

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

**ENGROSSED**

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

LLS NO. 10-0657.01 Kristen Forrestal

**HOUSE BILL 10-1240**

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**HOUSE SPONSORSHIP**

**Ferrandino,**

**SENATE SPONSORSHIP**

**Carroll M.,**

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**House Committees**

Local Government  
Appropriations

**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.*

HOUSE  
Am ended 2nd Reading  
March 2, 2010

**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.** 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.** 38-38-103 (1) (b), Colorado Revised Statutes, is  
15 amended to read:

16 **38-38-103. Combined notice - publication - providing**  
17 **information.** (1) (b) No more than sixty calendar days nor less than  
18 forty-five calendar days prior to the first scheduled date of sale, the public  
19 trustee shall SEND VIA CERTIFIED mail a combined notice as described in  
20 subsection (4) of this section to the persons as set forth in the most recent  
21 amended mailing list. If there is no amended mailing list, the public  
22 trustee shall SEND VIA CERTIFIED mail a combined notice as described in  
23 subsection (4) of this section to the persons as set forth in the mailing list.

24 **SECTION 3.** 24-32-705 (1), Colorado Revised Statutes, is  
25 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26 **24-32-705. Functions of division - repeal.** (1) The division has  
27 the following functions:

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

3 **SECTION 4.** 38-38-802 (1), Colorado Revised Statutes, is  
4 amended to read:

5 **38-38-802. Notice of the opportunity for foreclosure**  
6 **deferment.** (1) [REDACTED] No later than fifteen calendar days following the  
7 filing of the complete and accurate documents required by and in  
8 accordance with section 38-38-101 (1) and the determination of the public  
9 trustee that the filing is complete in accordance with section 38-38-102  
10 (1), AND NO EARLIER THAN THE DATE THE DETERMINATION IS MADE BY  
11 THE PUBLIC TRUSTEE, the holder or the attorney for the holder who filed  
12 the notice of election and demand shall cause a notice as described in this  
13 section to be PERSONALLY SERVED ON THE ELIGIBLE BORROWER OR TO BE  
14 posted in a conspicuous place on the property that is the subject of the  
15 notice of election and demand. THE NOTICE SHALL BE IN A FORM AND  
16 MANNER AS DETERMINED BY RULE OF THE DIVISION OF HOUSING. If  
17 possible, the notice shall be posted on the front door of the residence, but  
18 if access to the door is not possible or is restricted, then the notice shall  
19 be posted at an alternative conspicuous location, such as a guard gate or  
20 similar impediment.

21 [REDACTED]  
22 **SECTION 5.** 38-38-802 (2), Colorado Revised Statutes, is  
23 amended BY THE ADDITION OF THE FOLLOWING NEW  
24 PARAGRAPHS to read:

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

27 (d) A TELEPHONE NUMBER FOR THE HOLDER AND, IF APPLICABLE,

1 A TELEPHONE NUMBER FOR THE ATTORNEY FOR THE HOLDER WHO FILED  
2 THE NOTICE OF ELECTION AND DEMAND;

3 (e) THE PUBLIC TRUSTEE FORECLOSURE NUMBER.

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

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

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

1           **SECTION 7.** 38-38-804 (3), Colorado Revised Statutes, is  
2 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

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

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

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

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

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

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

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

22           **SECTION 9. Safety clause.** The general assembly hereby finds,  
23 determines, and declares that this act is necessary for the immediate  
24 preservation of the public peace, health, and safety.