

The Threat of Foreclosures on Real Property

The State of Oregon and local governments have already put protections in place during the Covid 19 pandemic to prevent small businesses and home owners from being evicted for being unable to pay their rent. Information about those restrictions can be found here:

1. The Oregon State Bar, at:
https://www.osbar.org/_docs/public/pamphlets/LegalInfoforLandlords2019.pdf
2. The Oregon governor's office at:
https://drive.google.com/file/d/1PFauc_5WVylsZPIGa75khV5QYj5Rw3w/view
3. New legislation, effective as of June 30, 2020 through September 30, 2020, House Bill 4213 See the summary at <https://www.oregonrentalhousing.com/news/9064285>

But, non payment of rent by tenants was recognized to create serious potential problems for property owners, who might be unable to make financing payments on their property, and face foreclosure due to the loss of rental income. The Oregon legislature has tried to address this situation in House Bill 4204-A, effective June 30, 2020. The bill's provisions run through September 30, 2020, unless extended, and include provisions that do the following:

Restrict a lender's abilities to enforce default remedies on mortgages, trust deeds and other instruments. Borrowers must be allowed to defer payments unless lender and borrower agree otherwise, such as a reduction in interest payments. Unpaid regular amounts are not forgiven. They are only deferred. Require courts to dismiss foreclosure actions brought during the "emergency period," which began March 8, 2020 and ends September 30, 2020. But, they can be re-filed in the future.

Require that lenders provide, within 60 days, written notices to borrowers of the borrowers' rights to accommodation under the Act.

Require that borrowers provide notices to lenders if borrowers cannot make periodic installment payments. Special notice requirements are included for both residential and commercial borrowers.

Prohibit lenders from collecting various fees, penalties and charges during the Covid 19 emergency period, and from taking other improper actions listed in the new law.

Allow a borrower that suffers ascertainable loss of money or property to bring an action for actual damages against a lender that took prohibited action against that borrower.

The complete Text of HN 4204-A may be viewed at:
<https://olis.oregonlegislature.gov/liz/2020S1/Measures/Overview/HB4204>

Depending on the relative financial situations of a particular lender and borrower and the existence of any irregularities in the execution and subsequent processing of the loan documents, these temporary legislative measures may in some cases create an incentive for the parties to restructure the borrower's longer term obligations, and avoid further uncertainty and legal expense in the future.