

September 1, 2020 Update: On August 31, 2020, Governor Brown signed Executive Order 20-37, utilizing her authority to extend the "Emergency Period" (as defined in Oregon House Bill 4204). Thus, effective August 31, 2020, the Emergency Period is March 8, 2020 to December 31, 2020. All other provisions of the law remain unchanged.

**OREGON'S NEW FORECLOSURE MORATORIUM LAW
SUMMARY FOR BORROWERS**

Updated September 1, 2020

By: Jesse M. Calm and Courtney E. Engel

On Tuesday, June 30, 2020, the Governor of Oregon signed Oregon House Bill 4204, referred to in this summary as the "Foreclosure Moratorium Law." The Foreclosure Moratorium Law prevents any foreclosures of residential or commercial real property in Oregon until at least January 1, 2021.

The Foreclosure Moratorium Law also provides certain borrower protections for failure to make payments if the borrower first notifies the lender of COVID-19 pandemic impacts.

This summary does not include all details of the new law and should not be used as the basis for any legal action or business decisions as there are nuances and other applicable clauses which are not addressed below. Our attorneys are well versed in this law and would be happy to evaluate any specific questions raised by our clients.

Foreclosure Moratorium Law

Foreclosure Moratorium. From March 8, 2020 through December 31, 2020 (the "Emergency Period"), Oregon lenders (as broadly defined in the new law) are not allowed to start or complete any judicial or non-judicial foreclosure, or to enforce any forfeiture remedy. Foreclosures started prior to the new law's enactment are tolled (that is, stalled) and may continue after the Emergency Period expires. This new law is sweeping and there are only limited exceptions for tax foreclosure proceedings and abandonment of real property as further detailed in the new law.

Additional Borrower Default Protections. A borrower of a loan secured by real property in Oregon who wants additional default protections will first have to send a specific COVID-19 notice to their lender. After the COVID-19 notice is received, the lender is prohibited from declaring certain defaults or exercising certain rights and remedies during the Emergency Period.

- Language in Notice. The notice must indicate that the borrower will not be making periodic installment payment(s). A borrower does not need to provide the notification more than once during the Emergency Period.
- One to Four Unit Residences. For loans secured by a house or other residential properties with one to four units, the borrower's notice must attest that the failure to pay is a result of a loss of income related to the COVID-19 pandemic.
- All other Borrowers. For all other borrowers, the notice must include financial statements or other evidence demonstrating a loss of income related to the COVID-19 pandemic and must disclose any Paycheck Protection Program (or other state or federal relief program) funds that the borrower has received.

Lender Restrictions After Receipt of COVID-19 Notice. After receiving a COVID-19 notice, a lender may not:

- Treat any nonpayment during the Emergency Period as a default, which applies to nonpayment of periodic installment payment(s) as well as any other amount due to the lender in connection with the loan during the Emergency Period;
- Impose any default interest, charge, fee, penalty, attorney's fees, or other amounts relating to the deferred payments (see below);
- Require or charge for an inspection, appraisal, or broker opinion of value not otherwise permitted in the absence of a default;
- Initiate any cash management, lockbox procedures, or other control of the operating revenue not already in place prior to June 30, 2020;
- Declare a default for failure to meet financial covenants due to inadequate operating revenue resulting from the COVID-19 pandemic; or
- For certain residential loans, treat the unpaid amounts as impediments to the "foreclosure avoidance measures" in ORS 86.707 et seq.

Additionally, unless the lender and borrower otherwise agree to modify, defer, or otherwise mitigate the loan, a lender is required to:

- Defer from collecting the unpaid periodic installment payment(s) during the Emergency Period; and
- Permit the borrower to pay such deferred amount at the loan maturity date.

Borrowers and lenders should review their loan documents closely in connection with the Foreclosure Moratorium Law to see what provisions remain operative.

Required Lender Notice to Borrowers. By August 29, 2020, each lender authorized to do business in Oregon, who has real property collateral located in Oregon, is also required to provide written notice by mail to all of its borrowers of the borrower's rights for accommodation under the Foreclosure Moratorium Law. There is no prescribed form of notice.

Borrower Remedies. If a borrower can show a loss of money or property because a lender took an action prohibited under this new law, a borrower may bring an action to recover the borrower's actual damages. A borrower who prevails in such an action may also recover the borrower's court costs and attorney fees.

Jesse M. Calm is a transactional partner at McEwen Gisvold LLP. Jesse provides comprehensive transactional guidance in all areas of commercial real estate and business. He advises lenders and borrowers on all types of commercial loans. He also represents landlords and tenants in leasing matters and property sales.

Courtney E. Engel joined McEwen Gisvold as an associate in 2019. She has significant experience in legal research and writing, and her practice focuses on real estate and business transactions.

This is not legal advice and does not create any attorney-client relationship and does not constitute any attorney-client communication.