

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0570.01 Duane Gall x4335

SENATE BILL 12-071

SENATE SPONSORSHIP

Giron,

HOUSE SPONSORSHIP

Duran,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING A REQUIREMENT TO PURSUE AVAILABLE LOAN
102 MODIFICATION REMEDIES BEFORE FORECLOSING ON
103 RESIDENTIAL REAL PROPERTY.

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 requires the holder of an evidence of debt (typically a mortgage lender), before initiating or completing the process of foreclosing on residential real property containing 4 or fewer dwelling units, to make and fully document its efforts to:

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.

- ! Contact the borrower directly;
- ! Negotiate in good faith with the borrower in an effort to effectuate a cure for default rather than move directly into the foreclosure process;
- ! Fully assess the eligibility of the borrower, the property, and the loan for any available public or private loan modification programs or other alternatives to foreclosure;
- ! Communicate with, and inform, the borrower about impending deadlines and the consequences of missing them at every major step of the foreclosure process;
- ! Carry the burden of proof in court proceedings regarding the holder's compliance with procedural as well as substantive requirements before obtaining an order authorizing sale of the property under rule 120 in the Colorado rules of civil procedure; and
- ! Abide by the terms of any offer of modification it makes, if the borrower signs and returns documents containing those terms.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 10 to article
 3 38 of title 38 as follows:

4 **PART 10**

5 **LOAN MODIFICATION PRIOR TO FORECLOSURE**

6 **38-38-1001. Definitions.** AS USED IN THIS PART 10, UNLESS THE
 7 CONTEXT OTHERWISE REQUIRES:

8 (1) "CASH FOR KEYS" MEANS AN INVESTOR PROGRAM THROUGH
 9 WHICH A HOLDER OFFERS MONETARY RELOCATION ASSISTANCE TO THE
 10 BORROWER.

11 (2) "FHA" MEANS THE FEDERAL HOUSING ADMINISTRATION.

12 (3) "FORECLOSURE ACTIVITY" MEANS ANY ACTION BY A HOLDER
 13 IN WHICH THE HOLDER ATTEMPTS TO EXERCISE THE POWER-OF-SALE
 14 CLAUSE FOUND IN A MORTGAGE NOTE OR SECURITY INSTRUMENT
 15 ASSOCIATED WITH THE PROPERTY SECURING AN OBLIGATION. THE TERM

1 INCLUDES REFERRING A LOAN TO FORECLOSURE, ISSUING A NOTICE OF
2 ELECTION AND DEMAND, PARTICIPATING IN A HEARING PURSUANT TO
3 C.R.C.P. 120, AND CONDUCTING A FORECLOSURE SALE.

4 (4) "FORECLOSURE ALTERNATIVE" MEANS ANY PROGRAM
5 DESIGNED TO AVOID FORECLOSURE, INCLUDING:

6 (a) A LOAN MODIFICATION OFFERED UNDER THE MAKING HOME
7 AFFORDABLE PROGRAM;

8 (b) A NON-MHA LOAN MODIFICATION OFFERED BY THE HOLDER;

9 (c) A REFINANCE UNDER HAMP OR OTHER NON-HAMP
10 REFINANCE PROGRAM OFFERED BY THE HOLDER; AND

11 (d) ANY FORBEARANCE, REPAYMENT PLAN, SHORT SALE, OR DEED
12 IN LIEU OF FORECLOSURE IN CONNECTION WITH ANY OF WHICH THE
13 HOLDER IS REQUIRED TO WORK WITH FHA PROGRAMS ALLOWING FOR
14 PARTIAL CLAIMS AS WELL AS MORTGAGE INSURERS IN AN ATTEMPT TO
15 CURE OR REDUCE THE DELINQUENCY OF A DEFAULTED LOAN.

16 (5) "HAMP" MEANS THE HOME AFFORDABLE MODIFICATION
17 PROGRAM ESTABLISHED BY THE MAKING HOME AFFORDABLE PROGRAM.

18 (6) "HOLDER" HAS THE SAME MEANING AS "HOLDER OF AN
19 EVIDENCE OF DEBT" AS DEFINED IN SECTION 38-38-100.3 (10).

