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80th OREGON LEGISLATIVE ASSEMBLY--2020 Special Session

Enrolled

House Bill 4204

Sponsored by Representative KOTEK; Representatives DEXTER, FAHEY, HOLVEY, KENY-GUYER, LAWRENCE SPENCE, MCLAIN, MITCHELL, NERON, NOSSE, PILUSO, POWER, REARDON, SMITH WARNER, Senators FAGAN, HASS, WAGNER (at the request of Joint Committee on the First Special Session of 2020)

CHAPTER 004

AN ACT

Relating to strategies to protect Oregonians from the effects of the COVID-19 pandemic; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

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

(a) The provisions of this section might affect the terms and conditions of certain contracts into which residents of this state have entered.

(b) The effects of the provisions of this section are not substantial because the provisions have a limited scope and duration and are necessary to protect the public health, safety and welfare. For these reasons the provisions do not undermine a contractual bargain, interfere with a party's reasonable expectations or prevent a party from safeguarding or reinstating the party's rights.

(c) Even if a provision of this section has the effect of undermining a contractual bargain, interfering with a party's reasonable expectations or preventing a party from safeguarding or reinstating the party's rights, the provision is appropriate and reasonable as a means by which to implement the significant and legitimate public purpose of responding to the declaration of a state of emergency issued by the Governor on March 8, 2020.

(2) As used in this section:

(a) "Borrower" means a mortgagor of real property, a grantor, as defined in ORS 86.705, a purchaser in a land sale contract, a person that enters into a retail installment contract with, or gives a security interest to, a lender for subject property and a successor in interest to the mortgagor, grantor, purchaser or person. For the purposes of this paragraph, "successor in interest" means a person to whom a borrower has transferred an interest in subject property under any of the following circumstances:

(A) The transfer occurs by devise, descent or operation of law at the borrower's death;

(B) A relative of the borrower receives the transfer as a result of the borrower's death;

(C) The spouse or children of the borrower become owners of the subject property;

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

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

(b) "Emergency period" means a period that begins on March 8, 2020, and ends on September 30, 2020, except that the Governor may specify a later date by executive order not later than 30 days before September 30, 2020.

(c) "Financing agreement" means:

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

(B) A retail installment contract, as defined in ORS 83.010, for which the subject matter is personal property that is used as a residence.

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

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

(f) "Lender" means a beneficiary or trustee, both as defined in ORS 86.705, a mortgagee, as defined in ORS 87.005, a seller in a land sale contract, a licensee, as defined in ORS 86A.303, a retail seller, as defined in ORS 83.010, in a retail installment contract for subject property or an agent, affiliate or employee of a beneficiary, trustee, mortgagee, seller, retail seller or licensee.

(g) "Subject property" means:

(A) Real property located in this state; and

(B) Personal property that is used as a residence in this state.

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

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

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

(A) Defer from collecting the periodic installment payment during the emergency period; and

(B) Permit the borrower to pay an amount the borrower owes to the lender as a result of a deferral under this subsection at the scheduled or anticipated date on which full performance of the obligation is due.

(b) After an escrow analysis and in accordance with the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), a lender may adjust the amount of any escrow impound payment the borrower has an obligation to make under the financing agreement and may take into account any shortage or deficiency that results from deferring payments under this subsection.

(c) A borrower does not need to provide a notification to a lender under paragraph (a) of this subsection more than once. If the subject property is a residence with four or fewer dwelling units, the notification must attest that the borrower's failure to pay is a result of a loss of income related to the COVID-19 pandemic. If the subject property is commercial property or residential property with more than four dwelling units, the notification must include financial statements or other evidence that demonstrates a loss of income related to the COVID-19 pandemic and must disclose any funds the borrower received from the United States Small Business Administration under the Paycheck Protection Program, as implemented under the Paycheck Protection Program Flexibility Act of 2020 (P.L. 116-142) or other state or federal relief programs.

(d) A lender may not, with respect to a financing agreement that is subject to paragraph (a) or (b) of this subsection:

(A) Impose or collect charges, fees, penalties, attorney fees or other amounts that, but for the provisions of this section, the lender might have imposed or collected from a borrower for failing, during the emergency period, to make a periodic installment payment or pay another amount due on or in connection with the borrower's obligation;

(B) Impose a default rate of interest that, but for the provisions of this section, the lender might have imposed or collected from a borrower for failing, during the emergency period, to make a periodic installment payment or pay another amount due on or in connection with the borrower's obligation;

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

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

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

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

(G) Take control of the operating revenue from real property secured by the financing document unless the control was established before the effective date of this 2020 special session Act; or

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

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

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

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

(c) Enforce a forfeiture remedy; or

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

(5) Notwithstanding ORS 18.920, 18.924, 86.764 and 93.915 and except as provided in subsection (10) of this section, if a lender initiated a foreclosure with respect to subject property before the effective date of this 2020 special session Act, the period of time that must elapse between the time a lender initiated the foreclosure and the time at which a trustee's sale, forfeiture remedy or other foreclosure may occur is tolled during the emergency period. After the emergency period expires, a trustee's sale may continue as if uninterrupted if the lender complies with the provisions of ORS 86.782 (12), a lender may obtain a forfeiture remedy if the lender complies with the provisions of ORS 93.918 and, for other types of foreclosure proceedings, a foreclosure may continue if the lender complies with the requirements of applicable law.

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

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

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

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

(9) Within 60 days following the effective date of this 2020 special session Act, each lender authorized to do business in this state must provide written notice by mail to all of the lender's borrowers of a borrower's rights for accommodation under this section.

(10) This section does not:

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

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

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

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

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

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

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

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