

**Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 08-1069.01 Duane Gall

HOUSE BILL 08-1402

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A BILL FOR AN ACT

101 **CONCERNING ADDITIONAL PROTECTIONS FOR HOMEOWNERS FACING**
102 **FORECLOSURE.**

Bill Summary

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

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, and to provide contact information for the lender's representative and the Colorado foreclosure hotline in case the borrower is unable to make regular payments after the change.

In a hearing for a court order authorizing a foreclosure sale, directs

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.

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, defined as efforts to work with the borrower to extend or restructure the loan. Repeals the 90-day delay provision after 3 years.

Requires filing of notices to the debtor and affidavits of compliance with good-faith loss mitigation efforts along with the notice of election and demand to initiate a public trustee's sale. Excludes credit sales from the act.

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

SECTION 1. 38-38-101 (4), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

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

(4) **Notice of election and demand.** A notice of election and demand filed with the public trustee pursuant to this section shall contain the following:

(k) IF THE EVIDENCE OF DEBT IS A RESIDENTIAL MORTGAGE LOAN, AS DEFINED IN SECTION 12-61-902, C.R.S., AN AFFIDAVIT ATTESTING THAT ALL REQUIRED NOTICES WERE GIVEN IN ACCORDANCE WITH SECTIONS 38-38-102.5 (2) AND 38-40-103.5, AND COPIES OF SUCH NOTICES.

SECTION 2. 38-38-102.5, Colorado Revised Statutes, is RECREATED AND REENACTED, WITH AMENDMENTS, to read:

38-38-102.5. Notice prior to residential foreclosure - good-faith loss mitigation efforts required - definitions - repeal. (1) AS USED IN THIS SECTION:

(a) "CERTIFIED HOUSING COUNSELOR" MEANS A HOUSING COUNSELOR CERTIFIED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

(b) (I) "CREDIT SALE" MEANS A SALE OF RESIDENTIAL REAL

1 PROPERTY IN WHICH THE SELLER PROVIDES CREDIT TO THE BUYER FOR ALL
2 OR PART OF THE PURCHASE PRICE.

3 (II) "CREDIT SALE" INCLUDES A BAILMENT OR LEASE, EXCEPT A
4 BAILMENT OR LEASE THAT IS TERMINABLE WITHOUT PENALTY AT ANY TIME
5 BY THE CONSUMER, UNDER WHICH THE CONSUMER:

6 (A) AGREES TO PAY, AS COMPENSATION FOR USE OF THE
7 PROPERTY, A SUM SUBSTANTIALLY EQUIVALENT TO, OR IN EXCESS OF, THE
8 TOTAL VALUE OF THE PROPERTY AND SERVICES INVOLVED; AND

9 (B) WILL BECOME, OR HAS THE OPTION TO BECOME, FOR NO
10 ADDITIONAL CONSIDERATION OR FOR NOMINAL CONSIDERATION, THE
11 OWNER OF THE PROPERTY UPON COMPLIANCE WITH THE AGREEMENT.

12 (c) "GOOD-FAITH LOSS MITIGATION EFFORTS" MEANS REASONABLE
13 EFFORTS BY THE HOLDER, ACTING IN GOOD FAITH, TO WORK WITH THE
14 DEBTOR TO CURE A DEFAULT USING APPLICABLE LOSS MITIGATION
15 PRACTICES, WHICH MAY INCLUDE BUT ARE NOT LIMITED TO:

16 (I) LOAN MODIFICATIONS, INCLUDING WITHOUT LIMITATION:

17 (A) REFINANCING THE LOAN;

18 (B) EXTENDING THE TERM OF THE LOAN;

19 (C) CAPITALIZING ARREARAGES;

20 (D) REDUCING PRINCIPAL;

21 (E) WAIVING LATE FEES OR OTHER FEES; AND

22 (F) MODIFYING THE INTEREST RATE TO RESULT IN A
23 RESTRUCTURED LOAN WITH A MONTHLY PAYMENT AFFORDABLE TO THE
24 DEBTOR;

25 (II) A REPAYMENT OR FORBEARANCE PLAN;

26 (III) A SHORT SALE; AND

27 (IV) ACCEPTANCE OF A DEED IN LIEU OF FORECLOSURE.

1 (d) (I) "HOLDER" MEANS THE HOLDER OF AN EVIDENCE OF DEBT
2 CONSTITUTING A RESIDENTIAL MORTGAGE LOAN, AS DEFINED IN SECTION
3 12-61-902, C.R.S., AND ANY LOAN SERVICER OR OTHER PERSON ACTING
4 ON THE HOLDER'S BEHALF.

