

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 11-0501.04 Kate Meyer

HOUSE BILL 11-1136

HOUSE SPONSORSHIP

Williams A., Ferrandino, Fields, Kerr A.

SENATE SPONSORSHIP

(None),

House Committees

Local Government

Economic and Business Development

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ESTABLISHMENT OF A FUND TO FINANCE**
102 **FORECLOSURE PREVENTION ACTIVITIES ADMINISTERED BY**
103 **HOUSING COUNSELING AGENCIES APPROVED BY THE UNITED**
104 **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

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.*

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 unencumbered 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.

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

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

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

8 (b) The fund created in this act is intended to provide support

1 during this crisis for proven and established foreclosure prevention
2 methods such as foreclosure counseling and outreach by approved
3 agencies;

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

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

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

11 **24-32-705. Functions of division - repeal.** (1) The division has
12 the following functions:

13 (t) (I) (A) TO EXPEND MONEYS FROM THE FORECLOSURE
14 PREVENTION COUNSELING FUND, CREATED IN SECTION 24-32-722, IN
15 ACCORDANCE WITH THAT SECTION; AND

16 (B) TO ACCEPT PUBLIC AND PRIVATE GIFTS, GRANTS, AND
17 DONATIONS FOR DEPOSIT IN THE FORECLOSURE PREVENTION COUNSELING
18 FUND.

19 (II) THIS PARAGRAPH (t) IS REPEALED, EFFECTIVE JULY 1, 2014.

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

23 **24-32-722. Foreclosure prevention counseling fund - creation**
24 **- definition - repeal.** (1) THERE IS HEREBY CREATED IN THE STATE
25 TREASURY THE FORECLOSURE PREVENTION COUNSELING FUND, ALSO
26 REFERRED TO IN THIS SECTION AS THE "FUND".

27 (2) THE FUND CONSISTS OF:

1 (a) MONEYS COLLECTED BY PUBLIC TRUSTEES AND TRANSMITTED
2 TO THE STATE TREASURER PURSUANT TO SECTION 38-37-104 (1) (b) (I.5),
3 C.R.S.; AND

4 (b) GIFTS, GRANTS, AND DONATIONS FROM PUBLIC AND PRIVATE
5 SOURCES, ACCEPTED BY THE DIVISION FOR DEPOSIT IN THE FUND
6 PURSUANT TO SECTION 24-32-705.

7 (3) (a) THE MONEYS IN THE FUND ARE CONTINUOUSLY
8 APPROPRIATED TO THE DIVISION, WHICH SHALL EXPEND MONEYS FROM THE
9 FUND, AS APPROVED BY THE BOARD, FOR THE FOLLOWING PURPOSES:

10 (I) TO MAKE GRANTS TO APPROVED HOUSING COUNSELING
11 AGENCIES;

12 (II) TO SUPPORT, THROUGH APPROVED HOUSING COUNSELING
13 AGENCIES, EVALUATIONS CONDUCTED BY SUCH AGENCIES UNDER THE
14 FORECLOSURE DEFERMENT PROGRAM CREATED BY PART 8 OF ARTICLE 38
15 OF TITLE 38, C.R.S.; AND

16 (III) TO SUPPORT OTHER FORECLOSURE PREVENTION ACTIVITIES
17 ADMINISTERED BY APPROVED HOUSING COUNSELING AGENCIES,
18 INCLUDING:

19 (A) THE OPERATION OF THE FORECLOSURE DEFERMENT PROGRAM
20 CREATED BY PART 8 OF ARTICLE 38 OF TITLE 38, C.R.S.; AND

21 (B) COMMUNITY OUTREACH.

22 (b) (I) IN MAKING GRANTS AND OTHER EXPENDITURES FROM THE
23 FUND, THE DIVISION SHALL, TO THE GREATEST EXTENT POSSIBLE,
24 ALLOCATE MONEY IN COLORADO ACCORDING TO NEED, AS INDICATED BY
25 THE FORECLOSURE RATE IN EACH COUNTY AND THE AMOUNT COLLECTED
26 AND REPORTED BY THE PUBLIC TRUSTEE OF EACH COUNTY IN ACCORDANCE
27 WITH SECTION 38-37-104, C.R.S. BETWEEN FIVE AND TEN PERCENT OF

1 THE MONEYS IN THE FUND MUST BE ALLOCATED FOR COMMUNITY
2 OUTREACH.

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

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

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

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

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

27 (b) FOR ANY YEAR IN WHICH AN APPROVED AGENCY RECEIVES THE

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

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

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

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

27 (II) INDIVIDUAL CLIENT DATA REVIEWED OR RECEIVED BY DIVISION

1 STAFF DURING ANY INSPECTION, AUDIT, OR RECORD REVIEW UNDER THIS
2 SECTION ARE CONFIDENTIAL RECORDS AND ARE EXEMPT FROM DISCLOSURE
3 UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF
4 TITLE 24, C.R.S.