20 (7) "HOLDER CERTIFICATION" MEANS THE CERTIFICATE AND
21 SUPPORTING DOCUMENTATION THAT A HOLDER MUST PRESENT TO THE
22 ATTORNEY REPRESENTING THE HOLDER IN CONNECTION WITH A
23 FORECLOSURE BEFORE THE ATTORNEY ISSUES A NOTICE OF ELECTION AND
24 DEMAND AND BEFORE THE ATTORNEY PROCEEDS WITH A HEARING
25 PURSUANT TO C.R.C.P. 120. EACH HOLDER CERTIFICATION ATTESTS TO
26 THE FACT THAT THE HOLDER HAS COMPLIED WITH ALL THE PROVISIONS OF
27 THIS PART 10 REQUIRED TO BE COMPLETED BEFORE PROCEEDING WITH THE

1 FORECLOSURE STEP TO WHICH THE CERTIFICATION PERTAINS.

2 (8) "MHA" MEANS THE MAKING HOME AFFORDABLE PROGRAM
3 IMPLEMENTED BY THE UNITED STATES DEPARTMENT OF THE TREASURY
4 PURSUANT TO ITS AUTHORITY UNDER THE TROUBLED ASSET RELIEF
5 PROGRAM, ESTABLISHED IN TITLE I OF THE "EMERGENCY ECONOMIC
6 STABILIZATION ACT OF 2008", PUB.L. 110-343, CODIFIED AT 12 U.S.C.
7 SEC. 5211 ET SEQ.

8 (9) "NPV" MEANS THE NET PRESENT VALUE EVALUATION OF A
9 MORTGAGE.

10 (10) "PARTIAL CLAIM" MEANS A MONETARY CONTRIBUTION,
11 WHETHER IN THE FORM OF A LOAN OR GRANT, FROM A MORTGAGE INSURER
12 OR OTHER PARTY GUARANTYING THE LOAN THAT IS USED TO CURE OR
13 REDUCE DELINQUENCY.

14 (11) "PRESALE CERTIFICATION" MEANS THE CERTIFICATE THAT A
15 HOLDER MUST PRESENT TO THE FORECLOSING ATTORNEY AND PUBLIC
16 TRUSTEE ATTESTING TO THE FACT THAT IT HAS MET ALL STATUTORY
17 REQUIREMENTS CONTAINED IN THIS PART 10 AND IS AUTHORIZED TO
18 PROCEED WITH THE SCHEDULED FORECLOSURE SALE.

19 (12) "REASONABLE EFFORTS", WITH REGARD TO MAKING
20 RIGHT-PARTY CONTACT, MEANS EFFORTS COMPLYING WITH THE MINIMUM
21 STANDARDS SET FORTH IN SECTION 38-38-1005.

22 (13) "RIGHT-PARTY CONTACT" MEANS MAKING CONTACT, EITHER
23 VIA WRITTEN OR ORAL COMMUNICATION, WITH A BORROWER OR
24 CO-BORROWER ON THE LOAN AS TO WHICH THE HOLDER IS CONSIDERING
25 OR PURSUING FORECLOSURE.

26 **38-38-1002. Scope of part - actions required - conditions**
27 **precedent to foreclosure.** (1) THIS PART 10 DOES NOT CREATE A

1 SUBSTANTIVE RIGHT TO A LOAN MODIFICATION.

2 (2) THIS PART 10 APPLIES TO ALL OWNER-OCCUPIED RESIDENTIAL
3 REAL PROPERTY CONTAINING NO MORE THAN FOUR DWELLING UNITS AND
4 THAT SECURES AN OBLIGATION AS TO WHICH A MORTGAGE NOTE AND DEED
5 OF TRUST WERE EXECUTED, AND THE DEED OF TRUST RECORDED, AFTER
6 JANUARY 1, 2001.

7 (3) A HOLDER SHALL NOT COMMENCE FORECLOSURE ACTIVITY,
8 AND IF FORECLOSURE ACTIVITY HAS COMMENCED, THE HOLDER SHALL
9 IMMEDIATELY CEASE AND DESIST FROM PURSUING ANY FURTHER
10 FORECLOSURE ACTIVITY, UNTIL:

11 (a) (I) THE HOLDER HAS MADE RIGHT-PARTY CONTACT, OR MADE
12 REASONABLE EFFORTS TO MAKE RIGHT-PARTY CONTACT AND, IF
13 RIGHT-PARTY CONTACT IS MADE AND THE PROPERTY MEETS THE CRITERIA
14 OF SUBSECTION (2) OF THIS SECTION, WORKED WITH THE BORROWER TO
15 PLACE THE BORROWER IN A FORECLOSURE ALTERNATIVE PROGRAM; OR

16 (II) ALL REVIEWS FOR FORECLOSURE ALTERNATIVES UNDER
17 GOVERNMENT PROGRAMS AND ALL PROGRAMS OFFERED BY AN INVESTOR
18 HAVE BEEN EXHAUSTED AND IT HAS BECOME OBJECTIVELY
19 DEMONSTRABLE THAT FORECLOSURE IS THE ONLY PRACTICABLE MEANS OF
20 PROTECTING THE HOLDER'S INTERESTS;

21 (b) THE HOLDER HAS NOTIFIED THE BORROWER REGARDING
22 POSSIBLE FORECLOSURE ALTERNATIVE OPTIONS AS SPECIFIED IN SECTION
23 38-38-1004;

