

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

REREVISED

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

LLS NO. 09-0348.03 Kristen Forrestal

HOUSE BILL 09-1276

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A BILL FOR AN ACT

101 **CONCERNING A DELAY IN THE FORECLOSURE OF RESIDENTIAL**
102 **PROPERTY FOR ELIGIBLE BORROWERS.**

Bill Summary

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

Requires the division of housing in the department of local affairs to set qualifications for, train, and retain foreclosure counselors to assist eligible borrowers in the deferment of a foreclosure sale.

Requires a notice to be posted on the front door of a property that is the subject of a notice of election and demand that provides information regarding how to pursue a mortgage foreclosure deferment. Requires the notice to be in both English and Spanish and to include

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 Unam ended
M arch 24 , 2009

SENATE
2nd Reading Unam ended
M arch 23 , 2009

HOUSE
3rd Reading Unam ended
M arch 9 , 2009

HOUSE
Am ended 2nd Reading
M arch 6 , 2009

information regarding the availability of a foreclosure counselor.

Allows an eligible borrower the opportunity to defer a foreclosure sale on a residential property for 90 days. Requires the borrower to contact a foreclosure counselor within 21 days after the notice of election and demand is received by the public trustee of the county in which the property is located. If the holder of the loan receives notice that the borrower is eligible for a loan deferment, requires the holder to defer the foreclosure for 90 days.

Specifies criteria for the foreclosure counselor to consider when determining whether an eligible borrower is eligible for a loan deferment with the holder of the loan. Requires a holder to negotiate in good faith with a borrower that a foreclosure counselor has determined is eligible for a loan deferment. Requires the borrower to make payments during the 90-day deferment period. Grants foreclosure counselors immunity from liability.

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

2 **SECTION 1.** 24-32-705 (1), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4 **24-32-705. Functions of division.** (1) The division has the
5 following functions:

6 (q) TO MAKE AVAILABLE TO FORECLOSURE COUNSELORS, AS
7 DEFINED IN SECTION 38-38-801, C.R.S., A DESCRIPTION OF THE
8 FORECLOSURE DEFERMENT PROGRAM DESCRIBED IN PART 8 OF ARTICLE 38
9 OF TITLE 38, C.R.S.

10 **SECTION 2.** 38-38-101 (1), Colorado Revised Statutes, is
11 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12 **38-38-101. Holder of evidence of debt may elect to foreclose.**

13 (1) **Documents required.** Whenever a holder of an evidence of debt
14 declares a violation of a covenant of a deed of trust and elects to publish
15 all or a portion of the property therein described for sale, the holder or the
16 attorney for the holder shall file the following with the public trustee of
17 the county where the property is located:

1 (g) A SEPARATE DOCUMENT NOTIFYING THE PUBLIC TRUSTEE THAT
2 THE PROPERTY REFERRED TO IN THE NOTICE OF ELECTION AND DEMAND IS
3 PROPERTY THAT REQUIRES POSTING UNDER SECTION 38-38-802. IF THE
4 DOCUMENT REQUIRED BY THIS PARAGRAPH (g) IS NOT FILED AT THE TIME
5 THE DOCUMENTS REQUIRED BY PARAGRAPHS (a) THROUGH (e) OF THIS
6 SUBSECTION (1) ARE FILED WITH THE PUBLIC TRUSTEE, AND THE HOLDER
7 DETERMINES AT A LATER DATE THAT THE PROPERTY REQUIRES POSTING,
8 THE HOLDER SHALL REQUEST THAT THE PUBLIC TRUSTEE RERECORD THE
9 NOTICE OF ELECTION AND DEMAND. THEREAFTER, ALL DEADLINES FOR
10 THE FORECLOSURE ACTION SHALL BE DETERMINED ACCORDING TO THE
11 DATE OF THE RERECORDING OF THE NOTICE OF ELECTION AND DEMAND AS
12 THOUGH THE FORECLOSURE WAS COMMENCED ON SUCH DATE, AND THE
13 PUBLIC TRUSTEE SHALL COLLECT A FEE OF SEVENTY-FIVE DOLLARS FROM
14 THE HOLDER.

