieve a borrower of the duty to repay the full amount of any  
23 obligation that is subject to a waiver, deferral, modification or  
24 forbearance under the provisions of this section.

25 “SECTION 2. Section 1 of this 2020 special session Act is repealed  
26 90 days after the expiration of the emergency period as defined in  
27 section 1 of this 2020 special session Act.

28 “SECTION 3. This 2020 special session Act being necessary for the  
29 immediate preservation of the public peace, health and safety, an  
30 emergency is declared to exist, and this 2020 special session Act takes

1 **effect on its passage.”.**

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