

## Right 2 Dream Too to sign new lease, threatens suit against city

STAFF REPORTS

Oct. 10 will be the one-year anniversary of Right 2 Dream Too, and the members homeless rest stop are celebrating by signing a second one-year lease with the property owners.

They're also firming up their expectations of City Hall to suspend its fine process and declare R2DToo's site at Fourth Avenue and Burnside a legal transitional housing campground area as allowed under state law.

In a letter to the city dated Aug. 31, R2DToo's attorney, Mark Kramer, says that if the city refuses to suspend monthly fine assessments against the nonprofit, he will seek a judge's decision to void the regulatory process in this case. The letter was addressed to City Commissioner Dan Saltzman, head of the Bureau of Development Services that oversees the regulatory process, and Commissioner Nick Fish, who heads up the city's homeless and housing programs.

"The regulations they're using is intended for Boy scout camps and KOA campgrounds, but not shelters for homeless folks," Kramer told Street Roots.

R2DToo rents the lot at Fourth and Burnside for \$1 from owners Michael Wright and Dan Cossette. The organization's spokesperson, Ibrahim Mubarak, said the owners are supportive of their cause, but should not be burdened with the city's fines that exceed \$1,200 a month. The organization has raised its own money to help cover some, but not all, of the costs levied against the property owners.

"They want to fine us out of existence," Mubarak says. "They know we don't have much money and depend on grants and donations."

R2DToo claim their site — where about 80 homeless men and women stay each night — qualifies as a transitional housing area as allowed under state law. State statute permits a city to create two such sites, on property it selects. Portland has already sanctioned one such campground with Dignity Village.

Commissioner Saltzman's office has said he is open to consider a second sanctioned operation, but not on the site now occupied by R2DToo.

The R2DToo rally on Oct. 10 begins at 8:30 and will culminate in the signing of the new lease. The cost, like the previous year, will be \$1.

## Lenders bypass foreclosure mediation law

Created to help keep Oregonians in their homes, the state program appears thwarted by bank tactics

BY JAKE THOMAS  
STAFF WRITER

This spring, when the Oregon Legislature created a mediation program to help homeowners negotiate with lenders and avoid or modify foreclosures, there was hope that the new requirements would prompt lenders to cooperate more with homeowners to preserve their housing. But the high hopes of the Oregon Department of Justice, which oversees the new program, have given way to frustration.

Keith Dubanevich, associate attorney general, anticipated the new program would result in about a thousand modified mortgages a month. The number actually modified: zero.

The reality, Dubanevich said, is that the bill's language gives the lender "the option to go to mediation or not."

The law was passed following a landmark \$25 billion settlement between 49 state attorneys general and the country's five largest loan servicers over charges that these financial institutions routinely foreclosed on homeowners without the proper documentation. The agreement, concluded this past February included provisions aimed at providing relief to homeowners rattled by the housing collapse.

The settlement brought in nearly \$30 million to Oregon. The Legislature directed \$7.6 million toward funding the new mediation program.

However, those in the program say it is having no impact as banks seek to avoid the law's new requirements.

Banks are initiating fewer foreclosures because they are trying to avoid newly imposed requirements that they go through mediation with a homeowner before seizing a home. And lenders appear reluctant to initiate foreclosures because they are spooked by a recent court decision that could significantly affect their ability to foreclose on 65 percent of mortgages in the state.

According to Dubanevich, more than 140 Oregonians have requested mediation with their lenders, but none of these requests resulted in mediation. And, he says, homeowners who were already in default on their mortgage are not eligible for the new program.

Angela Martin, the executive director of Economic Fairness Oregon, said that the banks just don't want to participate in the program and find it easier just to drag the process out rather than meet with distressed homeowners who want to cut a deal. She said some banks don't even bother respond to homeowners' requests for mediation.

"That's where we have the banks thumbing their nose at Oregon law," said Martin. The only remedy for homeowners who have their request for mediation ignored, she said, is to go through a drawn-

out process of taking their bank to court.

Under the law, when a lender issues a notice of default to a homeowner — typically a precursor to a non-judicial foreclosure (a foreclosure without court supervision) — it also has to include a notice that the homeowner has a right to mediation. Eleven state agencies that manage mortgages have sent out notices to homeowners indicating they are in default and they have a right to mediation. However, private lenders have gotten around this requirement simply by not foreclosing on homeowners.

"What's happening is that it appears that since the program went into effect on July 11 that the banks are not proceeding with the non-judicial foreclosures that they were previously," said Oregon Attorney General Ellen Rosenblum in an interview with Street Roots in August. "The mediation program only applied to non-judicial foreclosures, so if they're not serving the homeowners with a notice of default then there's not an opportunity for homeowners in default to request mediation."

Rosenblum said that homeowners who are having trouble with their mortgages but are not in default have the best hope of reaching an arrangement allowing them to stay in their homes.

Linda Navarro, president and CEO of the Oregon Bankers Association, called the mediation program "pretty flawed" and faulted the law for imposing unclear definitions and liabilities for banks. Navarro punted specific questions about the association's objections to the association's lobbyist Paul Cosgrove, who did not respond by press time.

Collins Center for Public Policy, a Florida think tank selected to oversee the mediations, did not comment for this article despite repeated attempts to contact them.

According to a report released in August by RealtyTrac, an online marketplace for foreclosed properties, foreclosures in Oregon are at a five-year low with banks avoiding the new mediation program. The number of non-judicial foreclosures dropped 42 percent the month before the program went into effect, according to the report.

Recently released numbers from RealtyTrac show that there were 864 non-judicial foreclosures in Oregon in August, which is 67 percent fewer foreclosures than the 2,638 during August 2011.

"From the banks' perspective, [the law] is creating more effort to foreclose," said Daren Blomquist, vice president at RealtyTrac.

According to Blomquist, non-judicial foreclosures used to be a relatively easy for banks, but now they don't want to become ensnared in the new laws requirements.

Foreclosures are also in a lull, according to RealtyTrac, because of recent court decisions involving the Mortgage Electronic Registration Systems, a shell company that was used by the banks to facilitate the housing boom and now causing confusion during the housing bust.

MERS was basically used by banks to bypass requirements to record mortgage documents at local county recorders' offices. The complicated mechanism allowed banks to rapidly bundle and sell debt on homes to investors. Courts in Oregon, and elsewhere, are grappling with whether or not the entire set-up is legal, and the question is

headed to the state Supreme Court.

Homeowners in Oregon have successfully fought non-judicial foreclosures in court by challenging banks' use of MERS. In July, the Oregon Court of Appeals ruled that banks that used MERS could not foreclose without judicial supervision, and the decision has made banks reluctant to seek non-judicial foreclosures.

The other option for lenders is to conduct foreclosures through the courts, which have more consumer protections but no mediation requirement. Dubanevich expects judicial foreclosures to become more common.

"I think the courts will become busy," he said.

Navarro would prefer not to go this route, pointing out that judicial foreclosures take more time to process and will slow the recovery of the housing market.

She said that mediation program can work if banks participate effectively, and the law, Navarro said, needs to be revised when the Legislature goes back into session next year. Navarro hopes lawmakers will also address any legal questions surrounding MERS next session.

However, in the long run the program may not have the desired impact. According to RealtyTrac's Blomquist, other states have launched mediation programs that created a lull in foreclosures. However, these programs ended up delaying the inevitable foreclosure for homeowners who simply couldn't keep up with mortgage payments.

"You get the sense that the other shoe is going to drop," he said.

**According to Keith Dubanevich, associate attorney general, more than 140 Oregonians have requested mediation with their lenders, but none of these requests has resulted in mediation.**



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