

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO
UNOFFICIAL PREAMENDED VERSION

Incorporating proposed committee amendment SB071_L.001
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LLS NO. 12-0570.01 Duane Gall x4335

**SENATE
BILL 12-071**

SENATE SPONSORSHIP

Giron,

HOUSE SPONSORSHIP

Duran,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT TO PURSUE AVAILABLE LOAN**
102 **MODIFICATION REMEDIES BEFORE FORECLOSING ON**
103 **RESIDENTIAL REAL PROPERTY.**

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/bills/summaries>.)

The bill requires the holder of an evidence of debt (typically a mortgage lender), before initiating or completing the process of

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.

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foreclosing on residential real property containing 4 or fewer dwelling units, to make and fully document its efforts to:

- Contact the borrower directly;
- Negotiate in good faith with the borrower in an effort to effectuate a cure for default rather than move directly into the foreclosure process;
- Fully assess the eligibility of the borrower, the property, and the loan for any available public or private loan modification programs or other alternatives to foreclosure;
- Communicate with, and inform, the borrower about impending deadlines and the consequences of missing them at every major step of the foreclosure process;
- Carry the burden of proof in court proceedings regarding the holder's compliance with procedural as well as substantive requirements before obtaining an order authorizing sale of the property under rule 120 in the Colorado rules of civil procedure; and
- Abide by the terms of any offer of modification it makes, if the borrower signs and returns documents containing those terms.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 10 to article
3 38 of title 38 as follows:

4 **PART 10**

5 **LOAN MODIFICATION PRIOR TO FORECLOSURE**

6 **38-38-1001. Definitions.** AS USED IN THIS PART 10, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "CASH FOR KEYS" MEANS AN INVESTOR PROGRAM THROUGH
9 WHICH A HOLDER OFFERS MONETARY RELOCATION ASSISTANCE TO THE
10 BORROWER.

11 (2) "FHA" MEANS THE FEDERAL HOUSING ADMINISTRATION.

12 (3) "FORECLOSURE ACTIVITY" MEANS ANY ACTION BY A HOLDER
13 IN WHICH THE HOLDER ATTEMPTS TO EXERCISE THE POWER-OF-SALE
14 CLAUSE FOUND IN A MORTGAGE NOTE OR SECURITY INSTRUMENT

1 ASSOCIATED WITH THE PROPERTY SECURING AN OBLIGATION. THE TERM
2 INCLUDES REFERRING A LOAN TO FORECLOSURE, ISSUING A NOTICE OF
3 ELECTION AND DEMAND, PARTICIPATING IN A HEARING PURSUANT TO
4 C.R.C.P. 120, AND CONDUCTING A FORECLOSURE SALE.

5 (4) "FORECLOSURE ALTERNATIVE" MEANS ANY PROGRAM
6 DESIGNED TO AVOID FORECLOSURE, INCLUDING:

7 (a) A LOAN MODIFICATION OFFERED UNDER THE MAKING HOME
8 AFFORDABLE PROGRAM;

9 (b) A NON-MHA LOAN MODIFICATION OFFERED BY THE HOLDER;

10 (c) A REFINANCE UNDER HAMP OR OTHER NON-HAMP
11 REFINANCE PROGRAM OFFERED BY THE HOLDER; AND

12 (d) ANY FORBEARANCE, REPAYMENT PLAN, SHORT SALE, OR DEED
13 IN LIEU OF FORECLOSURE IN CONNECTION WITH ANY OF WHICH THE
14 HOLDER IS REQUIRED TO WORK WITH FHA PROGRAMS ALLOWING FOR
15 PARTIAL CLAIMS AS WELL AS MORTGAGE INSURERS IN AN ATTEMPT TO
16 CURE OR REDUCE THE DELINQUENCY OF A DEFAULTED LOAN.

17 (5) "HAMP" MEANS THE HOME AFFORDABLE MODIFICATION
18 PROGRAM ESTABLISHED BY THE MAKING HOME AFFORDABLE PROGRAM.

19 (6) "HOLDER" HAS THE SAME MEANING AS "HOLDER OF AN
20 EVIDENCE OF DEBT" AS DEFINED IN SECTION 38-38-100.3 (10).

21 (7) "HOLDER CERTIFICATION" MEANS THE CERTIFICATE AND
22 SUPPORTING DOCUMENTATION THAT A HOLDER MUST PRESENT TO THE
23 ATTORNEY REPRESENTING THE HOLDER IN CONNECTION WITH A
24 FORECLOSURE BEFORE THE ATTORNEY ISSUES A NOTICE OF ELECTION AND
25 DEMAND AND BEFORE THE ATTORNEY PROCEEDS WITH A HEARING
26 PURSUANT TO C.R.C.P. 120. EACH HOLDER CERTIFICATION ATTESTS TO
27 THE FACT THAT THE HOLDER HAS COMPLIED WITH ALL THE PROVISIONS OF

1 THIS PART 10 REQUIRED TO BE COMPLETED BEFORE PROCEEDING WITH THE
2 FORECLOSURE STEP TO WHICH THE CERTIFICATION PERTAINS.

