Background Brief on …

Foreclosure

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Background

A foreclosure is a forced sale: mortgage lenders can force the sale of a home when a borrower/homeowner doesn’t make mortgage payments; local governments can force the sale of a home when a homeowner doesn’t pay property taxes.

If a borrower defaults on a mortgage, there are two processes in Oregon that lenders can use to foreclose: judicial and nonjudicial. The judicial process is when the lender takes the borrower to court to obtain a judgment. A court orders the sale of the home by the county sheriff and the proceeds are used to satisfy the borrower’s debt to the lender. The nonjudicial process permits foreclosure by “advertisement and sale” a formal notice of a borrower’s default is recorded in the appropriate county, which serves to inform the public that a sale is pending. With either process, the borrower is kept informed and has certain rights, including the right to request mediation with the lender to attempt some resolution other than foreclosure.

Over the course of the Great Recession, foreclosure rates rose to crisis levels, as people struggled to meet their financial obligations during prolonged periods of unemployment in the face of increased costs of living and severely declined home values. The Oregon Legislature enacted a number of measures in 2008 and 2009 aimed at providing greater protections for consumers, and by 2014, both federal and state governments responded with programs and services designed to inhibit the tide of foreclosures and stabilize homeowners in their homes, and by extension, the housing market as a whole.

Early Consumer Protection Measures

Senate Bill 1064 (2008) expanded enforcement of rules governing the conduct of loan originators (the individuals who work directly with borrowers for mortgage lenders). The Department of Consumer and Business Services (**DCBS**) was empowered to ban or suspend loan originators from the industry for fraudulent practices, negligence or incompetence, or violating industry rules.

House Bill 3630 (2008) was enacted to protect consumers at risk of foreclosure from both “consultants” who offer to help them avoid foreclosure, and “equity purchasers” who acquire a financial interest in the property. Consultants and equity purchasers are required to provide clear disclosures in a written contract to homeowners and homeowners have a right to cancel the contract. The measure also requires trustees acting for lenders to notify homeowners facing foreclosure in writing at least 120 days in advance, and provide information about the homeowner's options.

House Bill 2188 (2009) restricted the sale of negative amortization loans and required lenders to translate disclosures for mortgage loans marketed and negotiated in languages other than English.

House Bill 2189 (2009) authorized DCBS to enforce new federal mortgage lending standards that required additional disclosures and restricted loan-servicing abuses and misleading advertising. The measure also increased surety bond requirements and enabled Oregon to participate in a national licensing system for loan originators, designed to ensure that mortgage lenders met certain education requirements, passed background checks, and followed laws in other states.

House Bill 2191 (2009) took aim at predatory debt counseling services being used by more and more financially distressed Oregonians. It prohibited misleading advertising, mandated specific disclosures, and required all debt management service providers to register with the state.

Home Ownership Assistance Programs

The entities in Oregon that are primarily responsible for administering foreclosure assistance programs are the Department of Consumer and Business Services (**DCBS**) and Oregon Housing and Community Services (**OHCS**). Programs and services include providing information about the foreclosure process, offering debt counseling, facilitating mediation to avoid foreclosure, and assisting with requests for loan modifications.

Oregon Homeowner Support – DCBS, OHCS, and Oregon’s Department of Justice jointly maintain a website for homeowners called Oregon Homeowner Support (at http://www.oregonhomeownersupport.gov/) which centralizes information and resources on foreclosure prevention available at both state and federal levels.

Oregon Homeownership Stabilization Initiative
Due to its high rate of unemployment, Oregon received $220 million dollars from the U.S. Treasury’s Troubled Asset Relief Program in 2010. In relatively short order, Oregon designed a number of programs based on public input, administered by the Oregon Homeownership Stabilization Initiative **(OHSI)**. Programs include the following:

- *Mortgage Payment Assistance Unemployment Program* – Qualifying homeowners received up to 12 months or $20,000 in mortgage payments, whichever came first. By 2014, the Mortgage Payment Assistance Unemployment Program transitioned into the Home Rescue Program.
- *Loan Preservation Assistance Program* – Homeowners that regained employment and were recovering from financial distress also received assistance: up to $20,000 to bring a mortgage current that had become past due. The Loan Preservation Assistance Program provided a path for homeowners to exit from the Mortgage Payment Assistance Unemployment Program and by 2014, it also transitioned into the Home Rescue Program.
- *Loan Refinancing Assistance Pilot Project* – A number of Oregon counties experienced especially severe foreclosure crises: Crook, Deschutes, Jackson, Jefferson, and Josephine. Upside-down homeowners in those counties (those who owed more than their home was worth) received refinancing

assistance if they regained employment or were recovering from economic distress and could afford a loan for the home's current value.

- *Home Rescue Program* – The Mortgage Payment Assistance Unemployment Program and the Loan Preservation Assistance Program were rolled into the Home Rescue Program. Qualified homeowners receive up to one year or $20,000 in mortgage payment assistance and up to $10,000 in reinstatement benefits.
- *Rebuilding American Homeownership Assistance* – Rebuilding American Homeownership Assistance is a pilot program developed by Oregon Congressman Jeff Merkley to provide refinancing opportunities for upside-down homeowners.
- *Homeowner Education and Verification* – Homeowners who participate in OHSI programs are also provided with tools and information to improve their ability to succeed with the assistance they receive.

Foreclosure Avoidance Program – In 2009 the Legislative Assembly enacted Senate Bill 628 to require lenders and loan servicers to notify homeowners, facing foreclosure, of their right to meet either in person or by phone, to discuss options, and to assess whether the homeowner was eligible for loan modification. This communication requirement was further developed in 2012, when the legislature created a Foreclosure Avoidance Mediation Program under the direction of the Oregon Department of Justice via Senate Bill 1552 (which was later expanded by Senate Bill 558 in 2013). The program entitles most homeowners/borrowers, at risk of foreclosure, to participate in mediation with a lender using a trained facilitator, to attempt to reach an agreement with the lender that would avoid foreclosure. Before meeting with the lender and a facilitator, the homeowner also meets with a counselor to help prepare them for mediation.

Foreclosure Mitigation Counseling Program – This is a federal program that provides counseling to homeowners at risk of foreclosure. It is administered by OHCS as part of the National Foreclosure Mitigation Counseling Program. Counseling covers budgeting to prevent foreclosure, reverse mortgages, refinancing, and negotiating with lenders for loan modifications. There are fifteen counseling centers across the state.

Making Home Affordable Program – This is a federal program that allows qualifying homeowners to request a downward loan modification in order to lower their monthly mortgage payments but also to take advantage of lower interest rates. The program has been extended to December 2016, and also offers help for unemployed homeowners and homeowners who are upside-down on their mortgage.

Neighborhood Stabilization Program – The Neighborhood Stabilization Program is a highly structured, federally funded program administered by OHCS. It is offered in partnership with approved local governments that disburse funds to qualified recipients for specified uses. It was developed by the U.S. Department of Housing and Urban Development (**HUD**) to provide funds in three phases designed to stabilize target areas with large inventories of foreclosed homes, by providing incentives to homebuyers and qualified nonprofit developers using a formula, or based on competitive applications.

Tenants in Foreclosure – see *Landlord-Tenant* Background Brief.

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Other Resources

http://www.oregonhomeownersupport.gov/
http://www.oregon.gov/DCBS/foreclosurehelp/pages/index.aspx
http://www.oregon.gov/ohcs/Pages/SFF_Foreclosure_Prevention_Resources.aspx