



HOUSE OF REPRESENTATIVES

June 26, 2020

Timothy G. Sekerak
Chief Clerk of the House
State Capitol Building, H271
Salem, OR 97301

RE: Vote Explanation on House Bill 4204A

Dear Chief Clerk Sekerak,

Please accept this vote explanation regarding House Bill 4204A. The bill reveals some of the difficulties of crafting legislation on short notice. I write to explain my reservations about the legality and wisdom of the legislation *as drafted* despite the undisputed need to provide relief to the people impacted by the COVID-19 outbreak. This bill presents some unsettled legal questions, first in regards federally-backed mortgages and second as regarding the state impairing contracts between private parties. While the state may certainly change the state foreclosure *process*, it cannot modify the *terms* of federally-backed mortgages. This leaves us with a confusing conflict for borrowers. Similarly, notwithstanding the language in Section 1 stating that our interference with contract rights is not substantial, the courts may disagree, making it possible that non-federally-backed mortgages will also lack protection. This adds an element of uncertainty for both lenders and borrowers.

The state could have accomplished the same goal by changing aspects of the foreclosure process temporarily without attempting to change the underlying contract. These measures could have included simply forbidding sales prior to a date certain or allowing a redemption period after the sale. These approaches would provide a greater degree of certainty, while still helping people stay in their homes and businesses continue to operate.

As drafted, the bill will also have negative impacts on the business recovery. By not requiring that commercial property be beneficially operated to qualify for relief, or even to request the relief, we leave the door open to defunct businesses blocking new businesses from opening to serve the public. Also, many of these properties are financed by the small lenders that provide financing key to the recovery. Until we allow them to recover their capital from properties that are not being occupied, they cannot finance the kind of new projects that will help us climb out of the recession. As discussed above, this impact would be mitigated by intervening at the end



of the foreclosure process, rather than at the beginning.

In sum, I voted yes on this bill because it's important to protect people and businesses continuing to operate at this low point in the recession. However, I wish we had drafted the law more narrowly to prevent avoidable legal problems and interference with the recovery.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marshall L. Wilde".

Marty Wilde, State Representative, District 11