3 (8) "MHA" MEANS THE MAKING HOME AFFORDABLE PROGRAM
4 IMPLEMENTED BY THE UNITED STATES DEPARTMENT OF THE TREASURY
5 PURSUANT TO ITS AUTHORITY UNDER THE TROUBLED ASSET RELIEF
6 PROGRAM, ESTABLISHED IN TITLE I OF THE "EMERGENCY ECONOMIC
7 STABILIZATION ACT OF 2008", PUB.L. 110-343, CODIFIED AT 12 U.S.C.
8 SEC. 5211 ET SEQ.

9 (9) "NPV" MEANS THE NET PRESENT VALUE EVALUATION OF A
10 MORTGAGE.

11 (10) "PARTIAL CLAIM" MEANS A MONETARY CONTRIBUTION,
12 WHETHER IN THE FORM OF A LOAN OR GRANT, FROM A MORTGAGE INSURER
13 OR OTHER PARTY GUARANTYING THE LOAN THAT IS USED TO CURE OR
14 REDUCE DELINQUENCY.

15 (11) "PRESALE CERTIFICATION" MEANS THE CERTIFICATE THAT A
16 HOLDER MUST PRESENT TO THE FORECLOSING ATTORNEY AND PUBLIC
17 TRUSTEE ATTESTING TO THE FACT THAT IT HAS MET ALL STATUTORY
18 REQUIREMENTS CONTAINED IN THIS PART 10 AND IS AUTHORIZED TO
19 PROCEED WITH THE SCHEDULED FORECLOSURE SALE.

20 (12) "REASONABLE EFFORTS", WITH REGARD TO MAKING
21 RIGHT-PARTY CONTACT, MEANS EFFORTS COMPLYING WITH THE MINIMUM
22 STANDARDS SET FORTH IN SECTION 38-38-1004.

23 (13) "RIGHT-PARTY CONTACT" MEANS MAKING CONTACT, EITHER
24 VIA WRITTEN OR ORAL COMMUNICATION, WITH A BORROWER OR
25 CO-BORROWER ON THE LOAN AS TO WHICH THE HOLDER IS CONSIDERING
26 OR PURSUING FORECLOSURE.

27 **38-38-1002. Scope of part - actions required - conditions**

1 **precedent to foreclosure.** (1) THIS PART 10 DOES NOT CREATE A
2 SUBSTANTIVE RIGHT TO A LOAN MODIFICATION.

3 (2) THIS PART 10 APPLIES TO ALL OWNER-OCCUPIED RESIDENTIAL
4 REAL PROPERTY CONTAINING NO MORE THAN FOUR DWELLING UNITS AND
5 THAT SECURES AN OBLIGATION AS TO WHICH A MORTGAGE NOTE AND DEED
6 OF TRUST WERE EXECUTED, AND THE DEED OF TRUST RECORDED, AFTER
7 JANUARY 1, 2001.

8 (3) A HOLDER SHALL NOT COMMENCE FORECLOSURE ACTIVITY
9 UNTIL:

10 (a) (I) THE HOLDER HAS MADE RIGHT-PARTY CONTACT, OR MADE
11 REASONABLE EFFORTS TO MAKE RIGHT-PARTY CONTACT AND, IF
12 RIGHT-PARTY CONTACT IS MADE AND THE PROPERTY MEETS THE CRITERIA
13 OF SUBSECTION (2) OF THIS SECTION, WORKED WITH THE BORROWER TO
14 PLACE THE BORROWER IN A FORECLOSURE ALTERNATIVE PROGRAM; OR

15 (II) ALL REVIEWS FOR FORECLOSURE ALTERNATIVES UNDER
16 GOVERNMENT PROGRAMS AND ALL PROGRAMS OFFERED BY AN INVESTOR
17 HAVE BEEN EXHAUSTED AND IT HAS BECOME OBJECTIVELY
18 DEMONSTRABLE THAT FORECLOSURE IS THE ONLY PRACTICABLE MEANS OF
19 PROTECTING THE HOLDER'S INTERESTS;

20 (b) THE HOLDER HAS NOTIFIED THE BORROWER REGARDING
21 POSSIBLE FORECLOSURE ALTERNATIVE OPTIONS AS SPECIFIED IN SECTION
22 38-38-1003;

23 (c) THE HOLDER HAS PROVIDED A CERTIFICATION TO THE
24 FORECLOSURE ATTORNEY, AS SPECIFIED IN SECTION 38-38-1006, BEFORE
25 ISSUING A NOTICE OF ELECTION AND DEMAND;

26 (d) THE HOLDER HAS PROVIDED A PRESALE CERTIFICATE TO THE
27 FORECLOSURE ATTORNEY IN ACCORDANCE WITH SECTION 38-38-1007;

