

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. 10-0600.01 Duane Gall

HOUSE BILL 10-1133

HOUSE SPONSORSHIP

Massey,

SENATE SPONSORSHIP

Tochtrop,

House Committees
Judiciary

Senate Committees
Judiciary

A BILL FOR AN ACT

101 CONCERNING AMENDMENTS TO THE "COLORADO FORECLOSURE
102 PROTECTION ACT".

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 repeals subpart 3 of the "Colorado Foreclosure Protection Act", enacted in 2006, and the corresponding definition of an "equity purchaser". It retains subpart 2, regulating foreclosure consultants.

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 23, 2010

HOUSE
Am ended 3rd Reading
February 23, 2010

HOUSE
Am ended 2nd Reading
February 22, 2010

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

2 **SECTION 1.** 6-1-1103 (2)(a) and (7), Colorado Revised Statutes,
3 are amended, and the said 6-1-1103 (2) is further amended BY THE
4 ADDITION OF A NEW PARAGRAPH, to read:

5 **6-1-1103. Definitions.** As used in this part 11, unless the context
6 otherwise requires:

7 (2) "Equity purchaser" means a person, OTHER THAN A PERSON
8 WHO ACQUIRES A PROPERTY FOR THE PURPOSE OF USING SUCH PROPERTY
9 AS HIS OR HER PERSONAL RESIDENCE, ~~who in the course of the person's~~
10 ~~business, vocation, or occupation,~~ acquires title to a residence in
11 foreclosure; except that the term does not include a person who acquires
12 such title:

13 ~~(a) For the purpose of using such property as his or her personal~~
14 ~~residence for at least one year;~~

15 (h) AS A RESULT OF A SHORT SALE TRANSACTION IN WHICH A
16 SHORT SALE ADDENDUM FORM, AS PROMULGATED BY THE COLORADO
17 REAL ESTATE COMMISSION, IS PART OF THE CONTRACT USED TO ACQUIRE
18 A RESIDENCE IN FORECLOSURE AND SUCH TRANSACTION COMPLIES WITH
19 SECTION 6-1-1121.

20 (7) "Home owner" means the owner of a residence in foreclosure
21 DWELLING WHO OCCUPIES IT AS HIS OR HER PRINCIPAL PLACE OF
22 RESIDENCE, including a vendee under a contract for deed to real property,
23 as that term is defined in section 38-35-126 (1) (b), C.R.S.

24 **SECTION 2.** The introductory portion to 6-1-1103 (4) (a) and
25 6-1-1103 (8), Colorado Revised Statutes, are amended, and the said
26 6-1-1103 is further amended BY THE ADDITION OF A NEW
27 SUBSECTION, to read:

1 **6-1-1103. Definitions.** As used in this part 11, unless the context
2 otherwise requires:

3 (4) (a) "Foreclosure consultant" means a person who does not,
4 directly or through an associate, take or acquire any interest in or title to
5 ~~the residence in foreclosure~~ A HOMEOWNER'S PROPERTY and who, in the
6 course of such person's business, vocation, or occupation, makes a
7 solicitation, representation, or offer to a home owner to perform, in
8 exchange for compensation from the home owner or from the proceeds
9 of any loan or advance of funds, a service that the person represents will
10 do any of the following:

11 (8) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
12 THIS SUBSECTION (8), "residence in foreclosure" means a residence or
13 dwelling, as defined in sections 5-1-201 and 5-1-301, C.R.S., that is
14 occupied as the home owner's principal place of residence and that is
15 encumbered by a residential mortgage loan that is at least thirty days
16 delinquent or in default.

17 (b) WITH RESPECT TO SUBPART 3 OF THIS PART 11, "RESIDENCE IN
18 FORECLOSURE" MEANS A RESIDENCE OR DWELLING, AS DEFINED IN
19 SECTIONS 5-1-201 AND 5-1-301, C.R.S., THAT IS OCCUPIED AS THE HOME
20 OWNER'S PRINCIPAL PLACE OF RESIDENCE, IS ENCUMBERED BY A
21 RESIDENTIAL MORTGAGE LOAN, AND AGAINST WHICH A FORECLOSURE
22 ACTION HAS BEEN COMMENCED OR AS TO WHICH AN EQUITY PURCHASER
23 OTHERWISE HAS ACTUAL OR CONSTRUCTIVE KNOWLEDGE THAT THE LOAN
24 IS AT LEAST THIRTY DAYS DELINQUENT OR IN DEFAULT.