15 **SECTION 3.** 38-38-109 (1) (c) (I), Colorado Revised Statutes, is
16 amended BY THE ADDITION OF A NEW SUB-SUBPARAGRAPH to
17 read:

18 **38-38-109. Continuance of sale - effect of bankruptcy -**
19 **withdrawal of sale. (1) Continuance. (c) (I) (C) DURING A**
20 **FORECLOSURE DEFERMENT PURSUANT TO PART 8 OF THIS ARTICLE, ANY**
21 **CONTINUANCE REQUIRED BY SUB-SUBPARAGRAPHS (A) AND (B) OF THIS**
22 **SUBPARAGRAPH (I) SHALL RUN CONCURRENTLY WITH THE FORECLOSURE**
23 **DEFERMENT.**

24 **SECTION 4.** 38-38-103 (5), Colorado Revised Statutes, is
25 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26 **38-38-103. Combined notice - publication - providing**
27 **information. (5) (d) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,**

1 THE OFFICER SHALL NOT BEGIN PUBLICATION OR SEND THE MAILING
2 REQUIRED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (1)
3 OF THIS SECTION UNLESS THE HOLDER HAS PROVIDED THE AFFIDAVIT
4 REQUIRED BY SECTION 38-38-802, IF APPLICABLE. IF THE AFFIDAVIT HAS
5 NOT BEEN PROVIDED, THE FOLLOWING SHALL OCCUR:

6 (I) THE OFFICER SHALL NOTIFY THE HOLDER OR THE HOLDER'S
7 ATTORNEY, IN WRITING, THAT NO AFFIDAVIT WAS PROVIDED AND INDICATE
8 THAT THE PUBLICATIONS REQUIRED PURSUANT TO THIS SECTION SHALL
9 NOT BE MADE UNTIL THE HOLDER PROVIDES THE REQUIRED AFFIDAVIT.
10 THE OFFICER IS NOT OBLIGATED TO PROVIDE MORE THAN ONE NOTICE TO
11 THE HOLDER OR THE HOLDER'S ATTORNEY.

12 (II) AFTER NOTICE IS MADE PURSUANT TO SUBPARAGRAPH (I) OF
13 THIS PARAGRAPH (d) THAT NO AFFIDAVIT WAS PROVIDED AND UNTIL THE
14 REQUIRED AFFIDAVIT IS PROVIDED, THE OFFICER SHALL CONTINUE THE
15 SALE OF THE PROPERTY IN ACCORDANCE WITH SECTION 38-38-109 AN
16 ADDITIONAL WEEK FOR EACH WEEK THAT THE HOLDER FAILS TO PROVIDE
17 THE REQUIRED AFFIDAVIT.

18 **SECTION 5.** Article 38 of title 38, Colorado Revised Statutes, is
19 amended BY THE ADDITION OF A NEW PART to read:

20 PART 8

21 FORECLOSURE DEFERMENT

22 **38-38-801. Definitions.** AS USED IN THIS PART 8, UNLESS THE
23 CONTEXT OTHERWISE REQUIRES:

24 (1) "ELIGIBLE BORROWER" MEANS A GRANTOR UNDER A DEED OF
25 TRUST SECURING AN EVIDENCE OF DEBT THAT MEETS THE DESCRIPTION IN
26 SECTION 38-38-102.5 (1), AND THAT IS A FIRST LIEN UPON THE PROPERTY.
27 THE ELIGIBLE BORROWER SHALL:

1 (a) RESIDE AT THE PROPERTY THAT IS SUBJECT TO A NOTICE OF
2 ELECTION AND DEMAND THAT WAS FILED WITH THE PUBLIC TRUSTEE IN
3 THE COUNTY IN WHICH ALL OR A PORTION OF THE PROPERTY IS LOCATED
4 ON THE DATE WHEN THE NOTICE OF ELECTION AND DEMAND IS FILED;

5 (b) OCCUPY THE PROPERTY AS THE GRANTOR'S PRIMARY
6 RESIDENCE AS OF THE DATE WHEN THE NOTICE OF ELECTION AND DEMAND
7 WAS FILED WITH THE PUBLIC TRUSTEE;