24 (c) THE HOLDER HAS PROVIDED A CERTIFICATION TO THE
25 FORECLOSURE ATTORNEY, AS SPECIFIED IN SECTION 38-38-1007, BEFORE
26 ISSUING A NOTICE OF ELECTION AND DEMAND AND BEFORE THE HEARING
27 PURSUANT TO C.R.C.P. 120;

1 (d) THE HOLDER HAS PROVIDED A PRESALE CERTIFICATE TO THE
2 FORECLOSURE ATTORNEY IN ACCORDANCE WITH SECTION 38-38-1008;
3 AND

4 (e) THE HOLDER HAS WORKED IN GOOD FAITH WITH ALL PARTIES
5 DESIGNATED BY THE BORROWER AS AUTHORIZED THIRD PARTIES ON THE
6 LOAN. IF THE THIRD PARTY IS AN ATTORNEY REPRESENTING THE
7 BORROWER IN THE MORTGAGE MATTER, THE HOLDER SHALL TREAT THE
8 ATTORNEY AS A BORROWER AND SHALL INCLUDE THE ATTORNEY ON ALL
9 COMMUNICATIONS WITH THE BORROWER. UPON A BORROWER'S REQUEST,
10 A HOLDER SHALL COMMUNICATE ONLY WITH THE BORROWER'S ATTORNEY,
11 UNLESS OTHERWISE REQUIRED BY LAW, IN WHICH CASE THE HOLDER SHALL
12 COPY THE ATTORNEY ON ALL BORROWER COMMUNICATIONS.

13 **38-38-1003. General borrower notification from state agency.**

14 (1) THE DEPARTMENT OF LOCAL AFFAIRS SHALL CREATE A FORECLOSURE
15 AVOIDANCE NOTICE, WRITTEN IN ENGLISH, USING AT LEAST TWELVE-POINT
16 TYPE, IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION. THE
17 HOLDER SHALL SEND A COPY OF THE NOTIFICATION TO THE BORROWER AT
18 LEAST THIRTY DAYS BEFORE THE BORROWER'S ACCOUNT IS REFERRED FOR
19 FORECLOSURE. A COPY OF THE NOTIFICATION MUST ALSO BE POSTED ON
20 THE COLORADO FORECLOSURE HOTLINE'S WEB SITE AND ON THE PAGE ON
21 EACH COUNTY'S PUBLIC TRUSTEE WEB SITE THAT CONTAINS INFORMATION
22 OR ANSWERS TO FREQUENTLY ASKED QUESTIONS REGARDING THE
23 FORECLOSURE PROCESS.

24 (2) THE NOTIFICATION SHALL BE IN SUBSTANTIALLY THE
25 FOLLOWING FORM:

26 THIS IS NOT A SOLICITATION FROM
27 THE SERVICER OF YOUR MORTGAGE.

1 THE STATE OF COLORADO HAS
2 ISSUED THIS NOTICE TO ADVISE YOU
3 OF OPTIONS THAT MAY HELP YOU
4 AVOID FORECLOSURE. THIS
5 NOTIFICATION IS ISSUED BY A STATE
6 ENTITY THAT IS NOT AFFILIATED
7 WITH YOUR MORTGAGE SERVICER.

8 COLORADO LAW REQUIRES THAT YOU RECEIVE THIS
9 NOTICE OF YOUR LEGAL RIGHTS BEFORE THE FORECLOSURE
10 PROCESS BEGINS. COLORADO LAW REQUIRES EVERY
11 MORTGAGE SERVICER TO MAKE A GOOD-FAITH EFFORT TO
12 PURSUE FORECLOSURE ALTERNATIVES WITH THE BORROWER
13 BEFORE FORECLOSING ON THE BORROWER'S HOME. IF YOU
14 ARE HAVING TROUBLE PAYING YOUR MORTGAGE, YOU
15 SHOULD IMMEDIATELY CONTACT THE LOAN SERVICER TO
16 DISCUSS YOUR OPTIONS FOR AVOIDING FORECLOSURE. THE
17 LOAN SERVICER IS THE COMPANY LISTED ON THE MONTHLY
18 PAYMENT STUB OR OTHER NOTICE THAT YOU GET WHEN A
19 MORTGAGE PAYMENT IS DUE.

20 YOU MAY ALSO CALL THE COLORADO FORECLOSURE
21 HOTLINE, AN ENTITY CREATED SPECIFICALLY TO PROVIDE
22 BORROWERS WITH FREE MORTGAGE ADVICE.

