



Hope Del Carlo, Attorney • hope@elemental.law • Direct: (503) 789-7372 • www.elemental.law

Senate Committee on Housing and Development
Public Hearing on HB 2009A
April 15, 2021, 1:00 p.m.

Chair Jama, Vice-Chair Linthicum, and members of the Committee,

For twenty years, I have been a consumer protection attorney in Portland, specializing in foreclosure defense and other mortgage-related litigation. About half of my career was spent working for Oregon's legal services non-profits, including an eight-year stint as the coordinator for Legal Aid Foreclosure Help, a state-wide project that helped low- and moderate-income homeowners and tenants stay in their homes.

The pandemic and its attendant economic fallout began just as the door was finally closing on the last foreclosure crisis, and mortgage defaults were returning to baseline in Oregon. COVID-19's timing couldn't have been worse--the Legal Aid Foreclosure Help project is no longer available to assist struggling low- and moderate-income homeowners. There are also fewer private foreclosure defense attorneys in practice to assist people who don't qualify for legal aid. Because legal help is so difficult to come by, homeowners need the self-executing protection of a strong Oregon statute like HB 2009A, at least until more federal support is in place.

HB 2009A covers a broad swath of Oregon homeowners and gives them rights that are clear and easy to access. The protections offered by the CARES Act are insufficient. The federal law covers only an estimated sixty to seventy percent of loans, and many people have more than one mortgage. This means that even if their first mortgage is federally-related, many also owe on a second mortgage that puts them at risk of foreclosure despite their protected senior lien. Second mortgages are rarely federally-guaranteed loans covered by the CARES Act, which means a larger proportion of homeowners are at risk than is immediately obvious.

HB 2009A incorporates many of the protections afforded by its predecessor, HB 4204, such as the broad foreclosure moratorium and coverage for different kinds of borrowers. Many homeowners are still struggling with reduced income because of the pandemic, for whom the deferral rights and foreclosure moratorium created by the prior moratorium have been a lifesaver. The deferral provisions are especially helpful, since they go further than just pausing payments--they provide certainty about what happens at the end of the deferral period. This allows borrowers to worry less about how their delinquency will be resolved, because they have rights that don't depend on an investor's discretion about what to offer. HB 4204 already protected many borrowers who needed this help; it is vital that Oregon pass a bill that extends these protections further.

HB 2009A wisely includes all kind of obligors, including those buying homes on land sale contracts, an often-used financing arrangement in rural areas of Oregon, where homeowners are likely to have little access to outside help. It also covers those with or without federally-backed loans, which provides excellent double-coverage for those Oregonians who are wrestling with their loan servicers about the extent and details of their protection under the federal CARES Act. This is extremely important for borrowers who are encountering the kinds of loan servicer communication and paperwork errors that borrowers faced during the Great Recession.

Further, HB 2009A makes it simple for a homeowner who is in financial trouble to request deferral of payments, reducing the likelihood of squabbles with loan servicers about whether the borrower is entitled relief. Because payments are deferred, rather than forgiven, the risk of abuse by borrowers is very low, since ultimately, the payments must be made.

To sum up, Oregon needs a longer foreclosure moratorium and the right to defer payments while homeowners are still struggling. The parameters for COVID mortgage relief should be as flexible and accessible as possible, so that people can maintain stable shelter as we begin to recover from COVID-19's terrible effects.

As a consumer rights lawyer, mortgage borrower, and businessperson who banks with local credit unions, I believe HB 2009A stands to help the most Oregonians with the least amount of risk to the common good. Thank you for your efforts to keep homeowners and their families secure.

Sincerely,

Hope Del Carlo