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

10 (7) (a) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2014. THE
11 STATE TREASURER SHALL TRANSFER ANY UNEXPENDED AND
12 UNENCUMBERED MONEYS REMAINING IN THE FUND AS OF JUNE 30, 2014,
13 TO THE GENERAL FUND.

14 (b) DURING THE SECOND REGULAR SESSION OF THE SEVENTIETH
15 GENERAL ASSEMBLY, BUT BEFORE MARCH 1, 2014, THE DIVISION SHALL
16 REPORT TO THE HOUSE LOCAL GOVERNMENT COMMITTEE AND THE SENATE
17 LOCAL GOVERNMENT AND ENERGY COMMITTEE, OR THEIR SUCCESSOR
18 COMMITTEES, REGARDING THE FUND, INCLUDING AN ANALYSIS OF THE
19 AMOUNTS RECEIVED PER COUNTY, HOW THE DIVISION EXPENDED MONEYS
20 FROM THE FUND TO SUPPORT APPROVED AGENCIES ENGAGING IN
21 FORECLOSURE PREVENTION EFFORTS, AND THE RESULTS OF THOSE
22 EFFORTS.

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

27 **38-37-104. Duties of public trustees - fees, expenses, and**

1 **salaries - reports - repeal.** (1) The public trustees of each county of this
2 state shall perform the functions and exercise the powers conferred upon
3 them by statute. They ~~shall be~~ ARE entitled to receive as fees for such
4 services the following sums and no other fees or perquisites: ~~whatever:~~

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

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

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

24 (C) A PUBLIC TRUSTEE SHALL COLLECT THE SURCHARGE OR
25 AFFIDAVIT REQUIRED UNDER THIS SUBPARAGRAPH (I.5) AT THE TIME THAT
26 THE HOLDER OR ATTORNEY FOR THE HOLDER FILES THE DOCUMENTS
27 REQUIRED BY PARAGRAPHS (a) TO (e) OF SUBSECTION (1) OF SECTION

1 38-38-101.

2 (D) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (E) OF THIS
3 SUBPARAGRAPH (I.5), THE PUBLIC TRUSTEE SHALL SEPARATELY ACCOUNT
4 FOR MONEYS COLLECTED UNDER SUB-SUBPARAGRAPH (A) OF THIS
5 SUBPARAGRAPH (I.5) AND, AT LEAST QUARTERLY, SHALL TRANSMIT ALL
6 SUCH MONEYS TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO
7 THE FORECLOSURE PREVENTION COUNSELING FUND CREATED IN SECTION
8 24-32-722, C.R.S.

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

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

26 (G) THIS SUBPARAGRAPH (I.5) IS REPEALED, EFFECTIVE JULY 1,
27 2014. ANY MONEYS COLLECTED UNDER THIS SUBPARAGRAPH (I.5) AND

1 HELD BY THE PUBLIC TRUSTEE AS OF JUNE 30, 2014, SHALL BE
2 TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO
3 THE FORECLOSURE PREVENTION COUNSELING FUND CREATED IN SECTION
4 24-32-722, C.R.S.

