A BILL FOR AN ACT

CONCERNING THE ESTABLISHMENT OF A FUND TO FINANCE FORECLOSURE PREVENTION ACTIVITIES ADMINISTERED BY HOUSING COUNSELING AGENCIES APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

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.)

Sections 2 and 3 authorize the division of housing in the department of local affairs (division) to accept and expend moneys
collected by public trustees and deposited in a newly created fund, the foreclosure prevention counseling fund (fund). Section 3 specifies that the moneys in the fund shall be used to support foreclosure prevention efforts by housing counseling agencies approved by the United States department of housing and urban development, and requires such agencies to collect and maintain certain information regarding activities financed with fund moneys. **Sections 4 and 6** authorize and direct the public trustee of each county to:

- Collect, beginning July 1, 2011, a $240 surcharge upon the filing of each document notifying the public trustee that posting is required under the foreclosure deferment laws;
- Separately account for, and maintain a cumulative total of, the surcharge moneys thus collected; and
- Remit the surcharge moneys to the state treasurer, at least quarterly, to be credited to the fund.

Section 4 also allows a public trustee to collect a $10 fee for the costs of collecting the surcharge. Holders filing 15 or fewer notices of election and demand in a county are permitted to pay the surcharge on an annual basis.

**Sections 4 and 5** set forth circumstances and procedures under which a public trustee may waive the surcharge.

**Sections 4 and 6** also provide a future repeal date for the public trustees' new duties and the reversion of any unexpended and encumbered moneys to the general fund in 2016. Prior to that repeal, the division is required to report to the general assembly regarding the fund.

**Section 7** states that an officer (i.e., a public trustee or sheriff conducting a foreclosure sale) is neither responsible nor liable for determining the legal sufficiency of an affidavit filed when a holder qualifies for waiver from the surcharge.

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

2 SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

3 (a) There is a crisis of foreclosures of single-family, owner-occupied homes both nationwide and in Colorado, especially for homeowners whose original loan amount was under five hundred thousand dollars;

4 (b) The fund created in this act is intended to provide support
during this crisis for proven and established foreclosure prevention methods such as foreclosure counseling and outreach by approved agencies;

(c) Lenders have found that borrowers who engage the services of approved agencies are better prepared to resolve the issues that caused the foreclosure to begin with; and

(d) The fund created in this act will bolster the use of approved housing counseling agencies by borrowers seeking to avoid foreclosure.

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

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

(t) (I) (A) To expend moneys from the foreclosure prevention counseling fund, created in section 24-32-722, in accordance with that section; and

(B) To accept public and private gifts, grants, and donations for deposit in the foreclosure prevention counseling fund.

(II) This paragraph (t) is repealed, effective July 1, 2016.

SECTION 3. Part 7 of article 32 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-32-722. Foreclosure prevention counseling fund - creation - definition - repeal. (1) There is hereby created in the state treasury the foreclosure prevention counseling fund, also referred to in this section as the "fund".

(2) The fund consists of:
(a) **Moneys Collected by Public Trustees and Transmitted**

to the State Treasurer pursuant to Section 38-37-104 (1) (b) (1.5),

C.R.S.; and

(b) **Gifts, Grants, and Donations from Public and Private**

Sources, accepted by the Division for deposit in the fund

pursuant to Section 24-32-705.

(3) (a) **The Moneys in the Fund are Continuously**

appropriated to the Division, which shall expend moneys from the

fund, as approved by the Board, for the following purposes:

(I) **To Make Grants to Approved Housing Counseling**

Agencies;

(II) **To Support, through Approved Housing Counseling**

Agencies, Evaluations conducted by such Agencies under the

Foreclosure Deferment Program created by Part 8 of Article 38

of Title 38, C.R.S.; and

(III) **To Support Other Foreclosure Prevention Activities**

Administered by Approved Housing Counseling Agencies,

including:

(A) **The Operation of the Foreclosure Deferment Program**

created by Part 8 of Article 38 of Title 38, C.R.S.; and

(B) **Community Outreach.**

(b) (I) **In Making Grants and Other Expenditures from the**

Fund, the Division shall, to the greatest extent possible,

allocate money in Colorado according to need, as indicated by

the Foreclosure Rate in each County and the amount collected

and reported by the Public Trustee of each County in accordance

with Section 38-37-104, C.R.S. Between five and ten percent of
THE MONEYS IN THE FUND MUST BE ALLOCATED FOR COMMUNITY OUTREACH.

