

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0657.01 Kristen Forrestal

HOUSE BILL 10-1240

HOUSE SPONSORSHIP

Ferrandino,

SENATE SPONSORSHIP

(None),

House Committees

Local Government
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE FORECLOSURE DEFERMENT PROCESS FOR**
102 **RESIDENTIAL PROPERTIES.**

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/billsummaries>.)

The bill clarifies House Bill 09-1276, passed by the general assembly last year, that established a 90-day foreclosure deferment period for eligible borrowers. **Sections 1 and 6** of the bill give general rule-making authority to the division of housing in the department of local affairs related to the deferment process.

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.*

Section 2 clarifies that the notice of opportunity for foreclosure deferment may not be posted prior to the date the public trustee determines that the documents filed for the commencement of the foreclosure are complete and accurate.

Section 3 requires that the notice of opportunity for foreclosure deferment include a telephone number for the holder and, if applicable, the attorney for the holder and the public trustee foreclosure number.

Section 4 requires a foreclosure counselor to inform the holder if an eligible borrower who qualifies for a foreclosure deferment chooses not to participate.

Section 5 prohibits an eligible borrower from qualifying for a foreclosure deferment if the borrower has transferred title to the property to another party.

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

2 **SECTION 1.** 38-38-101 (1) (h), Colorado Revised Statutes, is
3 amended to read:

4 **38-38-101. Holder of evidence of debt may elect to foreclose.**

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

10 (h) A separate document notifying the public trustee that the
11 property referred to in the notice of election and demand is property that
12 requires posting under section 38-38-802. If the document required by
13 this paragraph (h) is not filed at the time the documents required by
14 paragraphs (a) to (e) of this subsection (1) are filed with the public
15 trustee, and the holder determines at a later date that the property requires
16 posting, the holder shall request that the public trustee rerecord the notice
17 of election and demand. Thereafter, all deadlines for the foreclosure
18 action shall be determined according to the date of the rerecording of the

1 notice of election and demand as though the foreclosure was commenced
2 on such date, and the public trustee shall collect a fee of seventy-five
3 dollars from the holder. IF THE DOCUMENT REQUIRED BY THIS PARAGRAPH
4 (h) IS FILED IN ERROR, THE HOLDER MAY WITHDRAW IT BY FILING WITH THE
5 PUBLIC TRUSTEE AN AFFIDAVIT SIGNED BY THE HOLDER OR THE ATTORNEY
6 FOR THE HOLDER AFFIRMING BOTH THAT THE DOCUMENT REQUIRED BY
7 THIS PARAGRAPH (h) WAS FILED IN ERROR, AND THAT THE PROPERTY HAS
8 NOT BEEN POSTED PURSUANT TO SECTION 38-38-802. IN ORDER TO BE
9 EFFECTIVE, AND THEREBY NOTIFY THE PUBLIC TRUSTEE THAT THE
10 PROPERTY IS NOT ELIGIBLE FOR POSTING, SUCH AFFIDAVIT SHALL BE FILED
11 WITH THE PUBLIC TRUSTEE NO LATER THAN FIFTEEN CALENDAR DAYS
12 AFTER THE DATE OF THE DETERMINATION OF THE PUBLIC TRUSTEE THAT
13 THE FILING IS COMPLETE IN ACCORDANCE WITH SECTION 38-38-102 (1).

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

16 **24-32-705. Functions of division - repeal.** (1) The division has
17 the following functions:

18 (s) TO PROMULGATE RULES PURSUANT TO SECTION 38-38-807.5,
19 C.R.S.

20 **SECTION 3.** 38-38-802 (1), Colorado Revised Statutes, is
21 amended to read:

22 **38-38-802. Notice of the opportunity for foreclosure**
23 **deferment.** (1) No later than fifteen calendar days following the
24 filing of the complete and accurate documents required by and in
25 accordance with section 38-38-101 (1) and the determination of the public
26 trustee that the filing is complete in accordance with section 38-38-102
27 (1), AND NO EARLIER THAN THE DATE THE DETERMINATION IS MADE BY

1 THE PUBLIC TRUSTEE, the holder or the attorney for the holder who filed
2 the notice of election and demand shall cause a notice as described in this
3 section to be PERSONALLY SERVED ON THE ELIGIBLE BORROWER OR TO BE
4 posted in a conspicuous place on the property that is the subject of the
5 notice of election and demand. THE NOTICE SHALL BE IN A FORM AND
6 MANNER AS DETERMINED BY RULE OF THE DIVISION OF HOUSING. If
7 possible, the notice shall be posted on the front door of the residence, but
8 if access to the door is not possible or is restricted, then the notice shall
9 be posted at an alternative conspicuous location, such as a guard gate or
10 similar impediment.

