



State News

Oregon’s HB 2009 Regarding Expanded Foreclosure Moratorium Signed into Law—Retroactively!

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The Oregon Legislature passed and the Governor signed House Bill 2009 (“HB 2009”), which imposes a new foreclosure moratorium and mandatory forbearance program. The bill was enacted upon signature by the Governor on June 1, 2021, with retroactive effect to January 1, 2021.

As previously reported, Oregon had a moratorium on both residential and commercial foreclosures under 2020’s House Bill 4204 (“2020 Bill”), which the Governor extended (as authorized by statute) through December 31, 2020. The prior moratorium ended on December 31, 2020, and lenders slowly commenced filing new foreclosures in 2021.

General Terms

Under HB 2009, the legislature declared a new “Emergency Period,” running (retroactively) from 11:59 p.m. on December 31, 2020 (when the prior moratorium ended), until 11:59 p.m. on June 30, 2021. The bill also provided the Governor with authority to extend the period by order twice, through September 30, 2021, and December 31, 2021, respectively. The Governor had until June 14, 2021 to issue an executive order to extend the period to September 30, 2021, and she effectuated this first extension by Executive Order 21-14. The Governor may thereafter issue another executive order by August 16, 2021 to extend the period to December 31, 2021.

HB 2009 applies to any properties where the borrower (or successor to the borrower, including heirs, relatives, dependents) owns up to five Oregon properties. Thus, the bill applies both to owner occupied residential loans and loans to small-scale landlords; but unlike the 2020 Bill, does not apply to true commercial properties.

During the Emergency Period, a lender may not:

- Treat the borrower’s inability to make a periodic payment as

a default if the borrower provides notice to the lender that the borrower cannot pay due to a loss of income related to COVID

- Charge any fee, penalty, attorney fees or other amount based on the failure to make a periodic payment
- Impose default interest
- Disqualify the borrower from eligibility for any other foreclosure avoidance measure based on the failure to make a periodic payment during the Emergency Period
- Charge for inspections, appraisals, or BPOs

Mandatory Forbearance

In lieu of treating the missed payment as a default (when notice is given), the lender must either agree to a “foreclosure avoidance measure” with the borrower, or agree to defer the missed payments until maturity. The lender may request additional information from the borrower to establish a hardship or reduction in income, but the borrower’s failure to provide such information does not disqualify the borrower from the right to defer the missed payments until maturity.

Notice Provisions

Even if the borrower provided notice of hardship under the 2020 Bill or prior to the effective date of HB 2009, the borrower must provide a new notice under HB 2009. The lender must give notice to all borrowers who cannot make a periodic payment during the Emergency Period of their rights under HB 2009. The lender can comply by either: 1) giving notice to **all borrowers** within 60 days of the effective date of the bill; or 2) to every borrower who misses a periodic payment, within 30 days of the missed payment.

The Division of Financial Regulation has promulgated a sample notice, but servicers are not required to use that form. By statute, the notice must contain the following text:

“*Lenders should carefully review statements issued between January 1, 2021, and the effective date, and should instruct their foreclosure counsel and trustees to review any actions taken since January 1, 2021, that should be unwound to prevent or limit exposure under the private right of action.*”



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If you have experienced a loss of income related to the COVID-19 pandemic, Oregon law allows you to place your mortgage loan in forbearance until June 30, 2021, or later if the law is extended, and defer the missed payments until the end of the loan term. Forbearance is not automatic. You must notify us that you have a hardship to qualify for the forbearance. If you notified us before June 1, 2021, you must notify us again if your hardship has continued and you cannot make payments due on your mortgage loan. Contact us at (contact information) for further information and to request a forbearance. If you have a federally backed mortgage loan, you might also be eligible for forbearance under the federal CARES Act. Please contact us for questions or to request either forbearance option.

Retroactive Effect

The bill has retroactive effect back to January 1, 2021. Therefore, unless an exception applies, under HB 2009:

- Any judicial foreclosure of a covered property filed since January 1, 2021 is subject to mandatory dismissal (“A court shall dismiss without prejudice any action or suit commenced during the emergency period that seeks to foreclose a lien upon subject property.”)
- A Court may not issue a judgment of foreclosure or writ of execution during the Emergency Period.
- Any nonjudicial foreclosure (trustee’s) sale, or sheriff’s execution sale, of covered property held during the Emergency Period is “void and does not transfer or foreclose any rights to the subject property.”

Private Right of Action to Enforce HB 2009

If a borrower suffers an “ascertainable loss of money or property” due to a lender or trustee taking a prohibited action during the emergency period, the borrower may sue in state court and recover “actual damages...court costs and attorney fees.” There is a partial defense to liability if the action occurred prior to the effective date or there was a bona fide error related to issuing a statement with an impermissible charge, but the lender may have to take affirmative steps to avail themselves of the defense, including by providing written confirmation that amounts will be deferred.

Lenders should carefully review statements issued between January 1, 2021, and the effective date, and should instruct their foreclosure counsel and trustees to review any actions taken since January 1, 2021, that should be unwound to pre-

vent or limit exposure under the private right of action.

Exceptions to HB 2009

HB 2009 does not apply to tax foreclosures, vacant land, abandoned properties, or foreclosures resulting from “borrower’s waste, destruction or illegal use of subject property or the borrower’s failure to prevent another person’s waste, destruction or illegal use of the subject property.” Therefore, it is still possible to foreclose on vacant and blighted properties, but a clear record should be established through inspections to confirm the property status before any foreclosure is commenced and continued. Also, since the legislature stripped out a proposal for *how* to establish an exception for residential properties that are exempt from the bill, lenders or their counsel should review with their preferred title vendors if additional steps are needed to insure REO title for any foreclosure that will proceed during the Emergency Period.

Pre-Foreclosure Mediation

Oregon requires pre-foreclosure mediation before filing first legal. Under prior law, a lender who foreclosed fewer than 175 properties in Oregon in the prior year (and for corporate trustees, counting all foreclosures cumulatively, regardless of which trust they fell under) could file an affidavit of exemption, citing the number of prior year foreclosures. Under HB 2009, the lookback period is switched from the prior calendar year (2020) to the prior non-COVID year (2019), and the total number is reduced from 175, to 30. Therefore, **all exemption affidavits filed in 2021 are now void**. Any lender claiming an exemption under HB 2009 should file a new affidavit of exemption, citing the total number of 2019 foreclosures. Because the state has promulgated no form as of this time, the exemption affidavit will need to be modified to be consistent with current law.



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