

**Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 08-1069.01 Duane Gall

HOUSE BILL 08-1402

HOUSE SPONSORSHIP

Gagliardi and Ferrandino, Benefield, Borodkin, Butcher, Carroll M., Casso, Fischer, Gallegos, Green, Kerr A., McGihon, Merrifield, Middleton, Peniston, Pommer, Primavera, Solano, Soper, and Todd

SENATE SPONSORSHIP

Bacon, Boyd, Groff, Morse, Tapia, and Tochtrop

House Committees

Business Affairs and Labor
Appropriations

Senate Committees

Local Government
Appropriations

A BILL FOR AN ACT

101 **CONCERNING ADDITIONAL PROTECTIONS FOR HOMEOWNERS FACING**
102 **FORECLOSURE, AND MAKING AN APPROPRIATION THEREFOR.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires a lender to give the borrower written notice at least 30 days in advance of a change in the interest rate or other factors affecting the size of a payment on a residential mortgage loan, and to provide contact information for the lender's representative and the Colorado foreclosure hotline in case the borrower is unable to make regular payments after the change.

In a hearing for a court order authorizing a foreclosure sale, directs

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
May 6, 2008

SENATE
Amended 2nd Reading
May 5, 2008

HOUSE
3rd Reading Unamended
April 30, 2008

HOUSE
Amended 2nd Reading
April 29, 2008

the court to extend the sale date for 90 days in the case of certain residential mortgages if the debtor shows either that required documentation was not duly served on the debtor or that a representative of the lender did not engage in good-faith loss mitigation efforts, defined as efforts to work with the borrower to extend or restructure the loan. Repeals the 90-day delay provision after 3 years.

Requires filing of notices to the debtor and affidavits of compliance with good-faith loss mitigation efforts along with the notice of election and demand to initiate a public trustee's sale. Excludes credit sales from the act.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2
3
4 **SECTION 1.** 38-38-102.5, Colorado Revised Statutes, is
5 RECREATED AND REENACTED, WITH AMENDMENTS, to read:

6 **38-38-102.5. Notice prior to residential foreclosure - hotline.**

7 (1) AS USED IN THIS SECTION, "HOLDER" MEANS THE HOLDER OF AN
8 EVIDENCE OF DEBT CONSTITUTING A RESIDENTIAL MORTGAGE LOAN, AS
9 DEFINED IN SECTION 12-61-902, C.R.S., OR THAT HOLDER'S LOAN
10 SERVICER OR OTHER PERSON ACTING ON THE HOLDER'S BEHALF.
11 "HOLDER" SHALL NOT INCLUDE A PERSON WHOSE ONLY ACTIVITY AS A
12 HOLDER IS AS THE SELLER IN NOT MORE THAN THREE CREDIT SALES OR
13 LOANS PER YEAR.

14 (2) AT LEAST THIRTY DAYS BEFORE FILING A NOTICE OF ELECTION
15 AND DEMAND AND AT LEAST THIRTY DAYS AFTER DEFAULT, THE
16 HOLDER SHALL MAIL A NOTICE ADDRESSED TO THE DEBTOR AT THE
17 ADDRESS SHOWN ON ITS RECORDS, CONTAINING THE TELEPHONE NUMBER
18 OF THE COLORADO FORECLOSURE HOTLINE AND THE DIRECT TELEPHONE
19 NUMBER OF THE HOLDER'S LOSS MITIGATION REPRESENTATIVE OR
20 DEPARTMENT.

1 (3) (a) THIS SECTION SHALL APPLY ONLY TO A DEFAULT
2 CONSISTING SOLELY OF THE DEBTOR'S FAILURE TO MAKE ONE OR MORE
3 REQUIRED PAYMENTS.

4 (b) WITH RESPECT TO DEFAULTS ON THE SAME OBLIGATION, AFTER
5 THE HOLDER HAS ONCE GIVEN THE DEBTOR A NOTICE AS SPECIFIED IN
6 SUBSECTION (2) OF THIS SECTION, THIS SECTION IMPOSES NO LIMITATION
7 ON THE HOLDER'S RIGHT TO FORECLOSE WITH RESPECT TO ANY
8 SUBSEQUENT DEFAULT THAT OCCURS WITHIN TWELVE MONTHS AFTER
9 SUCH NOTICE.

