



March 3, 2021

Representative Paul Holvey, Chair
House Committee on Business and Labor
900 Court Street NE, Room 334
Salem, OR 97301

Re: HB 2009 Testimony on behalf of the Oregon Mortgage Bankers Association

Chairman Holvey, Vice Chairs Bonham and Grayber, and Members of the committee:

I am David Shirk, an attorney with 34 years of mortgage industry experience, I am a Eugene resident, I represent financial institutions involved in mortgage lending and I am testifying on behalf of the Oregon Mortgage Bankers Association (the OMBA). The OMBA membership is composed of both depository and non-depository mortgage lenders and related businesses and professionals. Both the OMBA and I have a longstanding role of representing mortgage lenders on legislative matters including participating in the introduction of mortgage lender licensing legislation adopted in 1993. The OMBA opposes HB 2009.

This written testimony was requested by the chairman following oral testimony. It is provided as an enumerated list of the topics addressed.

1. Mortgage lenders are generally obligated to advance delinquent payments to secondary market investors. Unlike federal legislation that had accompanying legislation and federal reserve intervention Oregon provides no liquidity support. Non-depository mortgage companies have fewer liquidity options than depository institutions. The full cost of this bill on mortgage companies cannot be measured until after the emergency period expires. The cost will be high and the OMBA opposes the bill on grounds that the mortgage industry is inappropriately singled out to bear these costs.
2. The OMBA would like to point out that the bill does not target predatory lending practices or subprime loans, but ordinary lenders addressing delinquencies arising from job losses and other impacts of the pandemic. Affected lenders may also include individual holders of land sale contracts who may also have lost their jobs and/or businesses. When if their business is making residential loans they could be at risk of losing their income and potentially their business because of this legislation.
3. The OMBA agrees with Mr. Scoggins' and Mr. Mortensen's oral testimony.
4. Most mortgage payments are due on the 1st of each month and ending the emergency period on the 1st of September creates ambiguity about whether the September 1st payment is intended to be protected. An August 31st end date would eliminate that ambiguity.
5. The OMBA notes that retroactive language has negative impact and unintended consequences.
 - a. Legal foreclosure actions begun during the period between HB 4204 and HB 2009 should only be stayed.

202.237.6000

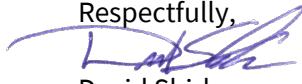
www.mortgagebanking.law
1629 K St NW Ste 300
Washington DC 20006

Admitted in CO, CT, DC, ID, MT, NJ, NM, OR, SC & WA

- b. Legal foreclosures completed and subsequent sales should be valid, not voided. Such sales are not purported, if they were legal and conclusive at that time.
 - i. Voided sales harm both lenders and subsequent good faith purchasers who are Oregon homeowners.
 - ii. If voiding of any legal lender actions persists in the bill, such provisions should clearly reinstate all lender rights and lien position and allow costs of the action and any costs resulting from the voiding and reinstatement of lender rights to be recovered in the future.
- 6. The OMBA acknowledges the benefit of remote participation in resolution conferences. However, it is concerned about reducing number of foreclosures that trigger participation from 175 to 30 foreclosures in a year.
- 7. The OMBA calls attention to ambiguity in HB 2009 language with respect to:
 - a. Whether a lender can restrict further advances on HELOCs. Lines of credit agreements typically do not allow borrowers in default to access further advances. HB 2009, if passed, should explicitly allow HELOC lenders to limit their exposure by halting cash advances when borrowers are not making payments.
 - b. RESPA escrow analysis is permitted, but the impact of borrowers failing to make payments affects that analysis. The language is ambiguous as to whether the escrow payment in the subsequent year can be adjusted for mandatory advances made by lenders pursuant to RESPA. The paragraph should begin with “Notwithstanding paragraphs (a) or (f)” to avoid this ambiguity and prevent lender advances mandated under RESPA to pay for taxes and insurance from being postponed until the end of the term of the transaction. Absent such clarifications, Oregonians could be disqualified for federally backed mortgage modifications.
 - c. Definition of a business entity borrower is ambiguous with respect to number of permitted owners of the business.
 - d. Sec 1 para (9)(a) is circular and unnecessarily confusing. (9)(b) establishes when lender is compliant with notice and should be substituted for notification requirement in (9)(a)

Thank you for the opportunity to participate. Please let me know if you have any questions.

Respectfully,



David Shirk