

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

INTRODUCED

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.

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.

4 **SECTION 3.** 38-38-103 (5), Colorado Revised Statutes, is
5 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

6 **38-38-103. Combined notice - publication - providing**
7 **information.** (5) (d) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
8 THE OFFICER SHALL NOT BEGIN PUBLICATION OR SEND THE MAILING
9 REQUIRED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (1)
10 OF THIS SECTION UNLESS THE HOLDER HAS PROVIDED THE AFFIDAVIT
11 REQUIRED BY SECTION 38-38-802, IF APPLICABLE. IF THE AFFIDAVIT HAS
12 NOT BEEN PROVIDED, THE FOLLOWING SHALL OCCUR:

13 (I) THE OFFICER SHALL NOTIFY THE HOLDER OR THE HOLDER'S
14 ATTORNEY, IN WRITING, THAT NO AFFIDAVIT WAS PROVIDED AND INDICATE
15 THAT THE PUBLICATIONS REQUIRED PURSUANT TO THIS SECTION SHALL
16 NOT BE MADE UNTIL THE HOLDER PROVIDES THE REQUIRED AFFIDAVIT.

17 (II) THE OFFICER SHALL CONTINUE THE SALE OF THE PROPERTY IN
18 ACCORDANCE WITH SECTION 38-38-109. THE SALE SHALL BE CONTINUED
19 FROM WEEK TO WEEK UNTIL THE HOLDER PROVIDES THE OFFICE WITH THE
20 REQUIRED AFFIDAVIT.

21 **SECTION 4.** Article 38 of title 38, Colorado Revised Statutes, is
22 amended BY THE ADDITION OF A NEW PART to read:

23 PART 8

24 FORECLOSURE DEFERMENT

25 **38-38-801. Definitions.** AS USED IN THIS PART 8, UNLESS THE
26 CONTEXT OTHERWISE REQUIRES:

27 (1) "ELIGIBLE BORROWER" MEANS A GRANTOR UNDER A DEED OF

1 TRUST SECURING AN EVIDENCE OF DEBT THAT MEETS THE DESCRIPTION IN
2 SECTION 38-38-102.5 (1), AND THAT IS A FIRST LIEN UPON THE PROPERTY.

3 THE ELIGIBLE BORROWER SHALL:

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

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

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

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

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

19 (2) "FORECLOSURE COUNSELOR" MEANS A HOUSING COUNSELOR
20 EMPLOYED BY AN AGENCY APPROVED BY THE UNITED STATES
21 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. FORECLOSURE
22 COUNSELORS INCLUDE HOUSING COUNSELORS AFFILIATED WITH THE
23 COLORADO FORECLOSURE HOTLINE AND THE HOPE FOR HOMEOWNERS
24 HOTLINE.

25 (3) "FORECLOSURE DEFERMENT" MEANS A PERIOD, NOT TO EXCEED
26 NINETY CALENDAR DAYS OR THE NEXT SCHEDULED SALE DATE AFTER
27 NINETY DAYS, DURING WHICH THE PUBLIC TRUSTEE OF THE COUNTY IN

1 WHICH THE PROPERTY IS LOCATED CONTINUES THE SCHEDULED SALE OF A
2 PROPERTY SUBJECT TO A NOTICE OF ELECTION AND DEMAND.

3 **38-38-802. Notice of the opportunity for foreclosure**
4 **deferment.** (1) NO LATER THAN FIFTEEN CALENDAR DAYS FOLLOWING
5 THE FILING OF THE DOCUMENTS REQUIRED BY AND IN ACCORDANCE WITH
6 SECTION 38-38-101 (1), THE HOLDER OR THE ATTORNEY FOR THE HOLDER
7 WHO FILED THE NOTICE OF ELECTION AND DEMAND SHALL CAUSE A NOTICE
8 AS DESCRIBED IN THIS SECTION TO BE POSTED IN A CONSPICUOUS PLACE ON
9 THE PROPERTY THAT IS THE SUBJECT OF THE NOTICE OF ELECTION AND
10 DEMAND. IF POSSIBLE, THE NOTICE SHALL BE POSTED ON THE FRONT DOOR
11 OF THE RESIDENCE, BUT IF ACCESS TO THE DOOR IS NOT POSSIBLE OR IS
12 RESTRICTED, THEN THE NOTICE SHALL BE POSTED AT AN ALTERNATIVE
13 CONSPICUOUS LOCATION, SUCH AS A GUARD GATE OR SIMILAR
14 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) NO LATER THAN TWENTY DAYS AFTER THE FILING OF THE
8 DOCUMENTS REQUIRED BY AND IN ACCORDANCE WITH SECTION 38-38-101
9 (1), THE HOLDER SHALL PROVIDE TO THE PUBLIC TRUSTEE AN AFFIDAVIT
10 STATING THAT THE POSTING REQUIRED BY THIS SECTION WAS MADE.

