

**Foreclosure Process**

1 **Amendment\_\_ proposes amending the Colorado Constitution to:**

- 2     ◆ prohibit the commencement of foreclosure proceedings until the party  
3         claiming the right to foreclose files competent evidence of its right to  
4         foreclose with the clerk and recorder of the county in which the real  
5         property is located.

6 **Summary and Analysis**

7         **Background.** In 1894, the Colorado General Assembly established an office of  
8         the public trustee in each county of the state to serve as a neutral party between  
9         borrowers and lenders. The public trustee is either appointed by the Governor or is  
10         the elected county treasurer depending on the size of the county. In Colorado, a deed  
11         of trust gives the public trustee the authority to foreclose on a property if a borrower  
12         does not make a certain number of loan payments.

13         **Evidence of debt.** A loan document represents a borrower's promise to pay and  
14         a lender's evidence of debt. Most home loans are originated by one lender and then  
15         sold to another financial institution, freeing up money that allows the original lender to  
16         make more loans. The entity that owns the loan is referred to as the holder, because  
17         it holds the evidence of debt. The borrower is then notified where to send payments  
18         which could be to the original lender, the holder, or a third party that specializes in  
19         servicing loans. A loan may be sold, assigned, and transferred several times over the  
20         life of the loan. These transactions do not change the status of the public trustee  
21         named in the deed of trust, and do not need to be filed with the county clerk and  
22         recorder.

23         **Foreclosure process.** Under current law, if a borrower stops making payments  
24         on a loan, a holder can initiate a foreclosure by filing with the public trustee either the  
25         original evidence of debt, or a copy of the original evidence of debt along with a  
26         statement signed by the holder or holder's attorney certifying that the copy is true and  
27         correct.

28         Amendment\_\_ adds a requirement that a holder file the loan document, records of  
29         all sales, assignments, and transfers associated with the loan with the county clerk  
30         and recorder prior to initiating the foreclosure process. For example, if a loan is sold  
31         by the original lender, and again by subsequent entities, all those transactions must be  
32         recorded by the county clerk and recorder prior to a foreclosure.

1     **Arguments For**

2           1) Requiring the foreclosing party to provide competent evidence demonstrating  
3 its right to foreclose gives homeowners additional due process protections in the  
4 foreclosure process. The measure increases transparency, allowing homeowners an  
5 opportunity to review the accuracy of the documents filed. Currently, the public  
6 trustee has no legal authority to request that the holder provide the original evidence  
7 of debt.

8     **Arguments Against**

9           1) Amendment \_\_ is unnecessary and may have serious unintended  
10 consequences to the availability of home loans. Sufficient safeguards for  
11 homeowners already exist under Colorado's public trustee system which ensures that  
12 homeowners and lenders comply with the law. The increased recording requirements  
13 may deter investors from purchasing loans from Colorado lenders thereby reducing  
14 available credit for new loans.