



CMA Legislative Update: Oregon Proposes Retroactively Reinstating Foreclosure Moratorium (HB 2009)

Since the Mortgage Meltdown, the Pacific Northwest has often followed California's legislative lead when it comes to preventing foreclosures. Lately, the Oregon Legislature has taken the lead. Let's hope that trends don't reverse and that California starts following its northern neighbor.

If passed, recently proposed HB 2009 would impose a new foreclosure moratorium and mandatory forbearance program, with retroactive effect to January 1, 2021. As we previously advised, Oregon had a moratorium on both residential and commercial foreclosures under 2020 HB 4204, which was extended by the governor (as authorized by statute) through December 31, 2020. There were further ambiguous orders issued by the governor, but the Oregon financial regulators and the title companies agreed that the moratorium ended on December 31, 2020, and lenders slowly commenced filing new foreclosures in 2021.

The Oregon House has now introduced a new bill, which proposes to reinstate the moratorium on residential properties (owner-occupied, and 1-4 family rental

bill). Lenders would be able to request documentation of the COVID-related difficulty (which was not required for non-commercial borrowers under the old bill). Lenders would also be required to issue a new notice to borrowers of their rights under the bill, including a requirement to send notice within 30 days of any missed payment to solicit requests for forbearance. Lenders would also not be allowed to charge default interest or late fees during the period.

Both lenders and foreclosure trustees would have exposure for claims of damages and attorney fees for violating the provisions of the bill. There is a narrow defense for bona fide errors related to notices issued that include prohibited fees or deferred balances, but lenders would have an affirmative duty to inform borrowers that the amounts remain deferred in order to be afforded bona fide error protections from liability.

The bill was recently introduced and has not yet moved out to committees for hearings, but is expected to proceed, as it is sponsored by the speaker of the house. The bill language and a tracker

properties), and would have retroactive effect to void notices of default and judicial foreclosure complaints filed on and after January 1, 2021. The moratorium would extend to August 31, 2021, with an option for the governor to further extend to December 31, 2021. The bill has no exception for vacant properties unless the borrower has filed a notice of abandonment or there is demonstrated “waste, destruction, or illegal use” of the property. The bill would not cover commercial properties that are not intended as domiciles, or residential properties held by landlords owning more than five total properties, which is a departure from the prior bill.

The bill would also reinstate and extend the requirement that lenders offer forbearance and deferral of missed payments, to be paid at maturity, of any payments accruing during the ongoing COVID emergency. Borrowers would need to affirmatively request such relief (and would need to give new notice after the effective date of the bill, even if they previously gave notice under the old

for the bill’s progress through the legislature can be found [HERE](#):

To oppose the bill, please reach out to any Oregon representative who will listen, as well as the Governor’s office. Note - if you or any of your employees own property in Oregon, please be sure to mention that and reach out to your specific representative. You can also reach out to kchristiansen@oregonbankers.com at the Oregon Bankers Association to see how you can help.

Thanks everyone. If you have any questions, please feel free to reach out to the Managing Attorney in our Oregon Office, Tony Kullen at tkullen@wrightlegal.net or Robert Finlay at rfinlay@wrightlegal.net.