11 **38-38-803. Procedures for foreclosure deferment - notification**

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

15 (2) TO QUALIFY FOR A FORECLOSURE DEFERMENT, AN ELIGIBLE
16 BORROWER SHALL CONTACT A FORECLOSURE COUNSELOR WITHIN TWENTY
17 DAYS AFTER THE POSTING OF THE NOTICE REQUIRED BY SECTION
18 38-38-802 FOR THE PURPOSE OF OBTAINING A QUALIFICATION DECISION AS
19 SET FORTH IN SUBSECTION (5) OF THIS SECTION. THE INITIAL CONTACT
20 MAY TAKE PLACE BY TELEPHONE, ELECTRONICALLY, OR IN PERSON.

21 (3) THE FORECLOSURE COUNSELOR SHALL NOTIFY THE HOLDER
22 PROMPTLY THAT HE OR SHE HAS BEEN CONTACTED BY AN ELIGIBLE
23 BORROWER AND SPECIFY THE DATE OF THE CONTACT.

24 (4) WITHIN TEN CALENDAR DAYS AFTER RECEIVING NOTICE THAT
25 THE ELIGIBLE BORROWER HAS CONTACTED A FORECLOSURE COUNSELOR,
26 THE HOLDER SHALL NOTIFY THE COUNSELOR AND THE ELIGIBLE BORROWER
27 IN WRITING OF THE ADDRESS TO WHICH PAYMENTS REQUIRED BY SECTION

1 38-38-805 (2) SHALL BE SENT IF THE BORROWER QUALIFIES FOR A
2 FORECLOSURE DEFERMENT AND INFORMATION ON HOW PAYMENTS CAN BE
3 MADE ELECTRONICALLY.

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

7 (a) DETERMINE WHETHER THE BORROWER IS QUALIFIED FOR A
8 FORECLOSURE DEFERMENT; AND

9 (b) CERTIFY THE DETERMINATION TO THE ELIGIBLE BORROWER
10 AND THE HOLDER. IF THE FORECLOSURE COUNSELOR DETERMINES THAT
11 THE ELIGIBLE BORROWER QUALIFIES FOR A FORECLOSURE DEFERMENT, THE
12 COUNSELOR SHALL ALSO NOTIFY THE PUBLIC TRUSTEE WITHIN THE SAME
13 THIRTY-DAY PERIOD.

14 (6) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE
15 PUBLIC TRUSTEE RECEIVES CERTIFICATION FROM THE FORECLOSURE
16 COUNSELOR THAT THE ELIGIBLE BORROWER QUALIFIES FOR A
17 FORECLOSURE DEFERMENT, THE PUBLIC TRUSTEE SHALL IMMEDIATELY
18 CANCEL ANY REMAINING PUBLICATIONS OF THE COMBINED NOTICE, SHALL
19 NOT MAIL THE NOTICE REQUIRED BY SECTION 38-38-103 (1) (a) (II), AND
20 SHALL CONTINUE THE SALE OF THE PROPERTY IN ACCORDANCE WITH
21 SECTION 38-38-109 (1) (a). THE SALE SHALL BE CONTINUED FROM WEEK
22 TO WEEK UNTIL RECEIPT OF CERTIFICATION PURSUANT TO SECTION
23 38-38-805 (4) THAT THE DEFERMENT HAS BEEN TERMINATED OR, IF NO
24 CERTIFICATION IS RECEIVED, FOR NINETY CALENDAR DAYS OR UNTIL THE
25 NEXT SCHEDULED SALE DATE AFTER THE END OF THE NINETY-DAY PERIOD.
26 WHEN THE DEFERMENT HAS BEEN TERMINATED OR HAS ENDED, THE
27 PUBLIC TRUSTEE SHALL BEGIN PUBLICATION OF THE COMBINED NOTICE AS

1 REQUIRED IN SECTION 38-38-103 (5) (a), AND SEND THE NOTICE REQUIRED
2 BY SECTION 38-38-103 (1) (a), AS SOON AS POSSIBLE AND NO MORE THAN
3 TWENTY CALENDAR DAYS AFTER THE COMPLETION OF THE DEFERMENT.
4 IF THE DEFERMENT TERMINATES OR HAS ENDED, THE PUBLIC TRUSTEE MAY
5 CHARGE A FEE OF UP TO SEVENTY-FIVE DOLLARS.