8 (c) HAVE OCCUPIED THE PROPERTY AS THE BORROWER'S PRIMARY
9 RESIDENCE WITHIN NINETY DAYS AFTER THE DATE OF THE DEED OF TRUST;

10 (d) INTEND TO CONTINUE TO RESIDE AT THE PROPERTY; AND

11 (e) BE PERSONALLY OBLIGATED ON THE DEBT, WHICH WAS
12 INCURRED PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES,
13 HAD AN ORIGINAL PRINCIPAL AMOUNT OF FIVE HUNDRED THOUSAND
14 DOLLARS OR LESS, AND IS SECURED BY THE DEED OF TRUST IN THE NOTICE
15 OF ELECTION AND DEMAND.

16 (2) "FORECLOSURE COUNSELOR" MEANS A HOUSING COUNSELOR
17 EMPLOYED BY AN AGENCY APPROVED BY THE UNITED STATES
18 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. FORECLOSURE
19 COUNSELORS INCLUDE HOUSING COUNSELORS AFFILIATED WITH THE
20 COLORADO FORECLOSURE HOTLINE AND THE HOPE NOW ALLIANCE, OR
21 ITS SUCCESSOR ORGANIZATION.

22 (3) "FORECLOSURE DEFERMENT" MEANS A PERIOD, NOT TO EXCEED
23 NINETY CALENDAR DAYS OR NOT TO EXTEND PAST THE NEXT SCHEDULED
24 SALE DATE AFTER NINETY DAYS, EXCEPT AS MAY BE EXTENDED PURSUANT
25 TO SECTION 38-38-103 (5) (d), DURING WHICH THE PUBLIC TRUSTEE OF THE
26 COUNTY IN WHICH THE PROPERTY IS LOCATED CONTINUES THE SCHEDULED
27 SALE OF A PROPERTY SUBJECT TO A NOTICE OF ELECTION AND DEMAND.

1 **38-38-802. Notice of the opportunity for foreclosure**

2 **deferment.** (1) NO LATER THAN FIFTEEN CALENDAR DAYS FOLLOWING
3 THE FILING OF THE COMPLETE AND ACCURATE DOCUMENTS REQUIRED BY
4 AND IN ACCORDANCE WITH SECTION 38-38-101 (1), AND THE
5 DETERMINATION OF THE PUBLIC TRUSTEE THAT THE FILING IS COMPLETE
6 IN ACCORDANCE WITH SECTION 38-38-102 (1), THE HOLDER OR THE
7 ATTORNEY FOR THE HOLDER WHO FILED THE NOTICE OF ELECTION AND
8 DEMAND SHALL CAUSE A NOTICE AS DESCRIBED IN THIS SECTION TO BE
9 POSTED IN A CONSPICUOUS PLACE ON THE PROPERTY THAT IS THE SUBJECT
10 OF THE NOTICE OF ELECTION AND DEMAND. IF POSSIBLE, THE NOTICE
11 SHALL BE POSTED ON THE FRONT DOOR OF THE RESIDENCE, BUT IF ACCESS
12 TO THE DOOR IS NOT POSSIBLE OR IS RESTRICTED, THEN THE NOTICE SHALL
13 BE POSTED AT AN ALTERNATIVE CONSPICUOUS LOCATION, SUCH AS A
14 GUARD GATE OR SIMILAR IMPEDIMENT.

15 (2) THE NOTICE SHALL CONTAIN:

16 (a) A DESCRIPTION OF THE FORECLOSURE DEFERMENT
17 OPPORTUNITY DESCRIBED IN THIS PART 8 AND THE PROCEDURES AN
18 ELIGIBLE BORROWER MAY FOLLOW TO SEEK A FORECLOSURE DEFERMENT;

19 (b) THE NUMBER OF THE COLORADO FORECLOSURE HOTLINE AND
20 THE ADDRESS OF THE UNITED STATES HOUSING AND URBAN DEVELOPMENT
21 WEB SITE IDENTIFYING APPROVED HOUSING COUNSELOR AGENCIES IN
22 COLORADO;

23 (c) THE DATE THAT THE NOTICE WAS POSTED AND THE DEADLINE
24 BY WHICH AN ELIGIBLE BORROWER SEEKING A FORECLOSURE DEFERMENT
25 SHALL CONTACT A FORECLOSURE COUNSELOR, WHICH DEADLINE SHALL BE
26 TWENTY DAYS AFTER THE POSTING OF THE NOTICE.