1 AND

2 (e) THE HOLDER HAS WORKED IN GOOD FAITH WITH ALL PARTIES
3 DESIGNATED BY THE BORROWER AS AUTHORIZED THIRD PARTIES ON THE
4 LOAN. IF THE THIRD PARTY IS AN ATTORNEY REPRESENTING THE
5 BORROWER IN THE MORTGAGE MATTER, THE HOLDER SHALL TREAT THE
6 ATTORNEY AS A BORROWER AND SHALL INCLUDE THE ATTORNEY ON ALL
7 COMMUNICATIONS WITH THE BORROWER. UPON A BORROWER'S REQUEST,
8 A HOLDER SHALL COMMUNICATE ONLY WITH THE BORROWER'S ATTORNEY,
9 UNLESS OTHERWISE REQUIRED BY LAW, IN WHICH CASE THE HOLDER SHALL
10 COPY THE ATTORNEY ON ALL BORROWER COMMUNICATIONS.

11 _____
12 _____
13 _____

14 **38-38-1003. Communication requirements.** (1) IN CONNECTION
15 WITH EVERY FORECLOSURE, A LOAN SERVICER SHALL SEND THE BORROWER
16 NOTICES, WRITTEN IN PLAIN LANGUAGE, ABOUT ALL FORECLOSURE
17 ALTERNATIVES ASSISTANCE AND THE PENDENCY OF FORECLOSURE
18 PROCEEDINGS. THE NOTICES MUST BE SENT TO THE BORROWER WITH THE
19 RIGHT TO CURE LETTER AND THE NOTICE OF ELECTION AND DEMAND, AND
20 MUST INCLUDE AT LEAST THE FOLLOWING INFORMATION:

21 (a) THE LOAN SERVICER'S TOLL-FREE TELEPHONE NUMBER FOR
22 LOSS MITIGATION;

23 (b) A LIST AND DESCRIPTION OF THE PROGRAMS THAT MAY BE
24 AVAILABLE TO THE OWNER;

25 (c) THE IMPORTANCE OF RESPONDING TO THE FORECLOSURE
26 ALTERNATIVES ASSISTANCE NOTICE AND THE BENEFITS OF EACH TYPE OF
27 ASSISTANCE;

1 (d) THE PROCESS TO APPLY FOR THE PROGRAMS AND WHAT THE
2 BORROWER SHOULD EXPECT THROUGHOUT THE PROCESS; AND

3 (e) INSTRUCTIONS ON HOW TO COMPLETE A FORECLOSURE
4 ALTERNATIVES APPLICATION, WHICH MUST BE INCLUDED WITH THE
5 COMMUNICATION.

6 (2) A _____ NOTIFICATION AND FORECLOSURE ALTERNATIVES
7 APPLICATION PACKET MUST BE INCLUDED WITH THE NOTICE OF SALE. THIS
8 NOTIFICATION PACKET MUST CONTAIN THE SAME INFORMATION AS THE
9 OTHER NOTIFICATIONS BUT WILL ALSO CONTAIN A STATEMENT INDICATING
10 THAT IT IS THE BORROWER'S FINAL OPPORTUNITY TO CONTACT THE
11 SERVICER FOR FORECLOSURE ALTERNATIVES ASSISTANCE. THIS
12 NOTIFICATION PACKET MUST ALSO STATE THAT THE INCLUDED
13 FORECLOSURE ALTERNATIVES APPLICATION MUST BE RECEIVED NO LATER
14 THAN 12 MIDNIGHT ON THE SEVENTH BUSINESS DAY PRECEDING THE
15 SCHEDULED FORECLOSURE SALE.

16 (3) A LOAN MAY NOT BE REFERRED TO FORECLOSURE UNTIL ONE
17 OF THE FOLLOWING OCCURS:

18 (a) THE BORROWER CLEARLY INDICATES THAT HE OR SHE DOES
19 NOT WISH TO PURSUE FORECLOSURE ALTERNATIVES, AND THE SERVICER
20 THOROUGHLY DOCUMENTS THIS FACT IN ITS RECORDS;

21 (b) THE HOLDER SENDS THE BORROWER THE FORECLOSURE
22 ALTERNATIVES APPLICATION PACKET AS REQUIRED UNDER THIS SECTION
23 AND THE BORROWER DOES NOT SUBMIT THE REQUESTED DOCUMENTS BY
24 THE DEADLINES STATED IN THE FORECLOSURE ALTERNATIVES APPLICATION
25 PACKET;

26 (c) THE BORROWER SUBMITS AN INITIAL FORECLOSURE
27 ALTERNATIVES APPLICATION PACKET, THE HOLDER REVIEWS IT FOR ALL

1 FORECLOSURE ALTERNATIVES, AND BASED ON THAT REVIEW THE HOLDER
2 DETERMINES THAT THE BORROWER IS INELIGIBLE FOR ASSISTANCE AND
3 NOTIFIES THE BORROWER OF THE REASONS FOR THE DETERMINATION;