10 █
11 **SECTION 2.** Part 7 of article 32 of title 24, Colorado Revised
12 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
13 read:

14 **24-32-719. Foreclosure prevention - outreach efforts - grant**
15 **fund - creation - administration - repeal.** (1) THERE IS HEREBY
16 CREATED IN THE STATE TREASURY THE FORECLOSURE PREVENTION GRANT
17 FUND. THE FUND SHALL CONSIST OF MONEYS APPROPRIATED BY THE
18 GENERAL ASSEMBLY AS WELL AS GIFTS, GRANTS, AND DONATIONS, WHICH
19 THE DIVISION IS HEREBY AUTHORIZED AND DIRECTED TO SOLICIT, ACCEPT,
20 EXPEND, AND DISBURSE FOR THE PURPOSE OF MAKING GRANTS AS
21 PROVIDED IN THIS SECTION. ANY MONEYS IN SUCH FUND AT THE END OF
22 THE 2008-2009 FISCAL YEAR SHALL NOT REVERT TO THE GENERAL FUND.
23 ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND
24 AS OF JUNE 30, 2010, SHALL REVERT TO THE GENERAL FUND.

25 (2) UPON THE APPROVAL OF THE STATE HOUSING BOARD, THE
26 DIVISION MAY MAKE A GRANT FROM MONEYS IN THE FUND TO ANY LOCAL
27 HOUSING AUTHORITY, PUBLIC NONPROFIT CORPORATION, OR PRIVATE

1 NONPROFIT CORPORATION FOR THE SOLE PURPOSE OF PROVIDING
2 OUTREACH AND NOTICE OF FORECLOSURE PREVENTION ASSISTANCE TO
3 PERSONS IN DANGER OF FORECLOSURE AND TO COMMUNITIES WITH HIGH
4 FORECLOSURE RATES. GRANTS SHALL BE MADE SUBJECT TO PROPOSALS
5 RECEIVED BY THE DIVISION AND AWARDED BASED UPON CRITERIA
6 DETERMINED BY THE DIVISION, WHICH CRITERIA SHALL INCLUDE:

- 7 (a) EVIDENCE OF THE ABILITY TO USE FUNDS EFFECTIVELY;
- 8 (b) AN ESTABLISHED PRESENCE IN THE COMMUNITY, WITH
9 PREFERENCE GIVEN TO ORGANIZATIONS WITH MEMBERS IN LOW- AND
10 MODERATE-INCOME AREAS WITH HIGH FORECLOSURE RATES; AND
- 11 (c) A DEMONSTRATED ABILITY TO REACH HOMEOWNERS FROM
12 CONSTITUENCIES AND COMMUNITIES WITH HIGH FORECLOSURE RATES.

13 (3) ON OR BEFORE JANUARY 1, 2009, AND ON OR BEFORE EACH
14 JANUARY 1 THEREAFTER, THE DIVISION SHALL REPORT TO THE BUSINESS
15 AFFAIRS AND LABOR COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND
16 THE BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE OF THE SENATE, OR
17 THEIR SUCCESSOR COMMITTEES, ON THE DIVISION'S RECEIPTS AND
18 EXPENDITURES PURSUANT TO THIS SECTION. THE DIVISION'S REPORT
19 SHALL CONTAIN QUANTIFIED RESULTS OF OUTCOMES, INCLUDING DATA AS
20 TO THE NUMBER OF CALLS TO THE FORECLOSURE HOTLINE AND THE
21 NUMBERS OF DEFAULTS, FORECLOSURES, AND REDEMPTIONS IN IDENTIFIED
22 GEOGRAPHIC AREAS.

23 (4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2010.

24 **SECTION 3. Appropriation - adjustments to the 2008 long**
25 **bill.** (1) In addition to any other appropriation, there is hereby
26 appropriated, out of any moneys in the general fund not otherwise
27 appropriated, to the foreclosure prevention grant fund created in section

1 24-32-719 (1), Colorado Revised Statutes, for the fiscal year beginning
2 July 1, 2008, the sum of one hundred thousand dollars (\$100,000), or so
3 much thereof as may be necessary, for the implementation of this act.

4 (2) In addition to any other appropriation, there is hereby
5 appropriated, out of any moneys in the foreclosure prevention grant fund
6 created in section 24-32-719 (1), Colorado Revised Statutes, not
7 otherwise appropriated, to the department of local affairs, for allocation
8 to the division of housing, for the fiscal year beginning July 1, 2008, the
9 sum of one hundred thousand dollars (\$100,000) reappropriated funds, or
10 so much thereof as may be necessary, for the implementation of this act.
11 Said sum shall remain available through June 30, 2009.

12 (3) For the implementation of this act, the general fund
13 appropriation to the controlled maintenance trust fund made in section 23
14 of the annual general appropriation act, for the fiscal year beginning July
15 1, 2008, shall be decreased by one hundred thousand dollars (\$100,000).

16 ==

17 **SECTION 4. Effective date - applicability.** This act shall take
18 effect upon passage and shall apply to foreclosure actions filed on or after
19 August 1, 2008.

20 **SECTION 5. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.