23 POTENTIAL FORECLOSURE ALTERNATIVES MAY
24 INCLUDE PROGRAMS SUCH AS A LOAN MODIFICATION. THE
25 LOAN SERVICER MAY PARTICIPATE IN THE FEDERAL LOAN
26 MODIFICATION PROGRAM CALLED THE HOME AFFORDABLE
27 MODIFICATION PROGRAM (HAMP). TO FIND OUT IF YOUR

1 LOAN SERVICER PARTICIPATES IN HAMP, OR TO FIND OUT
2 M O R E A B O U T H A M P , V I S I T
3 WWW.MAKINGHOMEAFFORDABLE.GOV/PROGRAMS/LOWER
4 -PAYMENTS/PAGES/HAMP.ASPX.

5 ALTHOUGH HAMP EXPIRES ON DECEMBER 31, 2012,
6 MANY SERVICERS OFFER SIMILAR LOAN MODIFICATION
7 PROGRAMS OF THEIR OWN. NOT ALL SERVICERS OFFER SUCH
8 PROGRAMS AND NOT ALL BORROWERS MAY APPLY OR
9 QUALIFY FOR THESE PROGRAMS. HOWEVER, A BORROWER
10 MAY QUALIFY FOR OTHER OPTIONS, SUCH AS REFINANCING,
11 A REPAYMENT PLAN, A SHORT SALE, OR DEED IN LIEU OF
12 FORECLOSURE.

13 WITH THIS NOTIFICATION, YOU SHOULD ALSO HAVE
14 RECEIVED A LETTER FROM THE LOAN SERVICER THAT
15 DESCRIBES ANY AVAILABLE OPTIONS FOR AVOIDING
16 FORECLOSURE. IF A BORROWER WANTS TO APPLY FOR ANY
17 OF THESE OPTIONS, THE BORROWER MUST CONTACT HIS OR
18 HER LOAN SERVICER IMMEDIATELY AND SUBMIT THE
19 REQUIRED DOCUMENTATION.

20 IF YOU CONTACT THE LOAN SERVICER AND INDICATE
21 THAT YOU WANT TO APPLY FOR ANY OF THESE OPTIONS, THE
22 LOAN SERVICER IS REQUIRED TO GIVE YOU AT LEAST
23 FORTY-FIVE DAYS AFTER YOUR RECEIVE THIS NOTICE TO
24 APPLY BEFORE IT CONTINUES WITH FORECLOSURE
25 ACTIVITIES.

26 YOU MUST SUBMIT ANY REQUESTED DOCUMENTS BY
27 THE DEADLINES INDICATED IN CORRESPONDENCE FROM A

1 LOAN SERVICER TO AVOID DISQUALIFICATION FROM
2 FORECLOSURE ALTERNATIVES ASSISTANCE.

3 IF YOU SUBMIT ALL OF THE REQUIRED
4 DOCUMENTATION AND INFORMATION BY THE SPECIFIED
5 DEADLINES, THE LOAN SERVICER MUST REVIEW THE
6 APPLICATION AND INFORM YOU OF ITS DECISION BEFORE
7 INITIATING THE FORECLOSURE PROCESS OR PROCEEDING
8 WITH A PREVIOUSLY SCHEDULED FORECLOSURE SALE. IF THE
9 LOAN SERVICER DENIES YOUR REQUEST FOR A LOAN
10 MODIFICATION, IT MUST SEND YOU A DETAILED DENIAL
11 LETTER THAT PROVIDES THE FOLLOWING INFORMATION:

12 (a) THE EXACT REASON FOR THE DENIAL AND, IF THE
13 DENIAL WAS BASED ON NUMERICAL VALUES SUCH AS
14 INCOME AND EXPENSE CALCULATIONS, THE NUMBERS USED;

15 (b) INSTRUCTIONS ON HOW TO DISPUTE THE DENIAL;
16 AND

17 (c) A TOLL-FREE TELEPHONE NUMBER TO CALL WITH
18 QUESTIONS OR DISPUTES AND THE HOURS OF OPERATION
19 DURING WHICH A LIVE REPRESENTATIVE CAN BE REACHED.

20 IF YOU DECIDE NOT TO APPLY FOR FORECLOSURE
21 ALTERNATIVES ASSISTANCE OR DO NOT MEET THE
22 DEADLINES OUTLINED BY THE LOAN SERVICER, THE LOAN
23 SERVICER MAY PROCEED WITH FORECLOSURE ACTIVITIES. IF
24 YOU CHANGE YOUR MIND AND DECIDE TO SEEK
25 FORECLOSURE ALTERNATIVES ASSISTANCE IN THE FUTURE,
26 YOU MUST CONTACT THE LOAN SERVICER IMMEDIATELY,
27 BUT THERE IS NO GUARANTEE THAT THE LOAN SERVICER