4 (d) THE BORROWER IS APPROVED FOR ONE OR MORE FORECLOSURE
5 ALTERNATIVES BUT IS SUBSEQUENTLY REMOVED FROM THE PROGRAM FOR
6 FAILING TO PERFORM THE NECESSARY ACTIONS TO REMAIN ELIGIBLE; OR

7 (e) THE HOLDER HAS UNDERTAKEN REASONABLE EFFORTS TO
8 MAKE RIGHT-PARTY CONTACT BUT IS NOT ABLE TO DO SO AND HAS
9 CLEARLY DOCUMENTED THE TIME AND METHODS OF EACH ATTEMPTED
10 CONTACT.

11 **38-38-1004. Borrower solicitation.** (1) A HOLDER SHALL NOT
12 REFER A LOAN TO FORECLOSURE UNTIL THE FOLLOWING REQUIREMENTS
13 FOR BORROWER SOLICITATION AS OUTLINED IN THIS SECTION HAVE BEEN
14 SATISFIED:

15 (a) A LOAN SERVICER SHALL BEGIN TO SOLICIT THE BORROWER FOR
16 FORECLOSURE ALTERNATIVES ASSISTANCE EITHER UPON A BORROWER'S
17 REQUEST OR WHEN TWO PAYMENTS ARE PAST DUE, AND BEFORE
18 INITIATING FORECLOSURE PROCEEDINGS. THIS SOLICITATION MUST
19 CONTINUE UNTIL A RIGHT-PARTY CONTACT IS MADE OR THE HOLDER HAS
20 MADE A REASONABLE EFFORT, AS DEFINED IN PARAGRAPH (b) OF THIS
21 SUBSECTION (1), TO SOLICIT A RIGHT-PARTY CONTACT.

22 (b) THE HOLDER SHALL MAKE A REASONABLE EFFORT TO SOLICIT
23 A BORROWER APPEARING ON THE NOTE. THE HOLDER IS DEEMED TO HAVE
24 MADE A REASONABLE EFFORT WHEN BOTH OF THE FOLLOWING HAVE
25 OCCURRED WITHIN A PERIOD OF AT LEAST THIRTY DAYS:

26 (I) THE HOLDER, OR A LOAN SERVICER ACTING ON THE HOLDER'S
27 BEHALF, MADE A MINIMUM OF FOUR TELEPHONE CALLS TO THE

1 LAST-KNOWN PHONE NUMBERS OF RECORD, AT INTERVALS NO LESS THAN
2 FIVE DAYS APART AND AT DIFFERENT TIMES OF THE DAY; AND

3 (II) THE HOLDER, OR A LOAN SERVICER ACTING ON THE HOLDER'S
4 BEHALF, SENT TWO WRITTEN NOTICES TO THE LAST-KNOWN ADDRESS OF
5 RECORD BY SENDING ONE LETTER VIA CERTIFIED OR EXPRESS MAIL OR VIA
6 OVERNIGHT DELIVERY SERVICE WITH A RETURN RECEIPT OR A DELIVERY
7 CONFIRMATION AND ONE LETTER VIA REGULAR MAIL.

8 (2) ALL BORROWER SOLICITATION, WHETHER ORAL OR WRITTEN,
9 MUST INCLUDE THE SAME INFORMATION AS CONTAINED IN BORROWER
10 NOTICES AS DESCRIBED IN SECTION 38-38-1003 (1).

11 (3) A HOLDER SHALL SEND A FORECLOSURE ALTERNATIVES
12 APPLICATION PACKET TO THE BORROWER WITHIN TEN DAYS AFTER THE
13 FIRST RIGHT-PARTY CONTACT. THE PACKET MUST CLEARLY INDICATE THE
14 DEADLINE BY WHICH THE REQUESTED DOCUMENTS MUST BE RETURNED.
15 THAT DEADLINE MUST BE NO LESS THAN FIFTEEN DAYS AFTER THE FIRST
16 RIGHT-PARTY CONTACT. IF THE BORROWER DOES NOT RETURN THE
17 FORECLOSURE ALTERNATIVES APPLICATION BY THE DEADLINE, THE
18 HOLDER SHALL RESEND THE PACKET ALONG WITH A LETTER THAT CLEARLY
19 STATES THAT THE BORROWER WILL BE REMOVED FROM CONSIDERATION
20 FOR FORECLOSURE ALTERNATIVES OPTIONS IF THE PACKET IS NOT
21 RETURNED WITHIN FIFTEEN DAYS AFTER THE INITIAL DUE DATE.