5 (II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH
6 (d), "HOLDER" SHALL NOT INCLUDE A PERSON WHOSE ONLY ACTIVITY AS
7 A HOLDER IS AS THE SELLER IN NOT MORE THAN THREE CREDIT SALES OR
8 LOANS PER YEAR.

9 (e) "UNCONVENTIONAL MORTGAGE" MEANS A RESIDENTIAL
10 MORTGAGE LOAN, AS DEFINED IN SECTION 12-61-902, C.R.S., THAT:

11 (I) ALLOWS THE MORTGAGOR TO PAY ONLY INTEREST FOR A
12 PERIOD OF TIME;

13 (II) ALLOWS THE MORTGAGOR TO MAKE A MINIMUM PAYMENT
14 THAT MAY BE LOWER THAN THE PAYMENT REQUIRED TO REDUCE THE
15 PRINCIPAL BALANCE OF THE MORTGAGE, RESULTING IN NEGATIVE
16 AMORTIZATION;

17 (III) PROVIDES FOR AN INITIAL INTEREST RATE THAT, AFTER A
18 PERIOD OF TIME, IS REPLACED WITH A VARIABLE RATE; OR

19 (IV) WAS MADE WITHOUT INCOME VERIFICATION INFORMATION
20 REQUESTED FROM THE MORTGAGOR.

21 (2) AT LEAST THIRTY DAYS BEFORE FILING A NOTICE OF ELECTION
22 AND DEMAND AND AT LEAST THIRTY DAYS AFTER DEFAULT, THE HOLDER
23 SHALL MAIL A NOTICE ADDRESSED TO THE DEBTOR FROM WHOM IT HAS
24 BEEN COLLECTING PAYMENTS AT THE ADDRESS SHOWN ON ITS RECORDS,
25 CONTAINING THE FOLLOWING:

26 (a) A STATEMENT THAT THE LOAN IS IN DEFAULT AND A WARNING
27 THAT FAILURE TO CORRECT THE DEFAULT COULD RESULT IN THE LOSS OF

1 THE DEBTOR'S HOME;

2 (b) A STATEMENT OF THE AMOUNT OF THE DEFAULT AND HOW A
3 REINSTATEMENT FIGURE MAY BE OBTAINED, INCLUDING A TELEPHONE
4 NUMBER THAT THE DEBTOR MAY CALL TO OBTAIN SUCH A FIGURE;

5 (c) A STATEMENT THAT THE HOLDER IS PREPARED TO MAKE A
6 REASONABLE EFFORT TO NEGOTIATE A FAIR RESOLUTION OF THE DISPUTE
7 AND THAT THE DEBTOR SHOULD MAKE DIRECT CONTACT WITH THE HOLDER
8 OR ITS LOAN SERVICER;

9 (d) THE NAME, ADDRESS, AND CONTACT INFORMATION, INCLUDING
10 A TOLL-FREE TELEPHONE NUMBER, FOR THE HOLDER'S LOSS MITIGATION
11 CONTACT OR OTHER PERSON AUTHORIZED TO NEGOTIATE A CURE OF THE
12 DEFAULT, A MODIFICATION OF THE LOAN, OR OTHER RESOLUTION OF THE
13 DISPUTE;

14 (e) THE TELEPHONE NUMBER OF THE COLORADO FORECLOSURE
15 HOTLINE;

16 (f) A STATEMENT THAT THE DEBTOR SHOULD CONTACT A
17 CERTIFIED HOUSING COUNSELOR OR AN ATTORNEY; AND

18 (g) A LIST OF CERTIFIED HOUSING COUNSELORS IN THE REGION
19 WHERE THE PROPERTY IS BEING FORECLOSED IS LOCATED, ALONG WITH
20 THE NAME OF A LOCAL ATTORNEY REFERRAL AGENCY AND THE TELEPHONE
21 NUMBER OF THE COLORADO LEGAL SERVICES OFFICE SERVICING THE
22 COUNTY IN WHICH THE PROPERTY IS LOCATED.

23 (3) (a) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
24 UNDER THE CIRCUMSTANCES SET FORTH IN SUBPARAGRAPH (II) OF THIS
25 PARAGRAPH (a), THE COURT SHALL EXTEND THE DATE OF THE
26 FORECLOSURE SALE FOR NINETY DAYS BEYOND THE DATE THAT WOULD
27 OTHERWISE HAVE BEEN SCHEDULED IF, AT THE TIME THAT THE COURT

1 CONSIDERS THE HOLDER'S REQUEST FOR AN ORDER AUTHORIZING SALE
2 PURSUANT TO C.R.C.P. 120, THE COURT FINDS THAT:

3 (A) THE DEBTOR WAS NOT DULY SERVED WITH THE NOTICE,
4 MOTION, AND ANY OTHER SUPPORTING DOCUMENTATION AS REQUIRED BY
5 C.R.C.P. 120 (b); OR

6 (B) THE DEBTOR WAS AVAILABLE AND COOPERATIVE BUT THE
7 HOLDER DID NOT UNDERTAKE GOOD-FAITH LOSS MITIGATION EFFORTS.