1 WILL BE ABLE TO PROVIDE YOU WITH ANY ASSISTANCE AT
2 THAT TIME.

3 **38-38-1004. Communication requirements.** (1) IN CONNECTION
4 WITHEVERY FORECLOSURE, A LOAN SERVICER SHALL SEND THE BORROWER
5 NOTICES, WRITTEN IN PLAIN LANGUAGE, ABOUT ALL FORECLOSURE
6 ALTERNATIVES ASSISTANCE AND THE PENDENCY OF FORECLOSURE
7 PROCEEDINGS. THE NOTICES MUST BE SENT TO THE BORROWER WITH THE
8 RIGHT TO CURE LETTER, THE NOTICE OF ELECTION AND DEMAND, AND THE
9 DOCUMENTS REQUIRED UNDER C.R.C.P. 120. ALL NOTICES MUST INCLUDE
10 AT LEAST THE FOLLOWING INFORMATION:

11 (a) A TOLL-FREE TELEPHONE NUMBER WHERE THE BORROWER CAN
12 REACH A REPRESENTATIVE OF THE LOAN SERVICER WHO IS CAPABLE OF
13 PROVIDING SPECIFIC DETAILS ABOUT FORECLOSURE ALTERNATIVES
14 ASSISTANCE AND THE APPLICATION PROCESS, TOGETHER WITH THE HOURS
15 OF OPERATION DURING WHICH CALLS WILL BE ANSWERED BY A LIVING
16 PERSON;

17 (b) A LIST AND DESCRIPTION OF THE PROGRAMS THAT MAY BE
18 AVAILABLE TO THE OWNER;

19 (c) THE IMPORTANCE OF RESPONDING TO THE FORECLOSURE
20 ALTERNATIVES ASSISTANCE NOTICE AND THE BENEFITS OF EACH TYPE OF
21 ASSISTANCE;

22 (d) THE PROCESS TO APPLY FOR THE PROGRAMS AND WHAT THE
23 BORROWER SHOULD EXPECT THROUGHOUT THE PROCESS; AND

24 (e) INSTRUCTIONS ON HOW TO COMPLETE A FORECLOSURE
25 ALTERNATIVES APPLICATION, WHICH MUST BE INCLUDED WITH THE
26 COMMUNICATION.

27 (2) A FINAL NOTIFICATION AND FORECLOSURE ALTERNATIVES

1 APPLICATION PACKET MUST BE INCLUDED WITH THE NOTICE OF SALE. THIS
2 NOTIFICATION PACKET MUST CONTAIN THE SAME INFORMATION AS THE
3 OTHER NOTIFICATIONS BUT WILL ALSO CONTAIN A STATEMENT INDICATING
4 THAT IT IS THE BORROWER'S FINAL OPPORTUNITY TO CONTACT THE
5 SERVICER FOR FORECLOSURE ALTERNATIVES ASSISTANCE. THIS
6 NOTIFICATION PACKET MUST ALSO STATE THAT THE INCLUDED
7 FORECLOSURE ALTERNATIVES APPLICATION MUST BE RECEIVED NO LATER
8 THAN 12 MIDNIGHT ON THE SEVENTH BUSINESS DAY PRECEDING THE
9 SCHEDULED FORECLOSURE SALE.

10 (3) A LOAN MAY NOT BE REFERRED TO FORECLOSURE UNTIL ONE
11 OF THE FOLLOWING OCCURS:

12 (a) THE BORROWER CLEARLY INDICATES THAT HE OR SHE DOES
13 NOT WISH TO PURSUE FORECLOSURE ALTERNATIVES, AND THE SERVICER
14 THOROUGHLY DOCUMENTS THIS FACT IN ITS RECORDS;

15 (b) THE HOLDER SENDS THE BORROWER THE FORECLOSURE
16 ALTERNATIVES APPLICATION PACKET AS REQUIRED UNDER THIS SECTION
17 AND THE BORROWER DOES NOT SUBMIT THE REQUESTED DOCUMENTS BY
18 THE DEADLINES STATED IN THE FORECLOSURE ALTERNATIVES APPLICATION
19 PACKET;

20 (c) THE BORROWER SUBMITS AN INITIAL FORECLOSURE
21 ALTERNATIVES APPLICATION PACKET, THE HOLDER REVIEWS IT FOR ALL
22 FORECLOSURE ALTERNATIVES, AND BASED ON THAT REVIEW THE HOLDER
23 DETERMINES THAT THE BORROWER IS INELIGIBLE FOR ASSISTANCE AND
24 NOTIFIES THE BORROWER OF THE REASONS FOR THE DETERMINATION;

25 (d) THE BORROWER IS APPROVED FOR ONE OR MORE FORECLOSURE
26 ALTERNATIVES BUT IS SUBSEQUENTLY REMOVED FROM THE PROGRAM FOR
27 FAILING TO PERFORM THE NECESSARY ACTIONS TO REMAIN ELIGIBLE; OR

1 (e) THE HOLDER HAS UNDERTAKEN REASONABLE EFFORTS TO
2 MAKE RIGHT-PARTY CONTACT BUT IS NOT ABLE TO DO SO AND HAS
3 CLEARLY DOCUMENTED THE TIME AND METHODS OF EACH ATTEMPTED
4 CONTACT.