22 **38-38-1005. Foreclosure prevention measures.** (1) IF A
23 BORROWER SUBMITS A COMPLETE FORECLOSURE ALTERNATIVES
24 APPLICATION PACKET BY 12 MIDNIGHT OF THE SEVENTH BUSINESS DAY
25 BEFORE THE FORECLOSURE SALE, THE HOLDER SHALL REVIEW THE
26 BORROWER FOR FORECLOSURE ALTERNATIVES.

27 (2) (a) (I) WITHIN TEN DAYS AFTER RECEIVING THE INITIAL

1 FORECLOSURE ALTERNATIVES APPLICATION PACKET, THE HOLDER SHALL
2 NOTIFY THE BORROWER OF ITS RECEIPT AND INDICATE WHETHER ANY
3 ADDITIONAL DOCUMENTATION IS NEEDED. IF ADDITIONAL
4 DOCUMENTATION IS NEEDED, THE HOLDER SHALL NOTIFY THE BORROWER
5 IN WRITING WHICH DOCUMENTS ARE NEEDED AND STATE A DATE BY WHICH
6 THE DOCUMENTS MUST BE SUBMITTED. THAT DATE MUST BE NO LESS THAN
7 FIFTEEN DAYS AFTER THE DATE OF THE LETTER.

8 (II) IF THE BORROWER DOES NOT RESPOND BY THE DUE DATE
9 SPECIFIED IN THE MISSING INFORMATION REQUEST, THE HOLDER SHALL
10 RESEND THE LETTER VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED.
11 THE LETTER MUST RESTATE WHICH DOCUMENTS ARE NEEDED AND
12 PROVIDE A DUE DATE FOR RECEIPT OF THE DOCUMENTS, WHICH MUST BE
13 NO LESS THAN FIFTEEN DAYS AFTER THE DATE OF THE LETTER. THE LETTER
14 MUST ALSO INCLUDE A CLEAR AND CONSPICUOUS STATEMENT THAT IF THE
15 BORROWER DOES NOT PROVIDE THE DOCUMENTATION BY THE STATED DUE
16 DATE, HE OR SHE MAY BE DENIED FORECLOSURE ALTERNATIVES
17 ASSISTANCE AND FORECLOSURE PROCEEDINGS WILL CONTINUE.

18 (b) WITHIN THIRTY DAYS AFTER RECEIVING A COMPLETE
19 FORECLOSURE ALTERNATIVES APPLICATION PACKET, THE HOLDER SHALL
20 NOTIFY THE BORROWER OF THE STATUS OF THE FORECLOSURE
21 ALTERNATIVES REVIEW.

22 (3) A HOLDER SHALL CEASE ALL FORECLOSURE ACTIVITIES UNTIL
23 THE BORROWER HAS BEEN REVIEWED UNDER ALL AVAILABLE PROGRAMS.
24 IF THE BORROWER IS DETERMINED TO BE INELIGIBLE FOR ALL
25 FORECLOSURE ALTERNATIVES, THE HOLDER SHALL SEND TO THE
26 BORROWER, VIA CERTIFIED MAIL, A DETAILED DENIAL NOTIFICATION AS
27 REQUIRED BY SECTION 38-38-1006 (2).

1 (4) (a) THE BORROWER MAY DISPUTE THE OUTCOME OF THE
2 HOLDER'S FORECLOSURE ALTERNATIVES REVIEW IF INFORMATION
3 PROVIDED BY THE HOLDER IS NOT ACCURATE OR IF THE HOLDER HAS
4 FAILED TO COMPLY WITH ANY REQUIREMENT OF THIS PART 10 OR ANY
5 OTHER APPLICABLE LAW OR REGULATION PERTAINING TO FORECLOSURES.
6 THE BORROWER SHALL NOTIFY THE HOLDER OF THE DISPUTE WITHIN
7 THIRTY DAYS AFTER THE DENIAL.

8 (b) IF A BORROWER BELIEVES THAT AN UNFAVORABLE RESOLUTION
9 OF THE DISPUTE WAS ISSUED BECAUSE THE HOLDER USED INACCURATE
10 NUMERICAL CALCULATIONS OR THE BORROWER WAS DENIED DUE TO A
11 HOLDER'S ASSERTION THAT IT WAS MISSING DOCUMENTATION OR THE
12 BORROWER FAILED TO MEET A DOCUMENT SUBMISSION DEADLINE, THE
13 BORROWER HAS THE RIGHT TO REQUEST A SUBSEQUENT MEETING WITH THE
14 HOLDER, A MEDIATOR, OR BOTH TO ASSESS THE VALIDITY OF THE HOLDER'S
15 DISPUTE RESOLUTION. THE MEETING MUST OCCUR WITHIN FIFTEEN DAYS
16 AFTER THE BORROWER'S RECEIPT OF THE HOLDER'S NOTICE OF THE DISPUTE
17 RESOLUTION AND MAY BE HELD TELEPHONICALLY IF ALL PARTIES ARE IN
18 POSSESSION OF ALL RELEVANT DOCUMENTS. IF THE BORROWER REQUESTS
19 THE INTERVENTION OF A MEDIATOR, EACH PARTY IS RESPONSIBLE FOR
20 HALF OF THE MEDIATOR'S FEE.