6 **38-38-804. Foreclosure deferment assessment standards -**
7 **ineligible borrowers.** (1) A FORECLOSURE COUNSELOR SHALL
8 DETERMINE WHETHER AN ELIGIBLE BORROWER QUALIFIES FOR A
9 FORECLOSURE DEFERMENT BY CALCULATING WHETHER, CONSIDERING THE
10 ELIGIBLE BORROWER'S HOUSEHOLD EXPENSES AND GROSS MONTHLY
11 INCOME, THE NATURE OF THE LOAN, ANY WRITTEN LOAN MODIFICATION
12 AGREEMENT BETWEEN THE ELIGIBLE BORROWER AND THE HOLDER
13 ENTERED INTO DURING THE PRECEDING TWELVE MONTHS, AND ANY OTHER
14 RELEVANT FACTORS, THERE IS A REASONABLE LIKELIHOOD THAT THE
15 HOLDER AND ELIGIBLE BORROWER CAN ACHIEVE A MUTUALLY
16 ACCEPTABLE AGREEMENT TO AVOID FORECLOSURE. IN MAKING HIS OR HER
17 DETERMINATION, THE COUNSELOR SHALL USE ANALYTICAL TOOLS
18 DESIGNED TO INDICATE BOTH:

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

23 (b) WHETHER THE HOLDER WOULD BE LIKELY TO RECEIVE
24 GREATER REVENUE FROM THE MODIFICATION NECESSARY TO ACHIEVE
25 SUCH A MONTHLY PAYMENT THAN THE HOLDER WOULD BE LIKELY TO
26 RECEIVE FROM A COMPLETED FORECLOSURE.

27 (2) THE ANALYTICAL TOOLS USED IN SUBSECTION (1) OF THIS

1 SECTION SHALL BE CONSISTENT WITH THE NET PRESENT VALUE TEST SET
2 OUT IN THE FEDERAL DEPOSIT INSURANCE CORPORATION LOAN
3 MODIFICATION PROGRAM GUIDELINES, EFFECTIVE OCTOBER 2008, OR ANY
4 SUCCESSOR PROGRAM.

5 (3) AN ELIGIBLE BORROWER SHALL NOT QUALIFY FOR A
6 FORECLOSURE DEFERMENT IF:

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

8 (b) THE BORROWER PROVIDED MATERIALLY FALSE INFORMATION
9 TO OBTAIN CREDIT. THE FACT THAT THE DEBT OBLIGATION REFLECTS A
10 STATED-INCOME LOAN IS NOT SUFFICIENT TO ESTABLISH THAT THE
11 ELIGIBLE BORROWER SUBMITTED MATERIALLY FALSE INFORMATION.

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

15 (d) THE BORROWER IS CURRENTLY IN A BANKRUPTCY PROCEEDING
16 IN WHICH THE PROPERTY SUBJECT TO THE NOTICE OF ELECTION AND
17 DEMAND IS PROPERTY OF THE BANKRUPTCY ESTATE OR WITHIN THE
18 PRECEDING TWENTY-FOUR MONTHS HAS BEEN DISCHARGED FROM A
19 CHAPTER SEVEN BANKRUPTCY IN WHICH THE PROPERTY SUBJECT TO THE
20 NOTICE OF ELECTION AND DEMAND WAS PROPERTY ON THE BANKRUPTCY
21 ESTATE; OR

22 (e) WITHIN THE IMMEDIATELY PRECEDING TWENTY-FOUR MONTHS,
23 THE ELIGIBLE BORROWER HAS BEEN DISCHARGED FROM A CHAPTER
24 THIRTEEN BANKRUPTCY WITH A MODIFIED LOAN AGREEMENT FOR WHICH
25 THE PROPERTY SUBJECT TO THE NOTICE OF ELECTION AND DEMAND IS THE
26 SECURITY.

