


Colorado Legislative Council Staff Fiscal Note
STATE
FISCAL IMPACT

Drafting Number: LLS 08-1069 **Date:** April 22, 2008
Prime Sponsor(s): Rep. Gagliardi; Ferrandino **Bill Status:** House Business Affairs & Labor
Fiscal Analyst: Harry Zeid (303-866-4753)
Sen. Bacon

TITLE: CONCERNING ADDITIONAL PROTECTIONS FOR HOMEOWNERS FACING FORECLOSURE.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
State Revenue		
State Expenditures		
General Fund	\$240,747	\$178,023
FTE Position Change	3.0 FTE	3.0 FTE
Effective Date: Upon signature of the Governor or the bill becoming law without his signature, and applies to foreclosure actions filed on or after that date.		
Appropriation Summary for FY 2008-2009: See the State Appropriations section.		
Local Government Impact: None.		

Summary of Legislation

HB08-1402 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. The lender must also provide contact information for the lender's representative and for the Colorado Foreclosure Hotline in case the borrower is unable to make regular payments after the change.

In a hearing to authorize a foreclosure sale, the bill directs 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. The 90-day delay provision is repealed, effective July 1, 2011.

State Expenditures

The Judicial Branch requires expenditures of **\$240,747 and 3.0 FTE in FY 2008-09** and **\$178,023 and 3.0 FTE in FY 2009-10** to implement the bill.

Presently, nearly all cases asking the court to approve a public trustee’s order of sale are handled on the debtor’s default. This bill injects substantive defenses in a hearing that may delay a foreclosure. As a result, there are a mix of situations that would trigger additional litigation:

- people who would attempt to stay in their homes an additional 90 days by either threatening to litigate the matter and achieving settlement or by actually going to court to get the 90-day extension;
- people who are at the edge of foreclosure and could probably save ownership of the property if lenders had in fact engaged in good-faith loss mitigation efforts; and
- the available remedy in a hearing that provides an automatic 90-day extension as a remedy for lack of notice instead of applying the equitable factors under current law and determining the scope of the extension.

Based on information gathered from judicial officers, it is believed that approximately 3 percent of debtors would avail themselves of the opportunity to delay a foreclosure proceeding at a hearing. It is estimated that an adequacy of notice hearing will take approximately 90 minutes on average to complete. In FY 2006-07, there were 33,586 foreclosures on deed of trust cases brought in the State of Colorado. Therefore, approximately 1,008 additional hearings at 90 minutes each will occur. This will result in approximately 1,500 hours, or about 0.75 FTE, of additional magistrate time per fiscal year to implement the bill. There will also be the need for 2.25 FTE additional support staff. Table 1 identifies Judicial Branch expenditures necessary to accommodate the additional hearings.

Table 1. Judicial Branch Expenditures Under HB08-1402		
Cost Components	FY 2008-09	FY 2009-10
Personal Services	\$169,473	\$169,473
FTE	<i>3.0 FTE</i>	<i>3.0 FTE</i>
Operating Expenses	8,550	8,550
Capital Outlay (one-time cost)	62,724	0
TOTAL	\$240,747	\$178,023

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, funding for the items noted below will not be included in fiscal note expenditure estimates.

- group health, life and dental insurance
- inflation indices
- amortization equalization disbursements
- supplemental amortization equalization disbursements
- short-term disability
- leased space
- indirect costs

State Appropriations

The Judicial Branch requires a General Fund appropriation of \$240,747 and 3.0 FTE for FY 2008-09 to implement the bill.

Departments Contacted

Judicial Local Affairs