

HB 4204: OREGON FORBEARANCE MORATORIUM

BACKGROUND

In response to the effects that the COVID-19 pandemic has had on the economy, Governor Kate Brown signed House Bill 4204 (“HB 4204”) into law on June 30, 2020. HB 4204 protects borrowers who fail to make payments due to economic hardship resulting from COVID-19 so long as the borrower provides to lender the notice required in the statute of their inability to make such payments. The law is broad in scope and applies to both residential as well as commercial loans secured by real property located in Oregon or personal property that is used as a residence in Oregon. One of the most significant provisions of the law is that it requires lenders to notify their borrowers by mail, no later than August 29, 2020, of their borrowers’ rights for accommodations under HB 4204.

PROTECTIONS FOR BORROWERS

Under HB 4204, during the “Emergency Period,” a lender cannot treat a borrower’s failure to make periodic payments due to economic hardship resulting from COVID-19 as a default so long as the borrower provides to lender the statutorily required notice that it will not be able to make payment at any time during the Emergency Period. The Emergency Period begins on March 8, 2020 and ends on September 30, 2020. This Emergency Period is subject to any extensions issued by the Governor.

If the borrower provides the required notice, the lender cannot treat the missed payment as a default. Instead, the statute states that absent an agreement between the lender and the borrower to modify, defer, or otherwise mitigate a loan, the lender must:

- defer from collecting the periodic installment payment; and
- allow the borrower to pay the amount owed as a result of the deferral when full performance is due, such as, the maturity date.

In addition to these protections, the statute also prohibits lenders from taking certain actions during the Emergency Period, such as:

- Impose or collect any charges, fees, penalties, attorney fees, or a default interest rate that the lender would have imposed or collected due to borrower’s failure to make any payments due during the Emergency Period.
- Treat a borrower’s failure to make a payment or other amount due during the Emergency Period as making the borrower ineligible for a foreclosure avoidance measure.
- Initiate cash management, implement lockbox procedures, or take control of the operating revenue not already in place prior to June 30, 2020.

- Declare a default based on failure of a borrower to meet financial covenants due to inadequate operating revenue resulting from the COVID-19 pandemic.
- Require or charge for an inspection, appraisal or a broker opinion of value that would normally be permitted due to a borrower's default.

REQUIRED BORROWER NOTICE

The statute specifies certain requirements for the borrower's notice of their inability to pay, which requirements differ depending on how many dwelling units are located at the property. If the subject property is a residence with four or fewer units, then the borrower notice must "attest" that borrower's failure to pay is a result of a loss of income related to the pandemic. If the subject property is a commercial or residential property with more than four units, the borrower notice must include financial statements or other evidence demonstrating loss of income is related to the pandemic and must disclose funds received from the U.S. Small Business Administration under the Paycheck Protection Program or other state or federal relief program. Lenders should note that the statute does not require the notifications to be in writing, but it is a more significant issue for the borrowers with properties that have four or fewer units since they are not required to submit any evidence and could arguably give notice through a phone call.

REQUIRED LENDER NOTICE

No later than August 29, 2020, lenders who are authorized to do business in Oregon must provide written notice by mail to all of the lender's borrowers of the borrower's rights for accommodation under HB 4204. This requirement could be time consuming for lenders so it is important that they start formulating a plan on how they will distribute notices to all of their borrowers as soon as possible.

Please do not hesitate to contact us with any questions or concerns you may have.

Best regards,



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