25 (9) "SHORT SALE" OR "SHORT SALE TRANSACTION" MEANS A
26 TRANSACTION IN WHICH THE RESIDENCE IN FORECLOSURE IS SOLD WHEN:

27 (a) A HOLDER OF EVIDENCE OF DEBT AGREES TO RELEASE ITS LIEN

1 FOR AN AMOUNT THAT IS LESS THAN THE OUTSTANDING AMOUNT DUE AND
2 OWING UNDER SUCH EVIDENCE OF DEBT; AND

3 (b) THE LIEN DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION
4 (9) IS RECORDED IN THE REAL PROPERTY RECORDS OF THE COUNTY WHERE
5 THE RESIDENCE IN FORECLOSURE IS LOCATED.

6 **SECTION 3.** 6-1-1104 (4), Colorado Revised Statutes, is
7 amended to read:

8 **6-1-1104. Foreclosure consulting contract.** (4) A foreclosure
9 consulting contract shall be dated and personally signed, with each page
10 being initialed, by each home owner of the residence in foreclosure and
11 the foreclosure consultant and shall be acknowledged by a notary public
12 in the presence of the home owner at the time the contract is signed by the
13 home owner.

14 **SECTION 4.** 6-1-1111, Colorado Revised Statutes, is amended
15 to read:

16 **6-1-1111. Written contract required.** Every contract shall be
17 written in at least ~~twelve-point, bold-faced~~ NINE-POINT, LEGIBLE type and
18 fully completed, signed, and dated by the home owner and equity
19 purchaser prior to the execution of any instrument quit-claiming,
20 assigning, transferring, conveying, or encumbering an interest in the
21 residence in foreclosure.

22 **SECTION 5.** The introductory portion to 6-1-1112 (1) (j),
23 Colorado Revised Statutes, is amended to read:

24 **6-1-1112. Written contract - contents - notice.** (1) Every
25 contract shall contain the entire agreement of the parties and shall include
26 the following terms:

27 (j) The following notice, in at least ~~fourteen-point~~ NINE-POINT

1 bold-faced type, and completed with the name of the equity purchaser,
2 immediately above the statement required by section 6-1-1114:

3 SECTION 6. The introductory portions to 6-1-1114 (2) and (2)
4 (c), Colorado Revised Statutes, are amended to read:

5 6-1-1114. Notice of cancellation. (2) The contract shall be
6 accompanied by duplicate completed forms, captioned "notice of
7 cancellation" in at least ~~twelve-point~~ NINE-POINT bold-faced type if the
8 contract is printed or in capital letters if the contract is typed, followed by
9 a space in which the equity purchaser shall enter the date on which the
10 home owner executed the contract. Such form shall:

11 (c) Contain the following statement, in at least ~~ten-point~~
12 NINE-POINT type if the contract is printed or in capital letters if the
13 contract is typed:

14 SECTION 7. 6-1-1120, Colorado Revised Statutes, is amended
15 to read:

16 6-1-1120. Language. (1) Any contract, rental agreement, lease,
17 option or right to repurchase, and any notice, conveyance, lien,
18 encumbrance, consent, or other document or instrument signed by a home
19 owner, shall be written in English; ~~and shall be accompanied by a written~~
20 ~~translation from English into any other language principally spoken by the~~
21 ~~home owner, certified by the person making the translation as a true and~~
22 ~~correct translation of the English version. The translated version shall be~~
23 ~~presumed to have equal status and credibility as the English version.~~
24 EXCEPT THAT, IF THE EQUITY PURCHASER HAS ACTUAL OR CONSTRUCTIVE
25 KNOWLEDGE THAT THE HOME OWNER'S PRINCIPAL LANGUAGE IS OTHER
26 THAN ENGLISH, THE HOME OWNER SHALL BE PROVIDED WITH A NOTICE,
27 WRITTEN IN THE HOME OWNER'S PRINCIPAL LANGUAGE, SUBSTANTIALLY

1 AS FOLLOWS:

2 THIS TRANSACTION INVOLVES IMPORTANT AND COMPLEX
3 LEGAL CONSEQUENCES, INCLUDING YOUR RIGHT TO
4 CANCEL THIS TRANSACTION WITHIN THREE BUSINESS
5 DAYS FOLLOWING THE DATE YOU SIGN THIS CONTRACT.
6 YOU SHOULD CONSULT WITH AN ATTORNEY OR SEEK
7 ASSISTANCE FROM A HOUSING COUNSELOR BY CALLING
8 THE COLORADO FORECLOSURE HOTLINE AT
9 _____ [CURRENT, CORRECT TELEPHONE
10 NUMBER].

