

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 10-0600.01 Duane Gall

HOUSE BILL 10-1133

HOUSE SPONSORSHIP

Massey,

SENATE SPONSORSHIP

Tochtrop,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING AMENDMENTS TO THE "COLORADO FORECLOSURE**
102 **PROTECTION ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries.>)

The bill repeals subpart 3 of the "Colorado Foreclosure Protection Act", enacted in 2006, and the corresponding definition of an "equity purchaser". It retains subpart 2, regulating foreclosure consultants.

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.

HOUSE
Amended 2nd Reading
February 22, 2010

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

2 **SECTION 1.** 6-1-1103 (2) (a), Colorado Revised Statutes, is
3 amended, and the said 6-1-1103 (2) is further amended BY THE
4 ADDITION OF A NEW PARAGRAPH, to read:

5 **6-1-1103. Definitions.** As used in this part 11, unless the context
6 otherwise requires:

7 (2) "Equity purchaser" means a person, OTHER THAN A PERSON
8 WHO ACQUIRES A PROPERTY FOR THE PURPOSE OF USING SUCH PROPERTY
9 AS HIS OR HER PERSONAL RESIDENCE, ~~who in the course of the person's~~
10 ~~business, vocation, or occupation,~~ acquires title to a residence in
11 foreclosure; except that the term does not include a person who acquires
12 such title:

13 ~~(a) For the purpose of using such property as his or her personal~~
14 ~~residence for at least one year;~~

15 (h) AS A RESULT OF A SHORT SALE TRANSACTION IN WHICH A
16 SHORT SALE ADDENDUM FORM, AS PROMULGATED BY THE COLORADO
17 REAL ESTATE COMMISSION, IS PART OF THE CONTRACT USED TO ACQUIRE
18 A RESIDENCE IN FORECLOSURE AND SUCH TRANSACTION COMPLIES WITH
19 SECTION 6-1-1121.

20 **SECTION 2.** The introductory portion to 6-1-1103 (4) (a) and
21 6-1-1103 (8), Colorado Revised Statutes, are amended, and the said
22 6-1-1103 is further amended BY THE ADDITION OF A NEW
23 SUBSECTION, to read:

24 **6-1-1103. Definitions.** As used in this part 11, unless the context
25 otherwise requires:

26 (4) (a) "Foreclosure consultant" means a person who does not,
27 directly or through an associate, take or acquire any interest in or title to

1 ~~the residence in foreclosure~~ A HOMEOWNER'S PROPERTY and who, in the
2 course of such person's business, vocation, or occupation, makes a
3 solicitation, representation, or offer to a home owner to perform, in
4 exchange for compensation from the home owner or from the proceeds
5 of any loan or advance of funds, a service that the person represents will
6 do any of the following:

7 (8) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
8 THIS SUBSECTION (8), "residence in foreclosure" means a residence or
9 dwelling, as defined in sections 5-1-201 and 5-1-301, C.R.S., that is
10 occupied as the home owner's principal place of residence and that is
11 encumbered by a residential mortgage loan that is at least thirty days
12 delinquent or in default.

13 (b) WITH RESPECT TO SUBPART 3 OF THIS PART 11, "RESIDENCE IN
14 FORECLOSURE" MEANS, A RESIDENCE OR DWELLING, AS DEFINED IN
15 SECTIONS 5-1-201 AND 5-1-301, C.R.S., THAT IS OCCUPIED AS THE HOME
16 OWNER'S PRINCIPAL PLACE OF RESIDENCE, IS ENCUMBERED BY A
17 RESIDENTIAL MORTGAGE LOAN, AND AGAINST WHICH A FORECLOSURE
18 ACTION HAS BEEN COMMENCED OR AS TO WHICH AN EQUITY PURCHASER
19 OTHERWISE HAS ACTUAL OR CONSTRUCTIVE KNOWLEDGE THAT THE LOAN
20 IS AT LEAST THIRTY DAYS DELINQUENT OR IN DEFAULT.

21 (9) "SHORT SALE" OR "SHORT SALE TRANSACTION" MEANS A
22 TRANSACTION IN WHICH THE RESIDENCE IN FORECLOSURE IS SOLD WHEN:

23 (a) A HOLDER OF EVIDENCE OF DEBT AGREES TO RELEASE ITS LIEN
24 FOR AN AMOUNT THAT IS LESS THAN THE OUTSTANDING AMOUNT DUE AND
25 OWING UNDER SUCH EVIDENCE OF DEBT; AND

26 (b) THE LIEN DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION
27 (9) IS RECORDED IN THE REAL PROPERTY RECORDS OF THE COUNTY WHERE

1 THE RESIDENCE IN FORECLOSURE IS LOCATED.

2 SECTION 3. 6-1-1104 (4), Colorado Revised Statutes, is
3 amended to read:

4 **6-1-1104. Foreclosure consulting contract.** (4) A foreclosure
5 consulting contract shall be dated and personally signed, with each page
6 being initialed, by each home owner of the residence in foreclosure and
7 the foreclosure consultant and shall be acknowledged by a notary public
8 in the presence of the home owner at the time the contract is signed by the
9 home owner.

10 SECTION 4. 6-1-1111, Colorado Revised Statutes, is amended
11 to read:

12 **6-1-1111. Written contract required.** Every contract shall be
13 written in at least twelve-point, ~~bold-faced~~ LEGIBLE type and fully
14 completed, signed, and dated by the home owner and equity purchaser
15 prior to the execution of any instrument quit-claiming, assigning,
16 transferring, conveying, or encumbering an interest in the residence in
17 foreclosure.