(II) AN APPROVED AGENCY RECEIVING MONEYS FROM THE FUND:

(A) SHALL ADHERE TO CORE OPERATING PROCEDURES AND REPORTING REQUIREMENTS AS CONTAINED IN, OR SUBSTANTIALLY SIMILAR TO, THOSE FOUND IN THE "NATIONAL INDUSTRY STANDARDS FOR HOMEOWNERSHIP EDUCATION AND COUNSELING - FORECLOSURE INTERVENTION SPECIALTY", PROMULGATED BY THE NATIONAL INDUSTRY STANDARDS FOR HOMEOWNERSHIP EDUCATION AND COUNSELING, AND SHALL COMPLY WITH THE GUIDELINES CONTAINED IN THE LATEST REVISION OF THE UNITED STATES HOUSING AND URBAN DEVELOPMENT DEPARTMENT'S DATA COLLECTION INSTRUMENT, COMMONLY REFERRED TO AS "HOUSING COUNSELING FORM HUD-9902", OR ANY SUCCESSOR INSTRUMENT; AND

(B) SHALL NOT SHOW FAVORITISM OR BIAS TOWARD ANY PERSON IN THE FORECLOSURE PROCESS OR IN HOW A FORECLOSURE IS RESOLVED.

(4) ALL MONEYS CREDITED TO THE FUND AND ALL INTEREST EARNED ON THE INVESTMENT OF MONEYS IN THE FUND SHALL REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED OR CREDITED TO THE GENERAL FUND OR TO ANY OTHER FUND EXCEPT AS DIRECTED BY THE GENERAL ASSEMBLY ACTING BY BILL.

(5) (a) AS A CONDITION OF RECEIVING MONEYS FROM THE FUND, THE DIVISION SHALL CONTRACTUALLY OBLIGATE AN APPROVED HOUSING COUNSELING AGENCY TO COLLECT CLIENT-LEVEL DATA SUFFICIENT TO REPORT ANNUAL PROGRAM AND RELATED OUTCOME PERFORMANCE DATA UNDER THIS SUBSECTION (5).

(b) FOR ANY YEAR IN WHICH AN APPROVED AGENCY RECEIVES THE
MONEYS, THE APPROVED AGENCY SHALL PROVIDE TO THE DIVISION OUTCOME-BASED DATA DERIVED FROM ITS FORECLOSURE PREVENTION COUNSELING ACTIVITIES. THE DATA REQUIRED UNDER THIS PARAGRAPH (b) MUST INCLUDE THE INFORMATION PROVIDED BY THE AGENCY TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IN THE DATA COLLECTION INSTRUMENT, COMMONLY REFERRED TO AS "HOUSING COUNSELING FORM HUD-9902", OR ANY SUCCESSOR INSTRUMENT, FOR THE DEPARTMENT'S HOUSING COUNSELING PROGRAM.

(c) EACH APPROVED HOUSING COUNSELING AGENCY THAT RECEIVES MONEYS FROM THE FUND SHALL MAINTAIN A SECURE CLIENT FILE, IN EITHER ELECTRONIC OR PAPER FORMAT, FOR EACH CLIENT THAT THE AGENCY COUNSELS USING THE FUND MONEYS. IN USING THE MONEYS, AN AGENCY SHALL ADHERE TO ALL RELEVANT GUIDELINES ISSUED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AS CONTAINED IN THE LATEST ADOPTED REVISION OF THE "HUD HOUSING COUNSELING PROGRAM HANDBOOK".

(d) AN APPROVED HOUSING COUNSELING AGENCY THAT RECEIVES MONEYS FROM THE FUND SHALL MAKE ALL NONIDENTIFYING CLIENT DATA REGARDING PERSONS BENEFITTING FROM THE FUND MONEYS THAT THE AGENCY COLLECTS ACCESSIBLE TO THE DIVISION FOR PURPOSES OF DETERMINING OVERALL PROGRAM EFFECTIVENESS AND DEVELOPING RELATED OUTCOME PERFORMANCE DATA.

(e) (I) THE DIVISION MAY INSPECT, CONDUCT AN AUDIT OF, OR OTHERWISE REVIEW ALL RECORDS MAINTAINED BY APPROVED AGENCIES FOR THE CLIENT FORECLOSURE PREVENTION ACTIVITIES FUNDED IN WHOLE OR IN PART UNDER THIS SECTION.

(II) INDIVIDUAL CLIENT DATA REVIEWED OR RECEIVED BY DIVISION...
STAFF DURING ANY INSPECTION, AUDIT, OR RECORD REVIEW UNDER THIS SECTION ARE CONFIDENTIAL RECORDS AND ARE EXEMPT FROM DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.