27 (3) THE NOTICE SHALL BE IN BOTH ENGLISH AND SPANISH ON A

1 SINGLE PIECE OF PAPER, IN AT LEAST FOURTEEN-POINT, BOLD-FACED TYPE.

2 (4) NO LATER THAN THIRTY CALENDAR DAYS AFTER THIS PART 8
3 IS ENACTED AND BECOMES LAW, THE DIVISION OF HOUSING IN THE
4 DEPARTMENT OF LOCAL GOVERNMENT SHALL MAKE AVAILABLE A
5 STANDARD FORM IN ENGLISH AND SPANISH THAT MEETS THE
6 REQUIREMENTS OF THIS SECTION.

7 (5) (a) NO LATER THAN TWENTY CALENDAR DAYS AFTER THE
8 FILING OF THE DOCUMENTS REQUIRED BY AND IN ACCORDANCE WITH
9 SECTION 38-38-101 (1), THE HOLDER SHALL PROVIDE TO THE PUBLIC
10 TRUSTEE AN AFFIDAVIT STATING THAT THE POSTING REQUIRED BY THIS
11 SECTION WAS MADE.

12 (b) IF THE HOLDER DOES NOT PROVIDE THE AFFIDAVIT REQUIRED
13 BY THIS SUBSECTION (5) TO THE PUBLIC TRUSTEE WITHIN THE
14 TWENTY-DAY PERIOD, THE SALE OF THE PROPERTY SHALL BE CONTINUED
15 IN ACCORDANCE WITH SECTION 38-38-103 (5) (d).

16 (c) THE AFFIDAVIT REQUIRED BY PARAGRAPH (a) OF THIS
17 SUBSECTION (5) SHALL CONTAIN AT LEAST THE FOLLOWING INFORMATION:

18 (I) THE FORECLOSURE CASE NUMBER;

19 (II) THE BORROWER'S NAME OR NAMES;

20 (III) THE ADDRESS OF THE PROPERTY AT WHICH THE POSTING WAS
21 MADE; AND

22 (IV) THE DATE OF THE POSTING.

23 (d) AN AFFIDAVIT FILED BY A QUALIFIED HOLDER SHALL BE SIGNED
24 BY EITHER THE HOLDER OR THE ATTORNEY FOR THE HOLDER. AN
25 AFFIDAVIT FILED BY A NONQUALIFIED HOLDER SHALL BE SIGNED BY THE
26 HOLDER AND PROPERLY ACKNOWLEDGED BY A NOTARY PUBLIC.

27 **38-38-803. Procedures for foreclosure deferment - notification**

1 **- process.** (1) AN ELIGIBLE BORROWER SHALL BE GRANTED THE
2 OPPORTUNITY FOR A FORECLOSURE DEFERMENT IF THE BORROWER MEETS
3 THE REQUIREMENTS OF THIS PART 8.

4 (2) TO QUALIFY FOR A FORECLOSURE DEFERMENT, AN ELIGIBLE
5 BORROWER SHALL CONTACT A FORECLOSURE COUNSELOR WITHIN TWENTY
6 DAYS AFTER THE POSTING OF THE NOTICE REQUIRED BY SECTION
7 38-38-802 FOR THE PURPOSE OF OBTAINING A QUALIFICATION DECISION AS
8 SET FORTH IN SUBSECTION (5) OF THIS SECTION. THE INITIAL CONTACT
9 MAY TAKE PLACE BY TELEPHONE, ELECTRONICALLY, OR IN PERSON.