5 **38-38-1005. Borrower solicitation.** (1) A HOLDER SHALL NOT
6 REFER A LOAN TO FORECLOSURE UNTIL THE FOLLOWING REQUIREMENTS
7 FOR BORROWER SOLICITATION AS OUTLINED IN THIS SECTION HAVE BEEN
8 SATISFIED:

9 (a) A LOAN SERVICER SHALL BEGIN TO SOLICIT THE BORROWER FOR
10 FORECLOSURE ALTERNATIVES ASSISTANCE EITHER UPON A BORROWER'S
11 REQUEST OR WHEN TWO PAYMENTS ARE PAST DUE, AND BEFORE
12 INITIATING FORECLOSURE PROCEEDINGS. THIS SOLICITATION MUST
13 CONTINUE UNTIL A RIGHT-PARTY CONTACT IS MADE OR THE HOLDER HAS
14 MADE A REASONABLE EFFORT, AS DEFINED IN PARAGRAPH (b) OF THIS
15 SUBSECTION (1), TO SOLICIT A RIGHT-PARTY CONTACT.

16 (b) THE HOLDER SHALL MAKE A REASONABLE EFFORT TO SOLICIT
17 A BORROWER APPEARING ON THE NOTE. THE HOLDER IS DEEMED TO HAVE
18 MADE A REASONABLE EFFORT WHEN ALL OF THE FOLLOWING HAVE
19 OCCURRED WITHIN A PERIOD OF AT LEAST THIRTY DAYS:

20 (I) THE HOLDER, OR A LOAN SERVICER ACTING ON THE HOLDER'S
21 BEHALF, MADE A MINIMUM OF FOUR TELEPHONE CALLS TO THE
22 LAST-KNOWN PHONE NUMBERS OF RECORD, AT INTERVALS NO LESS THAN
23 FIVE DAYS APART AND AT DIFFERENT TIMES OF THE DAY;

24 (II) THE HOLDER, OR A LOAN SERVICER ACTING ON THE HOLDER'S
25 BEHALF, SENT TWO WRITTEN NOTICES TO THE LAST-KNOWN ADDRESS OF
26 RECORD BY SENDING ONE LETTER VIA CERTIFIED OR EXPRESS MAIL OR VIA
27 OVERNIGHT DELIVERY SERVICE WITH A RETURN RECEIPT OR A DELIVERY

1 CONFIRMATION AND ONE LETTER VIA REGULAR MAIL; AND

2 (III) IF THE BORROWER IS REPRESENTED BY AN ATTORNEY, THE
3 HOLDER, OR A LOAN SERVICER ACTING ON THE HOLDER'S BEHALF, HAS
4 MADE THE SAME EFFORTS DESCRIBED IN SUBPARAGRAPHS (I) AND (II) OF
5 THIS PARAGRAPH (b) TO CONTACT THE REPRESENTING ATTORNEY.

6 (2) ALL BORROWER SOLICITATION, WHETHER ORAL OR WRITTEN,
7 MUST INCLUDE THE SAME INFORMATION AS CONTAINED IN BORROWER
8 NOTICES AS DESCRIBED IN SECTION 38-38-1004 (1).

9 (3) A HOLDER SHALL SEND A FORECLOSURE ALTERNATIVES
10 APPLICATION PACKET TO THE BORROWER WITHIN TEN DAYS AFTER THE
11 FIRST RIGHT-PARTY CONTACT. THE PACKET MUST CLEARLY INDICATE THE
12 DEADLINE BY WHICH THE REQUESTED DOCUMENTS MUST BE RETURNED.
13 THAT DEADLINE MUST BE NO LESS THAN FIFTEEN DAYS AFTER THE FIRST
14 RIGHT-PARTY CONTACT. IF THE BORROWER DOES NOT RETURN THE
15 FORECLOSURE ALTERNATIVES APPLICATION BY THE DEADLINE, THE
16 HOLDER SHALL RESEND THE PACKET ALONG WITH A LETTER THAT CLEARLY
17 STATES THAT THE BORROWER WILL BE REMOVED FROM CONSIDERATION
18 FOR FORECLOSURE ALTERNATIVES OPTIONS IF THE PACKET IS NOT
19 RETURNED WITHIN FIFTEEN DAYS AFTER THE INITIAL DUE DATE.