8 (II) THIS PARAGRAPH (a) SHALL APPLY IF:

9 (A) THE EVIDENCE OF DEBT IS AN UNCONVENTIONAL MORTGAGE;
10 AND

11 (B) AT THE TIME OF FILING OF THE NOTICE OF ELECTION AND
12 DEMAND, THE DEBTOR IS THE RECORD OWNER OF NOT MORE THAN TWO
13 DWELLING UNITS AND OCCUPIES ONE OF THE TWO UNITS AS HIS OR HER
14 PRINCIPAL RESIDENCE.

15 (b) THE HOLDER MAY SHOW THAT IT ENGAGED IN GOOD-FAITH
16 LOSS MITIGATION EFFORTS BY SUBMITTING A LIST OF ALL APPLICABLE LOSS
17 MITIGATION PRACTICES CURRENTLY UTILIZED BY IT OR BY ITS LOAN
18 SERVICER ALONG WITH AN AFFIDAVIT, SIGNED BY A REPRESENTATIVE OF
19 THE HOLDER OR SERVICER WHO IS PERSONALLY RESPONSIBLE FOR
20 DETERMINING THE DEBTOR'S ELIGIBILITY FOR LOSS MITIGATION, THAT THE
21 REPRESENTATIVE CONTACTED THE DEBTOR AND ENGAGED IN A
22 GOOD-FAITH CONSIDERATION OF ALL SUCH PRACTICES, WHETHER OR NOT
23 THE EFFORT WAS SUCCESSFUL.

24 (c) IF THE HOLDER DOES NOT HAVE A STANDARDIZED LIST OF LOSS
25 MITIGATION PRACTICES, OR IF IT FAILS TO SUBMIT SUCH A LIST, THEN THE
26 COURT MAY CONSIDER OTHER ATTEMPTS AT RESOLUTION UNDERTAKEN BY
27 THE HOLDER, BASED UPON THE EVIDENCE SUBMITTED.

1 (d) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE JULY 1, 2011.

2 **SECTION 3.** Article 40 of title 38, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW SECTION to read:

4 **38-40-103.5. Adjustable-rate residential mortgage loans -**
5 **notice of rate increase - contact information to avoid default.** (1) A
6 HOLDER, AS DEFINED IN SECTION 38-38-102.5, OF A RESIDENTIAL
7 MORTGAGE LOAN THAT IS SUBJECT TO CHANGES IN THE INTEREST RATE OR
8 ANY OTHER FACTOR AFFECTING THE AMOUNT OF THE REGULAR PRINCIPAL
9 AND INTEREST PAYMENTS DUE UNDER THE LOAN SHALL, AT LEAST THIRTY
10 DAYS BEFORE THE EFFECTIVE DATE OF ANY SUCH CHANGE, MAIL A NOTICE
11 ADDRESSED TO THE DEBTOR FROM WHOM IT HAS BEEN COLLECTING
12 PAYMENTS AT THE ADDRESS SHOWN ON ITS RECORDS, CONTAINING THE
13 FOLLOWING INFORMATION:

14 (a) THE EFFECTIVE DATE OF THE PENDING CHANGE;

15 (b) THE AMOUNT OF THE CHANGE AND THE TOTAL AMOUNT OF
16 EACH PAYMENT THE DEBTOR WILL BE REQUIRED TO MAKE AFTER THE
17 CHANGE;

18 (c) THE NAME, ADDRESS, AND CONTACT INFORMATION, INCLUDING
19 A TOLL-FREE TELEPHONE NUMBER, FOR THE HOLDER'S LOSS MITIGATION
20 CONTACT OR OTHER PERSON AUTHORIZED TO NEGOTIATE A CURE OF ANY
21 DEFAULT, A MODIFICATION OF THE LOAN, OR OTHER RESOLUTION IF THE
22 DEBTOR IS UNABLE TO CONTINUE MAKING REGULAR PAYMENTS AS
23 REQUIRED AFTER THE CHANGE; AND

24 (d) THE TELEPHONE NUMBER OF THE COLORADO FORECLOSURE
25 HOTLINE.

26 **SECTION 4. Effective date - applicability.** This act shall take
27 effect upon passage and shall apply to foreclosure actions filed on or after

1 said date.

2 **SECTION 5. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.