21 (c) THE HOLDER SHALL ACKNOWLEDGE RECEIPT OF THE
22 BORROWER'S NOTICE OF THE DISPUTE WITHIN FIVE BUSINESS DAYS AND
23 SHALL COMPLETE ITS REVIEW OF THE MATTERS IN DISPUTE WITHIN THIRTY
24 DAYS. WHEN THE REVIEW IS COMPLETE, THE HOLDER SHALL NOTIFY THE
25 BORROWER OF THE OUTCOME OF THE REVIEW AND PROVIDE A DETAILED
26 LETTER EXPLAINING HOW THE DISPUTE WAS REVIEWED AND HOW THE
27 DECISION WAS MADE.

1 (5) THE HOLDER MAY RESUME FORECLOSURE PROCEEDINGS THE
2 DAY AFTER IT IS NOTIFIED THAT THE BORROWER RECEIVED THE DENIAL
3 LETTER UNLESS SUCH ACTIONS VIOLATE SUBSECTION (6) OF THIS SECTION.

4 (6) (a) A FORECLOSURE SALE MAY NOT BE HELD SOONER THAN
5 THIRTY DAYS AFTER THE DATE OF THE DENIAL NOTICE. IF, DURING THAT
6 THIRTY-DAY PERIOD, THE BORROWER DISPUTES THE DENIAL, THE SALE
7 MUST BE POSTPONED UNTIL THIRTY DAYS AFTER THE HOLDER NOTIFIES THE
8 BORROWER OF THE RESULTS OF THE REVIEW OF THE DENIAL AND THE
9 HOLDER PROVIDES TO THE FORECLOSURE ATTORNEY AND THE PUBLIC
10 TRUSTEE THE PRESALE CERTIFICATION AS REQUIRED BY SECTION
11 38-38-1007.

12 (b) THE HOLDER SHALL NOT PLACE A BID UNTIL THE PRESALE
13 CERTIFICATION HAS BEEN PROVIDED TO THE PUBLIC TRUSTEE. IF THE
14 PUBLIC TRUSTEE DOES NOT RECEIVE THE PRESALE CERTIFICATION BEFORE
15 12 NOON ON THE SECOND BUSINESS DAY BEFORE THE SCHEDULED SALE
16 DATE, THEN THE TRUSTEE SHALL POSTPONE THE SALE, ONE WEEK AT A
17 TIME, UNTIL THE CERTIFICATION IS RECEIVED AND ALL OTHER BID
18 REQUIREMENTS, AS SET FORTH IN SECTION 38-38-106, ARE MET.

19 **38-38-1006. Content of holder certification.** (1) HAMP WILL BE
20 DISCONTINUED ON DECEMBER 31, 2012, AND THE CONTENT FOR DENIAL
21 NOTICES WILL BE LIMITED.

22 (2) BEFORE FILING THE NOTICE OF ELECTION AND DEMAND, THE
23 HOLDER SHALL CERTIFY THE ACTIONS IT HAS TAKEN TO ENGAGE THE
24 OWNER IN FORECLOSURE ALTERNATIVES ACTIVITIES, THE DETAILS OF ALL
25 REVIEWS PERFORMED UNDER EACH FORECLOSURE ALTERNATIVES
26 PROGRAM, AND A DETAILED EXPLANATION OF THE RESULT OF EACH
27 REVIEW. THE CERTIFICATION MUST CONTAIN AT LEAST THE FOLLOWING

1 INFORMATION:

2 (a) THE RESULTS OF THE HOLDER'S ATTEMPTS TO MAKE
3 RIGHT-PARTY CONTACT, INCLUDING:

4 (I) A DECLARATION SPECIFYING THE DATES, TIMES, AND METHODS
5 BY WHICH THE HOLDER ATTEMPTED TO CONTACT THE BORROWER;

6 (II) THE OUTCOME OF THOSE ATTEMPTS; AND

7 (III) THE DATE ON WHICH THE FILE WAS CLOSED AND
8 NOTIFICATION WAS SENT TO THE BORROWER;

9 _____

10 (b) IF THE HOLDER HAS DETERMINED THAT THE BORROWER IS
11 INELIGIBLE FOR ALL FORECLOSURE ALTERNATIVES PROGRAMS, THE
12 HOLDER SHALL PROVIDE A DETAILED DENIAL NOTICE CONTAINING A LIST
13 OF ALL PROGRAMS UNDER WHICH THE BORROWER WAS REVIEWED AND
14 PROVIDING SPECIFIC DETAILS REGARDING THE REASONS FOR DENIAL. THE
15 ALLOWABLE REASONS FOR DENIAL AND THE DETAILS REQUIRED UNDER
16 EACH ARE:

17 _____

18 (I) IF THE PROPERTY OR LOAN IS INELIGIBLE UNDER SECTION
19 38-38-1002 (2), THE REASON FOR THE INELIGIBILITY:

20 (II) IF THE CURRENT PAYMENT IS ALREADY BELOW THE
21 ALLOWABLE RATIO OF MORTGAGE PAYMENT TO GROSS INCOME:

22 (A) DATA USED IN CALCULATING GROSS INCOME; AND

23 (B) DATA USED TO DETERMINE THE CURRENT MONTHLY PAYMENT;

24 (III) WHETHER THE OFFER WAS NOT ACCEPTED OR THE REQUEST
25 WAS WITHDRAWN BY THE BORROWER;

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27 (IV) WHETHER THE LOAN WAS PREVIOUSLY MODIFIED;

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(V) IF THE BORROWER DID NOT SUBMIT ALL NECESSARY DOCUMENTS BY APPLICABLE DEADLINES:

- (A) THE DOCUMENTS THAT ARE ALLEGED TO BE MISSING;
- (B) ALL DATES ON WHICH THE HOLDER RECEIVED DOCUMENTS SUBMITTED BY THE BORROWER AND THE CONTENT OF THOSE SUBMISSIONS;
- (C) THE DATES ON WHICH THE HOLDER SENT LETTERS ADVISING THE BORROWER OF THE MISSING DOCUMENTS AND THE DEADLINES LISTED IN THE LETTER BY WHICH THE BORROWER WAS REQUIRED TO RETURN THE MISSING DOCUMENTS; AND
- (D) THE DATES AND CONTENTS OF ALL COMMUNICATIONS INITIATED BY THE BORROWER BEFORE AND AFTER THE DENIAL;

(VI) IF AN AFFORDABLE PAYMENT CANNOT BE REACHED UNDER APPLICABLE GUIDELINES:

- (A) DATA USED TO DETERMINE GROSS INCOME;
- (B) DATA USED TO CALCULATE THE MODIFIED PRINCIPAL AND INTEREST PAYMENT;
- (C) DATA USED TO CALCULATE THE TAXES AND INSURANCE;
- (D) THE STEPS TAKEN AND THE DATA USED WHILE ATTEMPTING TO MEET ANY APPLICABLE LOAN-TO-INCOME THRESHOLD FOR LOAN MODIFICATION; AND
- (E) WHETHER THERE WAS AN EXCESSIVE FORBEARANCE AND IF SO, THE DOLLAR AMOUNT ALLOWED TO BE FORBORNE AND THE FORBEARANCE AMOUNT ON THE LOAN THAT WOULD BE NECESSARY TO ACHIEVE AN AFFORDABLE PAYMENT;

(VII) IF THE INVESTOR OR GUARANTOR IS NOT PARTICIPATING IN FORECLOSURE ALTERNATIVES PROGRAMS:

- 1 (A) THE NAME OF THE INVESTOR OR GUARANTOR;
- 2 (B) THE APPROXIMATE DATE ON WHICH THE HOLDER APPROACHED
3 THE INVESTOR OR GUARANTOR IN A GOOD-FAITH EFFORT TO PERSUADE THE
4 INVESTOR OR GUARANTOR TO CONSIDER FORECLOSURE ALTERNATIVES;
- 5 (C) WHETHER THE LOAN HAS PRIVATE MORTGAGE INSURANCE
6 THAT PROHIBITED THE MODIFICATION; AND
- 7 (D) WHETHER THE LOAN IS GUARANTEED BY AN ENTITY AND, IF
8 SO, WHETHER THAT ENTITY DENIED THE MODIFICATION;
- 9 (VIII) IF AN NPV EVALUATION RESULTED IN A NEGATIVE NPV
10 UNDER THE APPLICABLE INVESTOR GUIDELINES, THE INVESTOR'S
11 FORECASTED LOSS OR GAIN BASED ON THE NPV ANALYSIS;
- 12 (IX) IF THE BORROWER WAS DENIED CONVERSION FROM A TRIAL
13 PERIOD PLAN (TPP) TO A PERMANENT MODIFICATION BECAUSE TPP WAS
14 NOT FULFILLED:
- 15 (A) HOW THE BORROWER VIOLATED THE PROVISIONS OF THE TPP;
- 16 (B) IF THE ALLEGED VIOLATION IS DUE TO MISSED PAYMENTS,
17 THEN THE PAYMENT DUE DATES AND AMOUNTS; AND
- 18 (C) THE DATES AND AMOUNTS OF PAYMENTS RECEIVED BY THE
19 HOLDER;
- 20 (X) IF INVESTOR GUIDELINES PREVENT ELIGIBILITY FOR
21 MODIFICATION:
- 22 (A) THE REASON THE BORROWER WAS DEEMED INELIGIBLE FOR
23 THE MODIFICATION;
- 24 (B) A DESCRIPTION OF THE INVESTOR GUIDELINES OR
25 RESTRICTIONS ON WHICH THE DETERMINATION WAS BASED;
- 26 (C) DATE OF THE DENIAL; AND
- 27 (D) DATA USED IN DETERMINING THAT THE BORROWER WAS

1 INELIGIBLE FOR A MODIFICATION, INCLUDING INCOME AND EXPENSE DATA.

2

3 (3) (a) DOCUMENTATION SUPPORTING THE DECLARATIONS IN THE
4 HOLDER'S CERTIFICATION MUST BE PROVIDED TO THE HOLDER'S ATTORNEY
5 BEFORE RECORDATION OF THE NOTICE OF ELECTION AND DEMAND.