20 **38-38-1006. Foreclosure prevention measures.** (1) IF A
21 BORROWER SUBMITS A COMPLETE FORECLOSURE ALTERNATIVES
22 APPLICATION PACKET BY 12 MIDNIGHT OF THE SEVENTH BUSINESS DAY
23 BEFORE THE FORECLOSURE SALE, THE HOLDER SHALL REVIEW THE
24 BORROWER FOR FORECLOSURE ALTERNATIVES.

25 (2) (a) (I) WITHIN TEN DAYS AFTER RECEIVING THE INITIAL
26 FORECLOSURE ALTERNATIVES APPLICATION PACKET, THE HOLDER SHALL
27 NOTIFY THE BORROWER OF ITS RECEIPT AND INDICATE WHETHER ANY

1 ADDITIONAL DOCUMENTATION IS NEEDED. IF ADDITIONAL
2 DOCUMENTATION IS NEEDED, THE HOLDER SHALL NOTIFY THE BORROWER
3 IN WRITING WHICH DOCUMENTS ARE NEEDED AND STATE A DATE BY WHICH
4 THE DOCUMENTS MUST BE SUBMITTED. THAT DATE MUST BE NO LESS THAN
5 FIFTEEN DAYS AFTER THE DATE OF THE LETTER.

6 (II) IF THE BORROWER DOES NOT RESPOND BY THE DUE DATE
7 SPECIFIED IN THE MISSING INFORMATION REQUEST, THE HOLDER SHALL
8 RESEND THE LETTER VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED.
9 THE LETTER MUST RESTATE WHICH DOCUMENTS ARE NEEDED AND
10 PROVIDE A DUE DATE FOR RECEIPT OF THE DOCUMENTS, WHICH MUST BE
11 NO LESS THAN FIFTEEN DAYS AFTER THE DATE OF THE LETTER. THE LETTER
12 MUST ALSO INCLUDE A CLEAR AND CONSPICUOUS STATEMENT THAT IF THE
13 BORROWER DOES NOT PROVIDE THE DOCUMENTATION BY THE STATED DUE
14 DATE, HE OR SHE MAY BE DENIED FORECLOSURE ALTERNATIVES
15 ASSISTANCE AND FORECLOSURE PROCEEDINGS WILL CONTINUE.

16 (b) WITHIN THIRTY DAYS AFTER RECEIVING A COMPLETE
17 FORECLOSURE ALTERNATIVES APPLICATION PACKET, THE HOLDER SHALL
18 NOTIFY THE BORROWER OF THE STATUS OF THE FORECLOSURE
19 ALTERNATIVES REVIEW.

20 (3) A HOLDER SHALL CEASE ALL FORECLOSURE ACTIVITIES UNTIL
21 THE BORROWER HAS BEEN REVIEWED UNDER ALL AVAILABLE PROGRAMS.
22 IF THE BORROWER IS DETERMINED TO BE INELIGIBLE FOR ALL
23 FORECLOSURE ALTERNATIVES, THE HOLDER SHALL SEND TO THE
24 BORROWER, VIA CERTIFIED MAIL, A DETAILED DENIAL NOTIFICATION AS
25 REQUIRED BY SECTION 38-38-1007 (2).

26 (4) (a) THE BORROWER MAY DISPUTE THE OUTCOME OF THE
27 HOLDER'S FORECLOSURE ALTERNATIVES REVIEW IF INFORMATION

1 PROVIDED BY THE HOLDER IS NOT ACCURATE OR IF THE HOLDER HAS
2 FAILED TO COMPLY WITH ANY REQUIREMENT OF THIS PART 10 OR ANY
3 OTHER APPLICABLE LAW OR REGULATION PERTAINING TO FORECLOSURES.
4 THE BORROWER SHALL NOTIFY THE HOLDER OF THE DISPUTE WITHIN
5 THIRTY DAYS AFTER THE DENIAL.

6 (b) IF A BORROWER BELIEVES THAT AN UNFAVORABLE RESOLUTION
7 OF THE DISPUTE WAS ISSUED BECAUSE THE HOLDER USED INACCURATE
8 NUMERICAL CALCULATIONS OR THE BORROWER WAS DENIED DUE TO A
9 HOLDER'S ASSERTION THAT IT WAS MISSING DOCUMENTATION OR THE
10 BORROWER FAILED TO MEET A DOCUMENT SUBMISSION DEADLINE, THE
11 BORROWER HAS THE RIGHT TO REQUEST A SUBSEQUENT MEETING WITH THE
12 HOLDER, A MEDIATOR, OR BOTH TO ASSESS THE VALIDITY OF THE HOLDER'S
13 DISPUTE RESOLUTION. THE MEETING MUST OCCUR WITHIN FIFTEEN DAYS
14 AFTER THE BORROWER'S RECEIPT OF THE HOLDER'S NOTICE OF THE DISPUTE
15 RESOLUTION AND MAY BE HELD TELEPHONICALLY IF ALL PARTIES ARE IN
16 POSSESSION OF ALL RELEVANT DOCUMENTS. IF THE BORROWER REQUESTS
17 THE INTERVENTION OF A MEDIATOR, EACH PARTY IS RESPONSIBLE FOR
18 HALF OF THE MEDIATOR'S FEE.

