

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0657.01 Kristen Forrestal

HOUSE BILL 10-1240

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HOUSE SPONSORSHIP

Ferrandino,

SENATE SPONSORSHIP

(None),

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House Committees  
Local Government

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING THE FORECLOSURE DEFERMENT PROCESS FOR  
102 RESIDENTIAL PROPERTIES.

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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.

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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 - repeal.** (1) The division has  
5 the following functions:

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

8 **SECTION 2.** 38-38-802 (1), Colorado Revised Statutes, is  
9 amended to read:

10 **38-38-802. Notice of the opportunity for foreclosure**  
11 **deferment.** (1) (a) No later than fifteen calendar days following the  
12 filing of the complete and accurate documents required by and in  
13 accordance with section 38-38-101 (1) and the determination of the public  
14 trustee that the filing is complete in accordance with section 38-38-102  
15 (1), AND NO EARLIER THAN THE DATE THE DETERMINATION IS MADE BY  
16 THE PUBLIC TRUSTEE, the holder or the attorney for the holder who filed  
17 the notice of election and demand shall cause a notice as described in this  
18 section to be PERSONALLY SERVED ON THE ELIGIBLE BORROWER OR TO BE

1 posted in a conspicuous place on the property that is the subject of the  
2 notice of election and demand. THE NOTICE SHALL BE IN A FORM AND  
3 MANNER AS DETERMINED BY RULE OF THE DIVISION OF HOUSING. If  
4 possible, the notice shall be posted on the front door of the residence, but  
5 if access to the door is not possible or is restricted, then the notice shall  
6 be posted at an alternative conspicuous location, such as a guard gate or  
7 similar impediment.

8 (b) IF THE HOLDER OR THE ATTORNEY FOR THE HOLDER POSTS THE  
9 NOTICE OF OPPORTUNITY FOR FORECLOSURE DEFERMENT IN ERROR, THE  
10 HOLDER OR THE ATTORNEY FOR THE HOLDER SHALL FILE AN AFFIDAVIT  
11 WITH THE PUBLIC TRUSTEE WITHIN FIFTEEN DAYS AFTER THE POSTING  
12 THAT STATES THE NOTICE WAS POSTED IN ERROR. IF THE HOLDER OR THE  
13 ATTORNEY FOR THE HOLDER DOES NOT FILE THE AFFIDAVIT WITH THE  
14 PUBLIC TRUSTEE WITHIN THE FIFTEEN-DAY PERIOD, THE HOLDER OR THE  
15 ATTORNEY FOR THE HOLDER SHALL EITHER INFORM THE FORECLOSURE  
16 COUNSELOR THAT THE ELIGIBLE BORROWER IS NOT QUALIFIED FOR A  
17 FORECLOSURE DEFERMENT PURSUANT TO SECTION 38-38-803 (5) OR  
18 WITHDRAW THE DOCUMENTS REQUIRED BY SECTION 38-38-101 AND REFILE  
19 THE DOCUMENTS WITHOUT THE NOTICE OF THE OPPORTUNITY FOR  
20 FORECLOSURE DEFERMENT.

21 **SECTION 3.** 38-38-802 (2), Colorado Revised Statutes, is  
22 amended BY THE ADDITION OF THE FOLLOWING NEW  
23 PARAGRAPHS to read:

24 **38-38-802. Notice of the opportunity for foreclosure**  
25 **deferment.** (2) The notice shall contain:

26 (d) A TELEPHONE NUMBER FOR THE HOLDER AND, IF APPLICABLE,  
27 A TELEPHONE NUMBER FOR THE ATTORNEY FOR THE HOLDER WHO FILED

1 THE NOTICE OF ELECTION AND DEMAND;

2 (e) THE PUBLIC TRUSTEE FORECLOSURE NUMBER.

3 **SECTION 4.** 38-38-803 (6), Colorado Revised Statutes, is  
4 amended, and the said 38-38-803 is further amended BY THE  
5 ADDITION OF A NEW SUBSECTION, to read:

6 **38-38-803. Procedures for foreclosure deferment - notification**  
7 **- process.** (5.5) THE FORECLOSURE COUNSELOR SHALL NOTIFY THE  
8 HOLDER OR THE ATTORNEY FOR THE HOLDER IF AN ELIGIBLE BORROWER  
9 WHO HAS QUALIFIED FOR A FORECLOSURE DEFERMENT OPTS NOT TO TAKE  
10 PART IN THE FORECLOSURE DEFERMENT PROCESS.

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

27 **SECTION 5.** 38-38-804 (3), Colorado Revised Statutes, is

1 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

2 **38-38-804. Foreclosure deferment assessment standards -**  
3 **ineligible borrowers.** (3) An eligible borrower shall not qualify for a  
4 foreclosure deferment if:

5 (f) THE ELIGIBLE BORROWER HAS TRANSFERRED TITLE TO THE  
6 PROPERTY TO ANOTHER PARTY.

7 **SECTION 6.** Part 8 of article 38 of title 38, Colorado Revised  
8 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
9 read:

10 **38-38-807.5. Rules - division of housing.** (1) THE DIVISION OF  
11 HOUSING IN THE DEPARTMENT OF LOCAL AFFAIRS CREATED IN SECTION  
12 24-32-704, C.R.S., SHALL PROMULGATE RULES AS NECESSARY FOR THE  
13 IMPLEMENTATION OF THIS PART 8. THE RULES SHALL INCLUDE:

14 (a) STANDARD FORMS AND NOTICES AS DETERMINED NECESSARY  
15 BY THE DIVISION;

16 (b) ACCEPTABLE FORMS OF PAYMENT FOR FORECLOSURE  
17 DEFERMENT PAYMENTS; AND

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

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