10 (3) THE FORECLOSURE COUNSELOR SHALL NOTIFY THE HOLDER
11 PROMPTLY THAT HE OR SHE HAS BEEN CONTACTED BY AN ELIGIBLE
12 BORROWER AND SPECIFY THE DATE OF THE CONTACT. UPON INITIAL
13 CONTACT FROM AN ELIGIBLE BORROWER, THE FORECLOSURE COUNSELOR
14 SHALL PROVIDE INFORMATION TO THE ELIGIBLE BORROWER REGARDING
15 THE FEDERAL GOVERNMENT'S "MAKING HOME AFFORDABLE" PROGRAM
16 AND ADVISE THE ELIGIBLE BORROWER WHETHER HE OR SHE WOULD
17 BENEFIT FROM THE FEDERAL PROGRAM.

18 (4) WITHIN TEN CALENDAR DAYS AFTER RECEIVING NOTICE THAT
19 THE ELIGIBLE BORROWER HAS CONTACTED A FORECLOSURE COUNSELOR,
20 THE HOLDER SHALL NOTIFY THE COUNSELOR AND THE ELIGIBLE BORROWER
21 IN WRITING OF THE ADDRESS TO WHICH PAYMENTS REQUIRED BY SECTION
22 38-38-805 (2) SHALL BE SENT IF THE BORROWER QUALIFIES FOR A
23 FORECLOSURE DEFERMENT AND INFORMATION ON HOW PAYMENTS CAN BE
24 MADE ELECTRONICALLY.

25 (5) NO LATER THAN THIRTY CALENDAR DAYS AFTER AN ELIGIBLE
26 BORROWER'S INITIAL CONTACT WITH THE FORECLOSURE COUNSELOR, THE
27 COUNSELOR SHALL:

1 (a) DETERMINE WHETHER THE BORROWER IS QUALIFIED FOR A
2 FORECLOSURE DEFERMENT; AND

3 (b) CERTIFY THE DETERMINATION TO THE ELIGIBLE BORROWER
4 AND THE HOLDER. IF THE FORECLOSURE COUNSELOR DETERMINES THAT
5 THE ELIGIBLE BORROWER QUALIFIES FOR A FORECLOSURE DEFERMENT, THE
6 COUNSELOR SHALL ALSO NOTIFY THE PUBLIC TRUSTEE WITHIN THE SAME
7 THIRTY-DAY PERIOD.

8 (6) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE
9 PUBLIC TRUSTEE RECEIVES CERTIFICATION FROM THE FORECLOSURE
10 COUNSELOR THAT THE ELIGIBLE BORROWER QUALIFIES FOR A
11 FORECLOSURE DEFERMENT, THE PUBLIC TRUSTEE SHALL IMMEDIATELY
12 CANCEL ANY REMAINING PUBLICATIONS OF THE COMBINED NOTICE, SHALL
13 NOT MAIL THE NOTICE REQUIRED BY SECTION 38-38-103 (1) (a) (II), AND
14 SHALL CONTINUE THE SALE OF THE PROPERTY IN ACCORDANCE WITH
15 SECTION 38-38-109 (1) (a). THE SALE SHALL BE CONTINUED FROM WEEK
16 TO WEEK UNTIL RECEIPT OF CERTIFICATION PURSUANT TO SECTION
17 38-38-805 (4) THAT THE DEFERMENT HAS BEEN TERMINATED OR, IF NO
18 CERTIFICATION IS RECEIVED, FOR NINETY CALENDAR DAYS OR UNTIL THE
19 NEXT SCHEDULED SALE DATE AFTER THE END OF THE NINETY-DAY PERIOD.
20 WHEN THE DEFERMENT HAS BEEN TERMINATED OR HAS ENDED, THE
21 PUBLIC TRUSTEE SHALL COLLECT A FEE OF SEVENTY-FIVE DOLLARS AND
22 THEREAFTER SHALL BEGIN PUBLICATION OF THE COMBINED NOTICE AS
23 REQUIRED IN SECTION 38-38-103 (5) (a), AS TO THE DEFERRED SALE, AND
24 SEND THE NOTICE REQUIRED BY SECTION 38-38-103 (1) (a), AS SOON AS
25 POSSIBLE AND NO MORE THAN TWENTY CALENDAR DAYS AFTER THE
26 COMPLETION OF THE DEFERMENT. [REDACTED]