27 (4) IF THE ELIGIBLE BORROWER HAS RECEIVED A FORECLOSURE

1 DEFERMENT, THE ELIGIBLE BORROWER SHALL NOT QUALIFY FOR A
2 SUBSEQUENT FORECLOSURE DEFERMENT IN CONNECTION WITH THE SAME
3 DEBT OBLIGATION, INCLUDING ANY MODIFICATION OF THE DEBT.

4 **38-38-805. Foreclosure deferment.** (1) IF A HOLDER HAS
5 RECEIVED NOTICE FROM AN ELIGIBLE BORROWER'S FORECLOSURE
6 COUNSELOR THAT THE ELIGIBLE BORROWER QUALIFIES FOR A
7 FORECLOSURE DEFERMENT, THE HOLDER AND THE ELIGIBLE BORROWER
8 SHALL NEGOTIATE THE TERMS OF THE DEBT OBLIGATION SECURED BY THE
9 DEED OF TRUST, SUBJECT TO THE TERMS OF ANY AGREEMENT APPLICABLE
10 TO THE DEBT OBLIGATION OR ANY APPLICABLE GOVERNMENT-SUPPORTED
11 ENTERPRISE SERVICING GUIDELINES.

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

22 (b) THE FIRST PAYMENT SHALL BE DUE TO THE ADDRESS PROVIDED
23 BY THE HOLDER PURSUANT TO SECTION 38-38-803 (4) BY THE FIFTH DAY
24 FOLLOWING THE FORECLOSURE COUNSELOR'S CERTIFICATE OF
25 QUALIFICATION FOR THE FORECLOSURE DEFERMENT. SUBSEQUENT
26 PAYMENTS SHALL BE DUE EVERY THIRTY CALENDAR DAYS THEREAFTER
27 UNTIL THE CONCLUSION OF THE FORECLOSURE DEFERMENT.

1 (c) IN ORDER TO PRESERVE EVIDENCE OF THE DATE OF THE
2 PAYMENT, THE ELIGIBLE BORROWER MAY MAKE THE PAYMENTS
3 ELECTRONICALLY OR BY CERTIFIED FUNDS DELIVERED BY A METHOD THAT
4 PROVIDES EVIDENCE OF THE DATE OF PAYMENT.

5 (3) ACCEPTANCE OF PAYMENTS MADE DURING THE FORECLOSURE
6 DEFERMENT PERIOD SHALL NOT CONSTITUTE A WAIVER OF DEFAULT OR
7 MODIFICATION OF ANY AMOUNTS DUE ON THE ORIGINAL DEBT OR ANY
8 OTHER RIGHTS OF THE HOLDER. THE PAYMENTS SHALL BE APPLIED BY THE
9 HOLDER PURSUANT TO THE APPLICABLE PROVISIONS OF THE NOTE AND
10 DEED OF TRUST OR, IF THERE ARE NO SUCH APPLICABLE PROVISIONS, IN THE
11 FOLLOWING ORDER: PAYMENT OF THE HOLDER'S COSTS AND EXPENSES
12 INCURRED IN THE FORECLOSURE, PAYMENT FOR PRESERVATION OF THE
13 PROPERTY, ESCROW ADVANCES OR SHORTAGES, LATE CHARGES AND
14 INTEREST, AND PRINCIPAL.

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

23 (a) THAT THE ELIGIBLE BORROWER HAS ABANDONED THE
24 PROPERTY;

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

1 (c) THAT THE ELIGIBLE BORROWER HAS CONVEYED, TRANSFERRED,
2 OR FURTHER ENCUMBERED THE PROPERTY IN VIOLATION OF THE DEED OF
3 TRUST;

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

6 (e) THAT THE ELIGIBLE BORROWER HAS FILED BANKRUPTCY
7 DURING THE FORECLOSURE DEFERMENT.

8 **38-38-806. Foreclosure counselor immunity.** A FORECLOSURE
9 COUNSELOR ACTING IN GOOD FAITH SHALL NOT BE LIABLE TO ANY PERSON
10 FOR APPROVING OR FAILING TO APPROVE A BORROWER FOR A
11 FORECLOSURE DEFERMENT OR FOR CERTIFYING OR DECLINING TO CERTIFY
12 AN EARLY TERMINATION.

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

23 **38-38-808. Repeal.** THIS PART 8 IS REPEALED, EFFECTIVE JUNE
24 30, 2011.

25 **SECTION 5. Effective date - applicability.** This act shall take
26 effect upon passage and shall apply to foreclosures that are commenced
27 by the filing of a notice of election and demand thirty days on or after said

1 date.

2 **SECTION 6. 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.