18 SECTION 5. 6-1-1120, Colorado Revised Statutes, is amended
19 to read:

20 **6-1-1120. Language.** (1) Any contract, rental agreement, lease,
21 option or right to repurchase, and any notice, conveyance, lien,
22 encumbrance, consent, or other document or instrument signed by a home
23 owner, shall be written in English; ~~and shall be accompanied by a written~~
24 ~~translation from English into any other language principally spoken by the~~
25 ~~home owner, certified by the person making the translation as a true and~~
26 ~~correct translation of the English version. The translated version shall be~~
27 ~~presumed to have equal status and credibility as the English version.~~

1 EXCEPT THAT, IF THE EQUITY PURCHASER HAS ACTUAL OR CONSTRUCTIVE
2 KNOWLEDGE THAT THE HOME OWNER'S PRINCIPAL LANGUAGE IS OTHER
3 THAN ENGLISH, THE HOME OWNER SHALL BE PROVIDED WITH A NOTICE,
4 WRITTEN IN THE HOME OWNER'S PRINCIPAL LANGUAGE, SUBSTANTIALLY
5 AS FOLLOWS:

6 **THIS TRANSACTION INVOLVES IMPORTANT AND COMPLEX**
7 **LEGAL CONSEQUENCES, INCLUDING YOUR RIGHT TO**
8 **CANCEL THIS TRANSACTION WITHIN THREE BUSINESS**
9 **DAYS FOLLOWING THE DATE YOU SIGN THIS CONTRACT.**
10 **YOU SHOULD CONSULT WITH AN ATTORNEY OR SEEK**
11 **ASSISTANCE FROM A HOUSING COUNSELOR BY CALLING**
12 **THE COLORADO FORECLOSURE HOTLINE AT**
13 _____ [CURRENT, CORRECT TELEPHONE
14 NUMBER].

15 (2) IF A NOTICE IN THE HOME OWNER'S PRINCIPAL LANGUAGE IS
16 REQUIRED TO BE PROVIDED UNDER SUBSECTION (1) OF THIS SECTION, THE
17 NOTICE SHALL BE GIVEN TO THE HOME OWNER AS A SEPARATE DOCUMENT
18 ACCOMPANYING THE WRITTEN CONTRACT REQUIRED BY SECTION 6-1-1111.

19 **SECTION 6.** Part 11 of article 1 of title 6, Colorado Revised
20 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
21 read:

22 **6-1-1121. Short sales - subsequent purchaser - definition.**

23 (1) WITH RESPECT TO ANY SHORT SALE TRANSACTION IN WHICH AN
24 EQUITY PURCHASER INTENDS TO RESELL THE RESIDENCE IN FORECLOSURE
25 TO A SUBSEQUENT PURCHASER, THE EQUITY PURCHASER SHALL:

26 (a) PROVIDE FULL DISCLOSURE TO THE HOME OWNER AND THE
27 HOLDERS OF THE EVIDENCE OF DEBT ON THE RESIDENCE IN FORECLOSURE,

1 OF THE TERMS OF THE AGREEMENT BETWEEN THE EQUITY PURCHASER AND
2 ANY SUBSEQUENT PURCHASER, INCLUDING BUT NOT LIMITED TO THE
3 PURCHASE PRICE TO BE PAID TO THE SUBSEQUENT PURCHASER FOR THE
4 RESIDENCE IN FORECLOSURE, WHICH DISCLOSURE SHALL BE MADE WITHIN
5 ONE BUSINESS DAY OF IDENTIFYING ANY SUCH SUBSEQUENT PURCHASER
6 AND IN NO EVENT LATER THAN CLOSING ON THE SHORT SALE
7 TRANSACTION; AND

8 (b) PROVIDE FULL DISCLOSURE TO ANY SUBSEQUENT PURCHASER
9 AND ANY SUBSEQUENT PURCHASER'S LENDER, AT THE TIME OF CONTRACT
10 WITH THE EQUITY PURCHASER, OF THE TERMS OF THE AGREEMENT
11 BETWEEN THE EQUITY PURCHASER AND THE HOME OWNER, INCLUDING BUT
12 NOT LIMITED TO THE PURCHASE PRICE PAID BY THE EQUITY PURCHASER
13 FOR THE RESIDENCE IN FORECLOSURE.

14 (c) COMPLY WITH ALL APPLICABLE RULES ADOPTED BY THE
15 COLORADO REAL ESTATE COMMISSION WITH REGARD TO SHORT SALES;
16 AND

17 (d) COMPLY WITH SECTION 38-35-125, C.R.S.

18 (2) AS USED IN THIS SECTION, A "SUBSEQUENT PURCHASER" MEANS
19 ANY PERSON WHO ACQUIRES THE RESIDENCE IN FORECLOSURE WITHIN
20 FOURTEEN DAYS AFTER THE DISBURSEMENT OF THE SHORT SALE
21 TRANSACTION.

22 **SECTION 7. Act subject to petition - specified effective date.**
23 This act shall take effect January 1, 2011; except that, if a referendum
24 petition is filed pursuant to section 1 (3) of article V of the state
25 constitution against this act or an item, section, or part of this act within
26 the ninety-day period after final adjournment of the general assembly,
27 then the act, item, section, or part shall not take effect unless approved by

1 the people at the general election to be held in November 2010 and shall
2 take effect on January 1, 2011, or on the date of the official declaration
3 of the vote thereon by the governor, whichever is later.