11 (2) IF A NOTICE IN THE HOME OWNER'S PRINCIPAL LANGUAGE IS
12 REQUIRED TO BE PROVIDED UNDER SUBSECTION (1) OF THIS SECTION, THE
13 NOTICE SHALL BE GIVEN TO THE HOME OWNER AS A SEPARATE DOCUMENT
14 ACCOMPANYING THE WRITTEN CONTRACT REQUIRED BY SECTION 6-1-1111.

15 **SECTION 8.** Part 11 of article 1 of title 6, Colorado Revised
16 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
17 read:

18 **6-1-1121. Short sales - subsequent purchaser - definition.**

19 (1) WITH RESPECT TO ANY SHORT SALE TRANSACTION IN WHICH AN
20 EQUITY PURCHASER INTENDS TO RESELL THE RESIDENCE IN FORECLOSURE
21 TO A SUBSEQUENT PURCHASER, THE EQUITY PURCHASER SHALL:

22 (a) PROVIDE FULL DISCLOSURE TO THE HOME OWNER AND TO THE
23 HOLDERS OF THE EVIDENCE OF DEBT ON THE RESIDENCE IN FORECLOSURE,
24 OR SUCH HOLDERS' REPRESENTATIVES, OF THE TERMS OF THE AGREEMENT
25 BETWEEN THE EQUITY PURCHASER AND ANY SUBSEQUENT PURCHASER,
26 INCLUDING BUT NOT LIMITED TO THE PURCHASE PRICE TO BE PAID TO THE
27 SUBSEQUENT PURCHASER FOR THE RESIDENCE IN FORECLOSURE, WHICH

1 DISCLOSURE SHALL BE MADE WITHIN ONE BUSINESS DAY OF IDENTIFYING
2 ANY SUCH SUBSEQUENT PURCHASER AND IN NO EVENT LATER THAN
3 CLOSING ON THE SHORT SALE TRANSACTION;

4 (b) PROVIDE FULL DISCLOSURE TO ANY SUBSEQUENT PURCHASER
5 AND TO ANY SUBSEQUENT PURCHASER'S LENDER, OR SUCH LENDER'S
6 REPRESENTATIVE, AT THE TIME OF CONTRACT WITH THE EQUITY
7 PURCHASER, OF THE TERMS OF THE AGREEMENT BETWEEN THE EQUITY
8 PURCHASER AND THE HOME OWNER, INCLUDING BUT NOT LIMITED TO THE
9 PURCHASE PRICE PAID BY THE EQUITY PURCHASER FOR THE RESIDENCE IN
10 FORECLOSURE;

11 (c) COMPLY WITH ALL APPLICABLE RULES ADOPTED BY THE
12 COLORADO REAL ESTATE COMMISSION WITH REGARD TO SHORT SALES;
13 AND

14 (d) COMPLY WITH SECTION 38-35-125, C.R.S.

15 (2) AS USED IN THIS SECTION, A "SUBSEQUENT PURCHASER" MEANS
16 ANY PERSON WHO ENTERS INTO A CONTRACT WITH AN EQUITY PURCHASER
17 PRIOR TO THE DISBURSEMENT OF THE SHORT SALE TRANSACTION TO
18 ACQUIRE THE RESIDENCE IN FORECLOSURE AND WHO ACQUIRES THE
19 RESIDENCE IN FORECLOSURE WITHIN FOURTEEN DAYS AFTER THE
20 DISBURSEMENT OF THE SHORT SALE TRANSACTION.

21 **SECTION 9. Act subject to petition - specified effective date.**

22 This act shall take effect January 1, 2011; except that, if a referendum
23 petition is filed pursuant to section 1 (3) of article V of the state
24 constitution against this act or an item, section, or part of this act within
25 the ninety-day period after final adjournment of the general assembly,
26 then the act, item, section, or part shall not take effect unless approved by
27 the people at the general election to be held in November 2010 and shall

- 1 take effect on January 1, 2011, or on the date of the official declaration
- 2 of the vote thereon by the governor, whichever is later.