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

7 **38-38-101. Holder of evidence of debt may elect to foreclose -**
8 **repeal. (1) Documents required.** Whenever a holder of an evidence of
9 debt declares a violation of a covenant of a deed of trust and elects to
10 publish all or a portion of the property therein described for sale, the
11 holder or the attorney for the holder shall file the following with the
12 public trustee of the county where the property is located:

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

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

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

1 LATER DATE THAT THE HOLDER IS NOT ELIGIBLE FOR WAIVER FROM THE
2 SURCHARGE UNDER SECTION 38-37-104 (1) (b) (I.5) (B), THE HOLDER OR
3 THE ATTORNEY FOR THE HOLDER MAY WITHDRAW THE ORIGINAL
4 AFFIDAVIT BY FILING WITH THE PUBLIC TRUSTEE AN AFFIDAVIT, SIGNED BY
5 THE HOLDER, AFFIRMING BOTH THAT THE AFFIDAVIT FILED UNDER
6 SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I) WAS SUBMITTED IN
7 ERROR AND THAT THE SURCHARGE HAS SUBSEQUENTLY BEEN PAID. TO BE
8 EFFECTIVE, AND THEREBY NOTIFY THE PUBLIC TRUSTEE THAT THE
9 PROPERTY IS NOT ELIGIBLE FOR THE SURCHARGE WAIVER, THE AFFIDAVIT
10 MUST BE FILED WITH THE PUBLIC TRUSTEE NO LATER THAN FIFTEEN
11 CALENDAR DAYS AFTER THE DATE OF THE DETERMINATION OF THE PUBLIC
12 TRUSTEE THAT THE FILING IS COMPLETE IN ACCORDANCE WITH SECTION
13 38-38-102 (1). WHEN THE AFFIDAVIT UNDER THIS SUB-SUBPARAGRAPH
14 (C) IS FILED, THE HOLDER ALSO SHALL REQUEST THAT THE PUBLIC TRUSTEE
15 RERECORD THE NOTICE OF ELECTION AND DEMAND. THEREAFTER, ALL
16 DEADLINES FOR THE FORECLOSURE ACTION ARE DETERMINED ACCORDING
17 TO THE DATE OF THE RERECORDING OF THE NOTICE OF ELECTION AND
18 DEMAND AS THOUGH THE FORECLOSURE WAS COMMENCED ON THAT DATE,
19 AND THE PUBLIC TRUSTEE SHALL COLLECT A FEE OF SEVENTY-FIVE
20 DOLLARS FROM THE HOLDER.

21 (II) THIS PARAGRAPH (i) IS REPEALED, EFFECTIVE JULY 1, 2014.

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

24 **38-38-101. Holder of evidence of debt may elect to foreclose -**
25 **repeal.** (10) **Deposit - foreclosure counseling surcharge.** (a) The
26 public trustee may require a deposit of up to six hundred fifty dollars or
27 the amount of the fee permitted pursuant to section 38-37-104 (1) (b) (I),

1 whichever is greater, at the time the notice of election and demand is
2 filed, to be applied against the fees and costs of the public trustee. The
3 public trustee may allow the attorney for the holder of the evidence of
4 debt to establish one or more accounts with the public trustee, which the
5 public trustee may use to pay the fees and costs of the public trustee in
6 any foreclosure filed by the holder or the attorney for the holder, or
7 through which the public trustee may transmit refunds or cures, excess
8 proceeds, or redemption proceeds.

9 (b) (I) BEGINNING JULY 1, 2011, THE PUBLIC TRUSTEE SHALL
10 REQUIRE THE PAYMENT OF A FORECLOSURE COUNSELING SURCHARGE AND
11 FEE, WHEN APPLICABLE, PURSUANT TO SECTION 38-37-104 (1) (b) (I.5)
12 UPON THE FILING OF THE NOTICE OF ELECTION AND DEMAND UNDER THIS
13 SECTION. THE SURCHARGE AND FEE QUALIFY AS FEES OR COSTS UNDER
14 SECTION 38-38-107.

15 (II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1, 2013.

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

19 **38-38-702. Limitation of officer's liability.** (1) An officer shall
20 not have responsibility or liability for determining:

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

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

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

27 **SECTION 8.** 38-38-806, Colorado Revised Statutes, is amended

1 to read:

2 **38-38-806. Foreclosure counselor immunity.** A foreclosure
3 counselor acting in good faith shall IS not be liable to any person for
4 approving or failing to approve a borrower for a foreclosure deferment or
5 for certifying or declining to certify an early termination, NOR DOES ANY
6 OF THE FOREGOING AFFECT THE VALIDITY OF ANY FORECLOSURE
7 PROCEEDING OR FORECLOSURE SALE.

8 **SECTION 9. Applicability.** This act shall apply to foreclosures
9 initiated on or after the effective date of this act.

10 **SECTION 10. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.