6 THE DOCUMENTATION MUST INCLUDE A SCREEN SHOT OR PRINTOUT OF THE
7 HOLDER'S ELECTRONIC RECORDS SHOWING FULL DETAILS OF ALL ATTEMPTS
8 TO CONTACT THE BORROWER AND THE CONTENT OF THOSE
9 COMMUNICATIONS, THE DATES AND CONTENT OF ALL WRITTEN
10 COMMUNICATIONS SENT TO OR RECEIVED FROM THE BORROWER FOR
11 FORECLOSURE ALTERNATIVES.

12 (b) THE FORECLOSING ATTORNEY SHALL RECORD THE DOCUMENTS
13 SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (3) WITH THE NOTICE OF
14 ELECTION AND DEMAND AND INCLUDE THEM IN ANY NOTIFICATION SENT
15 TO THE BORROWER OR ANY PARTY REPRESENTING THE BORROWER.

16

17 (4) ANY PARTY MAY CONTEST THE TRUTH AND SUFFICIENCY OF
18 THE HOLDER'S CERTIFICATION REQUIRED UNDER THIS SECTION, FILED WITH
19 THE NOTICE OF ELECTION AND DEMAND UNDER SECTION 38-38-101 (1).

20

21 (5) IF THE HOLDER PARTICIPATES IN THE FEDERAL MHA PROGRAM
22 AND THE LOAN UNDER REVIEW MEETS THE REQUIREMENTS TO BE ELIGIBLE
23 FOR REVIEW AS SPECIFIED IN THE MHA GUIDELINES, THE HOLDER MUST
24 ABIDE BY ALL THE REQUIREMENTS FOUND IN THE APPLICABLE MHA
25 GUIDELINES. FAILURE TO DO SO CONSTITUTES A VIOLATION OF THIS PART
26 10, PRECLUDES THE HOLDER FROM OBTAINING THE CERTIFICATIONS
27 REQUIRED BY THIS SECTION AND SECTION 38-38-1007, AND VOIDS ANY

1 SUCH CERTIFICATION THAT WAS ALREADY PROVIDED.

2 **38-38-1007. Content of presale certification.** (1) NO SOONER
3 THAN SEVEN BUSINESS DAYS BEFORE THE SCHEDULED FORECLOSURE SALE,
4 THE HOLDER SHALL PROVIDE TO THE FORECLOSURE ATTORNEY A WRITTEN
5 CERTIFICATION THAT CONTAINS A STATEMENT CERTIFYING THAT ONE OF
6 THE CIRCUMSTANCES IN SECTION 38-38-1002 (3) (a) HAS OCCURRED, ALL
7 OTHER AVAILABLE FORECLOSURE ALTERNATIVES HAVE BEEN EXHAUSTED,
8 AND A NON-FORECLOSURE OUTCOME COULD NOT BE REACHED.

9 (2) THE TRUTH AND SUFFICIENCY OF THE PRESALE CERTIFICATION
10 REQUIRED UNDER THIS SECTION MAY BE CHALLENGED AND ENFORCED IN
11 ACCORDANCE WITH SECTION 38-38-1005 (4) (a).

12 **38-38-1008. Execution of foreclosure alternatives modification**
13 **documents.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF
14 THIS SECTION, A MODIFICATION DOCUMENT THAT HAS BEEN RECEIVED BY
15 THE BORROWER CONSTITUTES AN OFFER TO CONTRACT AND IS CONSIDERED
16 A BINDING CONTRACT IMMEDIATELY UPON THE BORROWER'S ACCEPTANCE,
17 WHICH HAS OCCURRED ONCE THE BORROWER SIGNS THE MODIFICATION
18 DOCUMENT AND TAKES ACTION TO RETURN THE SIGNED DOCUMENT TO THE
19 HOLDER.

20 (2) THE MODIFICATION IS NOT BINDING IF THE HOLDER WITHDRAWS
21 THE OFFER BEFORE THE BORROWER EXECUTES THE DOCUMENTS AND
22 RETURNS THEM BY THE METHOD REQUESTED BY THE HOLDER.

23 **SECTION 2. Effective date - applicability.** This act takes effect
24 upon passage and applies to foreclosures in which the notice of election
25 and demand is filed on or after said date.

26 **SECTION 3. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.