(6) AS USED IN THIS SECTION, "APPROVED HOUSING COUNSELING AGENCY" OR "APPROVED AGENCY" MEANS AN AGENCY APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT THAT RECEIVES REFERRALS THROUGH THE COLORADO FORECLOSURE HOTLINE.

(7) (a) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2016. THE STATE TREASURER SHALL TRANSFER ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AS OF JUNE 30, 2016, TO THE GENERAL FUND.

(b) DURING THE SECOND REGULAR SESSION OF THE SEVENTIETH GENERAL ASSEMBLY, BUT BEFORE MARCH 1, 2016, THE DIVISION SHALL REPORT TO THE HOUSE LOCAL GOVERNMENT COMMITTEE AND THE SENATE LOCAL GOVERNMENT AND ENERGY COMMITTEE, OR THEIR SUCCESSOR COMMITTEES, REGARDING THE FUND, INCLUDING AN ANALYSIS OF THE AMOUNTS RECEIVED PER COUNTY, HOW THE DIVISION EXPENDED MONEYS FROM THE FUND TO SUPPORT APPROVED AGENCIES ENGAGING IN FORECLOSURE PREVENTION EFFORTS, AND THE RESULTS OF THOSE EFFORTS.

SECTION 4. The introductory portions to 38-37-104 (1) and (1) (b), Colorado Revised Statutes, are amended, and the said 38-37-104 (1) (b) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

38-37-104. Duties of public trustees - fees, expenses, and
salaries - reports - repeal. (1) The public trustees of each county of this state shall perform the functions and exercise the powers conferred upon them by statute. They shall be entitled to receive as fees for such services the following sums and no other fees or perquisites: whatever:

(b) For performing a foreclosure under article 38 of this title, the following sums, which shall be cumulative:

(I.5) (A) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I.5), FOR ACCEPTING THE FILING OF THE DOCUMENT DESCRIBED UNDER SECTION 38-38-101 (1) (h), A FORECLOSURE COUNSELING SURCHARGE OF TWO HUNDRED FORTY DOLLARS FOR THE PURPOSES SET FORTH IN SECTION 24-32-722, C.R.S.

(B) THE PUBLIC TRUSTEE SHALL WAIVE THE SURCHARGE IF THE HOLDER OR ATTORNEY FOR THE HOLDER SUBMITS AN AFFIDAVIT, IN ACCORDANCE WITH SECTION 38-38-101 (1) (i), ATTESTING EITHER THAT: THE HOLDER HAS FILED FEWER THAN TEN NOTICES OF ELECTION AND DEMAND WITHIN THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE CURRENT NOTICE OF ELECTION AND DEMAND FILING DATE IN THE COUNTY IN WHICH THE CURRENT FILING IS BEING MADE; OR THE HOLDER HAS PAID THE SURCHARGE FOR A PREVIOUSLY FILED NOTICE OF ELECTION AND DEMAND ON THE SAME LIEN, WHICH IS HELD BY THE SAME HOLDER ON WHICH THE CURRENT FILING IS BEING MADE, AND SUCH PREVIOUS NOTICE OF ELECTION AND DEMAND WAS FILED NO MORE THAN THIRTY-SIX MONTHS BEFORE THE CURRENT NOTICE OF ELECTION AND DEMAND FILING DATE.

(C) A PUBLIC TRUSTEE SHALL COLLECT THE SURCHARGE OR AFFIDAVIT REQUIRED UNDER THIS SUBPARAGRAPH (I.5) AT THE TIME THAT THE HOLDER OR ATTORNEY FOR THE HOLDER FILES THE DOCUMENTS REQUIRED BY PARAGRAPHS (a) TO (e) OF SUBSECTION (1) OF SECTION
(D) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (E) OF THIS
SUBPARAGRAPH (I.5), THE PUBLIC TRUSTEE SHALL SEPARATELY ACCOUNT
FOR MONEYS COLLECTED UNDER SUB-SUBPARAGRAPH (A) OF THIS
SUBPARAGRAPH (I.5) AND, AT LEAST QUARTERLY, SHALL TRANSMIT ALL
SUCH MONEYS TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO
THE FORECLOSURE PREVENTION COUNSELING FUND CREATED IN SECTION
24-32-722, C.R.S.

