

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REVISED

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

LLS NO. 10-0657.01 Kristen Forrestal

HOUSE BILL 10-1240

HOUSE SPONSORSHIP

Ferrandino,

SENATE SPONSORSHIP

Carroll M.,

House Committees

Local Government
Appropriations

Senate Committees

Local Government and Energy

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.

SENATE
Am ended 2nd Reading
March 25, 2010

HOUSE
3rd Reading Unamended
March 3, 2010

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.

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

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

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

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

(h) A separate document notifying the public trustee that the property referred to in the notice of election and demand is property that requires posting under section 38-38-802. If the document required by this paragraph (h) is not filed at the time the documents required by paragraphs (a) to (e) of this subsection (1) are filed with the public trustee, and the holder determines at a later date that the property requires posting, the holder shall request that the public trustee rerecord the notice of election and demand. Thereafter, all deadlines for the foreclosure 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. 38-38-105, Colorado Revised Statutes, is amended
15 BY THE ADDITION OF A NEW SUBSECTION to read:

16 38-38-105. Court order authorizing sale mandatory - notice of
17 hearing for residential properties. (3) NOT LESS THAN FIFTEEN DAYS
18 BEFORE THE DATE SET FOR THE HEARING PURSUANT TO RULE 120 OR
19 OTHER RULE OF THE COLORADO RULES OF CIVIL PROCEDURE, THE HOLDER
20 OR THE ATTORNEY FOR THE HOLDER SEEKING AN ORDER AUTHORIZING
21 SALE UNDER THIS SECTION FOR A RESIDENTIAL PROPERTY SHALL CAUSE A
22 NOTICE OF HEARING AS DESCRIBED IN RULE 120 (b) OF THE COLORADO
23 RULES OF CIVIL PROCEDURE TO BE POSTED IN A CONSPICUOUS PLACE ON
24 THE PROPERTY THAT IS THE SUBJECT OF THE SALE. IF POSSIBLE, THE
25 NOTICE SHALL BE POSTED ON THE FRONT DOOR OF THE RESIDENCE, BUT IF
26 ACCESS TO THE DOOR IS NOT POSSIBLE OR IS RESTRICTED, THE NOTICE
27 SHALL BE POSTED AT AN ALTERNATIVE CONSPICUOUS LOCATION, SUCH AS

1 A GATE OR SIMILAR IMPEDIMENT.

2 **SECTION 3.** 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 ESTABLISH UNIFORM STANDARDS PURSUANT TO SECTION
7 38-38-807.5, C.R.S.

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

10 **38-38-802. Notice of the opportunity for foreclosure**
11 **deferral.** (1) [REDACTED] 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
19 posted in a conspicuous place on the property that is the subject of the
20 notice of election and demand. THE NOTICE SHALL BE IN A FORM AND
21 MANNER AS DETERMINED BY UNIFORM STANDARDS OF THE DIVISION OF
22 HOUSING. If possible, the notice shall be posted on the front door of the
23 residence, but if access to the door is not possible or is restricted, then the
24 notice shall be posted at an alternative conspicuous location, such as a
25 guard gate or similar impediment.

26 [REDACTED]
27 **SECTION 5.** 38-38-802 (2), Colorado Revised Statutes, is

1 amended BY THE ADDITION OF THE FOLLOWING NEW
2 PARAGRAPHS to read:

3 **38-38-802. Notice of the opportunity for foreclosure**
4 **deferment.** (2) The notice shall contain:

5 (d) A TELEPHONE NUMBER FOR THE HOLDER AND, IF APPLICABLE,
6 A TELEPHONE NUMBER FOR THE ATTORNEY FOR THE HOLDER WHO FILED
7 THE NOTICE OF ELECTION AND DEMAND;

8 (e) THE PUBLIC TRUSTEE FORECLOSURE NUMBER.

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

12 **38-38-803. Procedures for foreclosure deferment - notification**
13 **- process.** (5.5) THE FORECLOSURE COUNSELOR SHALL NOTIFY THE
14 HOLDER OR THE ATTORNEY FOR THE HOLDER IF AN ELIGIBLE BORROWER
15 WHO HAS QUALIFIED FOR A FORECLOSURE DEFERMENT OPTS NOT TO TAKE
16 PART IN THE FORECLOSURE DEFERMENT PROCESS.

17 (6) Notwithstanding any other provision of law, if the public
18 trustee receives certification from the foreclosure counselor that the
19 eligible borrower qualifies for a foreclosure deferment, the public trustee
20 shall ~~immediately~~ cancel any remaining publications of the combined
21 notice, shall not mail the notice required by section 38-38-103 (1) (a) (II),
22 and shall continue the sale of the property in accordance with section
23 38-38-109 (1) (a). The sale shall be continued from week to week until
24 receipt of certification pursuant to section 38-38-805 (4) that the
25 deferment has been terminated or, if no certification is received, for
26 ninety calendar days or until the next scheduled sale date after the end of
27 the ninety-day period. When the deferment has been terminated or has

1 ended, the public trustee shall collect a fee of seventy-five dollars and
2 thereafter shall begin publication of the combined notice as required in
3 section 38-38-103 (5) (a), as to the deferred sale, and send the notice
4 required by section 38-38-103 (1) (a), as soon as possible and no more
5 than twenty calendar days after the completion of the deferment.

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

8 **38-38-804. Foreclosure deferment assessment standards -**
9 **ineligible borrowers.** (3) An eligible borrower shall not qualify for a
10 foreclosure deferment if:

11 (f) THE ELIGIBLE BORROWER HAS TRANSFERRED TITLE TO THE
12 PROPERTY TO ANOTHER PARTY.

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

16 **38-38-807.5. Uniform standards - division of housing.** (1) THE
17 DIVISION OF HOUSING IN THE DEPARTMENT OF LOCAL AFFAIRS CREATED IN
18 SECTION 24-32-704, C.R.S., SHALL ESTABLISH AND MAY UPDATE UNIFORM
19 STANDARDS AS NECESSARY FOR THE IMPLEMENTATION OF THIS PART 8.
20 THE UNIFORM STANDARDS SHALL INCLUDE:

21 (a) STANDARD FORMS AND NOTICES AS DETERMINED NECESSARY
22 BY THE DIVISION;

23 (b) ACCEPTABLE FORMS OF PAYMENT FOR FORECLOSURE
24 DEFERMENT PAYMENTS; AND

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

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