27 **38-38-804. Foreclosure deferment assessment standards -**

1 **ineligible borrowers.** (1) A FORECLOSURE COUNSELOR SHALL
2 DETERMINE WHETHER AN ELIGIBLE BORROWER QUALIFIES FOR A
3 FORECLOSURE DEFERMENT BY CALCULATING WHETHER, CONSIDERING THE
4 ELIGIBLE BORROWER'S HOUSEHOLD EXPENSES AND GROSS MONTHLY
5 INCOME, THE NATURE OF THE LOAN, ANY WRITTEN LOAN MODIFICATION
6 AGREEMENT BETWEEN THE ELIGIBLE BORROWER AND THE HOLDER
7 ENTERED INTO DURING THE PRECEDING TWELVE MONTHS, AND ANY OTHER
8 RELEVANT FACTORS, THERE IS A REASONABLE LIKELIHOOD THAT THE
9 HOLDER AND ELIGIBLE BORROWER CAN ACHIEVE A MUTUALLY
10 ACCEPTABLE AGREEMENT TO AVOID FORECLOSURE. IN MAKING HIS OR HER
11 DETERMINATION, THE COUNSELOR SHALL USE ANALYTICAL TOOLS
12 DESIGNED TO INDICATE BOTH:

13 (a) WHAT THE ELIGIBLE BORROWER IS ABLE TO PAY IN MONTHLY
14 HOUSING EXPENSES, INCLUDING PRINCIPAL, INTEREST, TAXES, INSURANCE,
15 AND ANY APPLICABLE HOMEOWNERS ASSOCIATION DUES ON A
16 SUSTAINABLE BASIS; AND

17 (b) WHETHER THE HOLDER WOULD BE LIKELY TO RECEIVE
18 GREATER REVENUE FROM THE MODIFICATION NECESSARY TO ACHIEVE
19 SUCH A MONTHLY PAYMENT THAN THE HOLDER WOULD BE LIKELY TO
20 RECEIVE FROM A COMPLETED FORECLOSURE.

21 (2) THE ANALYTICAL TOOLS USED IN SUBSECTION (1) OF THIS
22 SECTION SHALL BE CONSISTENT WITH THE NET PRESENT VALUE TEST SET
23 OUT IN THE FEDERAL DEPOSIT INSURANCE CORPORATION LOAN
24 MODIFICATION PROGRAM GUIDELINES, EFFECTIVE OCTOBER 2008, OR ANY
25 SUCCESSOR PROGRAM.

26 (3) AN ELIGIBLE BORROWER SHALL NOT QUALIFY FOR A
27 FORECLOSURE DEFERMENT IF:

1 (a) THE ELIGIBLE BORROWER HAS ABANDONED THE PROPERTY;

2 (b) THE BORROWER PROVIDED MATERIALLY FALSE INFORMATION
3 TO OBTAIN CREDIT. THE FACT THAT THE DEBT OBLIGATION REFLECTS A
4 STATED-INCOME LOAN IS NOT SUFFICIENT TO ESTABLISH THAT THE
5 ELIGIBLE BORROWER SUBMITTED MATERIALLY FALSE INFORMATION.

6 (c) THE ELIGIBLE BORROWER HAS ENGAGED IN GROSS WASTE OF
7 THE PROPERTY, HAS BEEN CITED FOR MAJOR CODE VIOLATIONS, OR HAS
8 USED THE PROPERTY FOR ILLEGAL PURPOSES;

9 (d) THE BORROWER IS CURRENTLY IN A BANKRUPTCY PROCEEDING
10 IN WHICH THE PROPERTY SUBJECT TO THE NOTICE OF ELECTION AND
11 DEMAND IS PROPERTY OF THE BANKRUPTCY ESTATE OR WITHIN THE
12 PRECEDING TWENTY-FOUR MONTHS HAS BEEN DISCHARGED FROM A
13 CHAPTER SEVEN BANKRUPTCY IN WHICH THE PROPERTY SUBJECT TO THE
14 NOTICE OF ELECTION AND DEMAND WAS PROPERTY OF THE BANKRUPTCY
15 ESTATE; OR

16 (e) WITHIN THE IMMEDIATELY PRECEDING TWENTY-FOUR MONTHS,
17 THE ELIGIBLE BORROWER HAS BEEN DISCHARGED FROM A CHAPTER
18 THIRTEEN BANKRUPTCY WITH A MODIFIED LOAN AGREEMENT FOR WHICH
19 THE PROPERTY SUBJECT TO THE NOTICE OF ELECTION AND DEMAND IS THE
20 SECURITY.