11

12 **SECTION 4.** 38-38-802 (2), Colorado Revised Statutes, is
13 amended BY THE ADDITION OF THE FOLLOWING NEW
14 PARAGRAPHS to read:

15 **38-38-802. Notice of the opportunity for foreclosure**
16 **deferment.** (2) The notice shall contain:

17 (d) A TELEPHONE NUMBER FOR THE HOLDER AND, IF APPLICABLE,
18 A TELEPHONE NUMBER FOR THE ATTORNEY FOR THE HOLDER WHO FILED
19 THE NOTICE OF ELECTION AND DEMAND;

20 (e) THE PUBLIC TRUSTEE FORECLOSURE NUMBER.

21 **SECTION 5.** 38-38-803 (6), Colorado Revised Statutes, is
22 amended, and the said 38-38-803 is further amended BY THE
23 ADDITION OF A NEW SUBSECTION, to read:

24 **38-38-803. Procedures for foreclosure deferment - notification**
25 **- process.** (5.5) THE FORECLOSURE COUNSELOR SHALL NOTIFY THE
26 HOLDER OR THE ATTORNEY FOR THE HOLDER IF AN ELIGIBLE BORROWER
27 WHO HAS QUALIFIED FOR A FORECLOSURE DEFERMENT OPTS NOT TO TAKE

1 PART IN THE FORECLOSURE DEFERMENT PROCESS.

2 (6) Notwithstanding any other provision of law, if the public
3 trustee receives certification from the foreclosure counselor that the
4 eligible borrower qualifies for a foreclosure deferment, the public trustee
5 shall ~~immediately~~ cancel any remaining publications of the combined
6 notice, shall not mail the notice required by section 38-38-103 (1) (a) (II),
7 and shall continue the sale of the property in accordance with section
8 38-38-109 (1) (a). The sale shall be continued from week to week until
9 receipt of certification pursuant to section 38-38-805 (4) that the
10 deferment has been terminated or, if no certification is received, for
11 ninety calendar days or until the next scheduled sale date after the end of
12 the ninety-day period. When the deferment has been terminated or has
13 ended, the public trustee shall collect a fee of seventy-five dollars and
14 thereafter shall begin publication of the combined notice as required in
15 section 38-38-103 (5) (a), as to the deferred sale, and send the notice
16 required by section 38-38-103 (1) (a), as soon as possible and no more
17 than twenty calendar days after the completion of the deferment.

18 **SECTION 6.** 38-38-804 (3), Colorado Revised Statutes, is
19 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

20 **38-38-804. Foreclosure deferment assessment standards -**
21 **ineligible borrowers.** (3) An eligible borrower shall not qualify for a
22 foreclosure deferment if:

23 (f) THE ELIGIBLE BORROWER HAS TRANSFERRED TITLE TO THE
24 PROPERTY TO ANOTHER PARTY.

25 **SECTION 7.** Part 8 of article 38 of title 38, Colorado Revised
26 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
27 read:

1 **38-38-807.5. Rules - division of housing.** (1) THE DIVISION OF
2 HOUSING IN THE DEPARTMENT OF LOCAL AFFAIRS CREATED IN SECTION
3 24-32-704, C.R.S., SHALL PROMULGATE RULES AS NECESSARY FOR THE
4 IMPLEMENTATION OF THIS PART 8. THE RULES SHALL INCLUDE:

5 (a) STANDARD FORMS AND NOTICES AS DETERMINED NECESSARY
6 BY THE DIVISION;

7 (b) ACCEPTABLE FORMS OF PAYMENT FOR FORECLOSURE
8 DEFERMENT PAYMENTS; AND

9 (c) A MECHANISM FOR A FORECLOSURE COUNSELOR TO NOTIFY THE
10 HOLDER AND PUBLIC TRUSTEE WHEN A QUALIFIED ELIGIBLE BORROWER
11 OPTS NOT TO PARTICIPATE IN THE FORECLOSURE DEFERMENT PROCESS.

12 **SECTION 8. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.