(E) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
CONTRARY, A PUBLIC TRUSTEE MAY TRANSMIT THE SURCHARGE IMPOSED
UNDER SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I.5) TO THE
STATE TREASURER LESS FREQUENTLY THAN QUARTERLY, BUT AT LEAST
ANNUALLY, IF THE TOTAL OF UNTRANSMITTED SURCHARGES COLLECTED
UNDER SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I.5) DOES NOT
EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS. IF THE TOTAL OF ALL
SURCHARGES COLLECTED UNDER SUB-SUBPARAGRAPH (A) OF THIS
SUBPARAGRAPH (I.5) EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS IN
ANY QUARTER, THE PUBLIC TRUSTEE SHALL TRANSMIT ALL MONEYS
COLLECTED FOR THE SURCHARGE TO DATE WITHIN THIRTY DAYS AFTER
THE END OF THE QUARTER DURING WHICH THE TOTAL EXCEEDED TWO
THOUSAND FIVE HUNDRED DOLLARS.

(F) A PUBLIC TRUSTEE MAY COLLECT AND RETAIN A FEE OF TEN
DOLLARS FOR THE COSTS OF COLLECTING AND PROCESSING THE
SURCHARGE UNDER SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH
(I.5).

(G) THIS SUBPARAGRAPH (I.5) IS REPEALED, EFFECTIVE JULY 1,
2016. ANY MONEYS COLLECTED UNDER THIS SUBPARAGRAPH (I.5) AND
HELD BY THE PUBLIC TRUSTEE AS OF JUNE 30, 2016, SHALL BE
TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO
THE FORECLOSURE PREVENTION COUNSELING FUND CREATED IN SECTION
24-32-722, C.R.S.

SECTION 5. 38-38-101 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

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

(i) (I) (A) IF THE HOLDER QUALIFIES FOR AN EXEMPTION FROM THE
SURCHARGE IMPOSED PURSUANT TO SECTION 38-37-104 (1) (b) (I.5), THE
HOLDER OR THE ATTORNEY FOR THE HOLDER SHALL, AT THE TIME THE
DOCUMENTS REQUIRED BY PARAGRAPHS (a) TO (e) OF THIS SUBSECTION (1)
ARE FILED WITH THE PUBLIC TRUSTEE, FILE AN AFFIDAVIT, SIGNED BY THE
HOLDER AND PROPERLY ACKNOWLEDGED BY A NOTARY PUBLIC, STATING
THAT THE HOLDER SO QUALIFIES.

(B) IF AN AFFIDAVIT IS NOT FILED UNDER SUB-SUBPARAGRAPH (A)
OF THIS SUBPARAGRAPH (I), AND THE HOLDER DETERMINES AT A LATER
DATE THAT THE HOLDER MEETS A CRITERION FOR WAIVER LISTED UNDER
SECTION 38-37-104 (1) (b)(I.5)(B), THE PAYMENT MADE IN ERROR ON THE
SURCHARGE IMPOSED UNDER SECTION 38-37-104 (1) (b) (I.5) (A) SHALL
NOT BE REFUNDED.

(C) IF AN AFFIDAVIT REQUIRED BY SUB-SUBPARAGRAPH (A) OF
THIS SUBPARAGRAPH (I) IS FILED AND THE HOLDER DETERMINES AT A

(II) THIS PARAGRAPH (i) IS REPEALED, EFFECTIVE JULY 1, 2016.

SECTION 6. 38-38-101 (10), Colorado Revised Statutes, is amended to read:

38-38-101. Holder of evidence of debt may elect to foreclose - repeal. (10) Deposit - foreclosure counseling surcharge. (a) The public trustee may require a deposit of up to six hundred fifty dollars or the amount of the fee permitted pursuant to section 38-37-104 (1) (b) (I),
whichever is greater, at the time the notice of election and demand is filed, to be applied against the fees and costs of the public trustee. The public trustee may allow the attorney for the holder of the evidence of debt to establish one or more accounts with the public trustee, which the public trustee may use to pay the fees and costs of the public trustee in any foreclosure filed by the holder or the attorney for the holder, or through which the public trustee may transmit refunds or cures, excess proceeds, or redemption proceeds.


(II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1, 2015.

SECTION 7. 38-38-702 (1) (c) and (1) (d), Colorado Revised Statutes, are amended, and the said 38-38-702 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

38-38-702. Limitation of officer's liability. (1) An officer shall not have responsibility or liability for determining:

(c) The accuracy or completeness of a mailing list submitted to the officer; or

(d) The legal sufficiency of the description of the property contained in the notice of election and demand; OR

(e) THE LEGAL SUFFICIENCY OF AN AFFIDAVIT FILED UNDER SECTION 38-38-101 (1) (i).

SECTION 8. Applicability. This act shall apply to foreclosures
initiated on or after the effective date of this act.

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