21 (4) IF THE ELIGIBLE BORROWER HAS RECEIVED A FORECLOSURE
22 DEFERMENT, THE ELIGIBLE BORROWER SHALL NOT QUALIFY FOR A
23 SUBSEQUENT FORECLOSURE DEFERMENT IN CONNECTION WITH THE SAME
24 DEBT OBLIGATION, INCLUDING ANY MODIFICATION OF THE DEBT.

25 **38-38-805. Foreclosure deferment.** (1) IF A HOLDER HAS
26 RECEIVED NOTICE FROM AN ELIGIBLE BORROWER'S FORECLOSURE
27 COUNSELOR THAT THE ELIGIBLE BORROWER QUALIFIES FOR A

1 FORECLOSURE DEFERMENT, THE HOLDER AND THE ELIGIBLE BORROWER
2 SHALL NEGOTIATE THE TERMS OF THE DEBT OBLIGATION SECURED BY THE
3 DEED OF TRUST, SUBJECT TO THE TERMS OF ANY AGREEMENT APPLICABLE
4 TO THE DEBT OBLIGATION OR ANY APPLICABLE GOVERNMENT-SUPPORTED
5 ENTERPRISE SERVICING GUIDELINES.

6 (2) (a) DURING THE FORECLOSURE DEFERMENT, THE ELIGIBLE
7 BORROWER SHALL MAKE MONTHLY LOAN PAYMENTS TO THE HOLDER OR
8 THE HOLDER'S DESIGNATED REPRESENTATIVE THAT EQUAL SIXTY-SIX AND
9 TWO-THIRDS PERCENT OF THE MONTHLY PAYMENT DUE PRIOR TO
10 DELINQUENCY, LESS ANY PORTION OF THE MONTHLY PAYMENT THAT
11 REPRESENTS TAXES AND INSURANCE. IF THE ELIGIBLE BORROWER HAS AN
12 OBLIGATION TO MAKE MONTHLY PAYMENTS FOR TAXES AND INSURANCE
13 TO THE HOLDER, THE ELIGIBLE BORROWER SHALL PAY THE HOLDER, ON
14 THE SAME SCHEDULE, ONE-TWELFTH OF THE ANNUAL AMOUNT DUE FOR
15 TAXES AND INSURANCE PRIOR TO DELINQUENCY.

16 (b) THE FIRST PAYMENT SHALL BE DUE TO THE ADDRESS PROVIDED
17 BY THE HOLDER PURSUANT TO SECTION 38-38-803 (4) BY THE FIFTH DAY
18 FOLLOWING THE FORECLOSURE COUNSELOR'S CERTIFICATE OF
19 QUALIFICATION FOR THE FORECLOSURE DEFERMENT. SUBSEQUENT
20 PAYMENTS SHALL BE DUE EVERY THIRTY CALENDAR DAYS THEREAFTER
21 UNTIL THE CONCLUSION OF THE FORECLOSURE DEFERMENT.

22 (c) IN ORDER TO PRESERVE EVIDENCE OF THE DATE OF THE
23 PAYMENT, THE ELIGIBLE BORROWER MAY MAKE THE PAYMENTS
24 ELECTRONICALLY OR BY CERTIFIED FUNDS DELIVERED BY A METHOD THAT
25 PROVIDES EVIDENCE OF THE DATE OF PAYMENT.

26 (3) ACCEPTANCE OF PAYMENTS MADE DURING THE FORECLOSURE
27 DEFERMENT PERIOD SHALL NOT CONSTITUTE A WAIVER OF DEFAULT OR

1 MODIFICATION OF ANY AMOUNTS DUE ON THE ORIGINAL DEBT OR ANY
2 OTHER RIGHTS OF THE HOLDER. THE PAYMENTS SHALL BE APPLIED BY THE
3 HOLDER PURSUANT TO THE APPLICABLE PROVISIONS OF THE NOTE AND
4 DEED OF TRUST OR, IF THERE ARE NO SUCH APPLICABLE PROVISIONS, IN THE
5 FOLLOWING ORDER: PAYMENT OF THE HOLDER'S COSTS AND EXPENSES
6 INCURRED IN THE FORECLOSURE, PAYMENT FOR PRESERVATION OF THE
7 PROPERTY, ESCROW ADVANCES OR SHORTAGES, LATE CHARGES AND
8 INTEREST, AND PRINCIPAL.

9 (4) THE FORECLOSURE DEFERMENT SHALL TERMINATE EARLY UPON
10 CERTIFICATION BY THE FORECLOSURE COUNSELOR TO THE PUBLIC
11 TRUSTEE. IF THE HOLDER SEEKS EARLY TERMINATION, THE HOLDER SHALL
12 DEMONSTRATE TO THE FORECLOSURE COUNSELOR THAT ADEQUATE
13 GROUNDS FOR EARLY TERMINATION EXIST. THE FORECLOSURE
14 COUNSELOR SHALL MAKE A DETERMINATION WITHIN TEN CALENDAR DAYS
15 AFTER A HOLDER'S REQUEST AND ISSUE A CERTIFICATION OF EARLY
16 TERMINATION IF HE OR SHE DETERMINES:

17 (a) THAT THE ELIGIBLE BORROWER HAS ABANDONED THE
18 PROPERTY;

19 (b) THAT THE ELIGIBLE BORROWER HAS FAILED TO COMPLY WITH
20 THE CONDITIONS OF FORECLOSURE DEFERMENT, INCLUDING FAILURE TO
21 MAKE PAYMENTS ON TIME AND IN ACCORDANCE WITH THIS SECTION;

22 (c) THAT THE ELIGIBLE BORROWER HAS CONVEYED, TRANSFERRED,
23 OR FURTHER ENCUMBERED THE PROPERTY IN VIOLATION OF THE DEED OF
24 TRUST;

25 (d) THAT A FORECLOSURE HAS BEEN INITIATED BY A DIFFERENT
26 PARTY ON ANOTHER LIEN ENCUMBERING THE PROPERTY; OR

27 (e) THAT THE ELIGIBLE BORROWER HAS FILED BANKRUPTCY

1 DURING THE FORECLOSURE DEFERMENT.

2 **38-38-806. Foreclosure counselor immunity.** A FORECLOSURE
3 COUNSELOR ACTING IN GOOD FAITH SHALL NOT BE LIABLE TO ANY PERSON
4 FOR APPROVING OR FAILING TO APPROVE A BORROWER FOR A
5 FORECLOSURE DEFERMENT OR FOR CERTIFYING OR DECLINING TO CERTIFY
6 AN EARLY TERMINATION.

7 **38-38-807. Remedies.** IF THE HOLDER FAILS TO POST THE NOTICE
8 REQUIRED BY SECTION 38-38-802 WITHIN THE TIME SPECIFIED, THE
9 ELIGIBLE BORROWER SHALL HAVE TWENTY CALENDAR DAYS AFTER THE
10 DATE OF ACTUAL POSTING TO CONTACT A FORECLOSURE COUNSELOR. THE
11 HOLDER IS RESPONSIBLE FOR ALL FEES INCURRED BETWEEN THE DEADLINE
12 FOR POSTING AND TWENTY CALENDAR DAYS AFTER THE DATE OF THE
13 ACTUAL POSTING. INTEREST FOR THE PERIOD BETWEEN THE DEADLINE FOR
14 POSTING AND THE DATE OF ACTUAL POSTING SHALL BE ALLOWED ONLY AT
15 THE REGULAR RATE AND NOT AT THE DEFAULT RATE AS MAY BE SPECIFIED
16 IN THE DEED OF TRUST.

17 **38-38-808. Repeal.** THIS PART 8 IS REPEALED, EFFECTIVE JUNE
18 30, 2011.

19 **SECTION 6. Effective date - applicability.** This act shall take
20 effect upon passage and shall apply to foreclosures that are commenced
21 by the filing of a notice of election and demand sixty days on or after said
22 date.

23 **SECTION 7. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.