19 (c) THE HOLDER SHALL ACKNOWLEDGE RECEIPT OF THE
20 BORROWER'S NOTICE OF THE DISPUTE WITHIN FIVE BUSINESS DAYS AND
21 SHALL COMPLETE ITS REVIEW OF THE MATTERS IN DISPUTE WITHIN THIRTY
22 DAYS. WHEN THE REVIEW IS COMPLETE, THE HOLDER SHALL NOTIFY THE
23 BORROWER OF THE OUTCOME OF THE REVIEW AND PROVIDE A DETAILED
24 LETTER EXPLAINING HOW THE DISPUTE WAS REVIEWED AND HOW THE
25 DECISION WAS MADE.

26 (5) THE HOLDER MAY RESUME FORECLOSURE PROCEEDINGS THE
27 DAY AFTER IT IS NOTIFIED THAT THE BORROWER RECEIVED THE DENIAL

1 LETTER UNLESS SUCH ACTIONS VIOLATE SUBSECTION (6) OF THIS SECTION.

2 (6) (a) A FORECLOSURE SALE MAY NOT BE HELD SOONER THAN
3 THIRTY DAYS AFTER THE DATE OF THE DENIAL NOTICE. IF, DURING THAT
4 THIRTY-DAY PERIOD, THE BORROWER DISPUTES THE DENIAL, THE SALE
5 MUST BE POSTPONED UNTIL THIRTY DAYS AFTER THE HOLDER NOTIFIES THE
6 BORROWER OF THE RESULTS OF THE REVIEW OF THE DENIAL AND THE
7 HOLDER PROVIDES TO THE FORECLOSURE ATTORNEY AND THE PUBLIC
8 TRUSTEE THE PRESALE CERTIFICATION AS REQUIRED BY SECTION
9 38-38-1008.

10 (b) THE HOLDER SHALL NOT PLACE A BID UNTIL THE PRESALE
11 CERTIFICATION HAS BEEN PROVIDED TO THE PUBLIC TRUSTEE. IF THE
12 PUBLIC TRUSTEE DOES NOT RECEIVE THE PRESALE CERTIFICATION BEFORE
13 12 NOON ON THE SECOND BUSINESS DAY BEFORE THE SCHEDULED SALE
14 DATE, THEN THE TRUSTEE SHALL POSTPONE THE SALE, ONE WEEK AT A
15 TIME, UNTIL THE CERTIFICATION IS RECEIVED AND ALL OTHER BID
16 REQUIREMENTS, AS SET FORTH IN SECTION 38-38-106, ARE MET.

17 **38-38-1007. Content of holder certification.** (1) HAMP WILL BE
18 DISCONTINUED ON DECEMBER 31, 2012, AND THE CONTENT FOR DENIAL
19 NOTICES WILL BE LIMITED.

20 (2) BEFORE FILING THE NOTICE OF ELECTION AND DEMAND, AND AS
21 PART OF ITS APPLICATION FOR AN ORDER AUTHORIZING SALE UNDER
22 C.R.C.P. 120, THE HOLDER SHALL CERTIFY THE ACTIONS IT HAS TAKEN TO
23 ENGAGE THE OWNER IN FORECLOSURE ALTERNATIVES ACTIVITIES, THE
24 DETAILS OF ALL REVIEWS PERFORMED UNDER EACH FORECLOSURE
25 ALTERNATIVES PROGRAM, AND A DETAILED EXPLANATION OF THE RESULT
26 OF EACH REVIEW. THE CERTIFICATION MUST CONTAIN AT LEAST THE
27 FOLLOWING INFORMATION:

1 (a) IF NO RIGHT-PARTY CONTACT WAS MADE:
2 (I) A DECLARATION SPECIFYING THE DATES, TIMES, AND METHODS
3 BY WHICH THE HOLDER ATTEMPTED TO CONTACT THE BORROWER;
4 (II) THE OUTCOME OF THOSE ATTEMPTS; AND
5 (III) THE DATE ON WHICH THE FILE WAS CLOSED AND
6 NOTIFICATION WAS SENT TO THE BORROWER;
7 (b) IF RIGHT-PARTY CONTACT WAS MADE, THE STATUS OF ANY
8 ONGOING FORECLOSURE ALTERNATIVES REVIEW OR, IF THE LOAN IS NOT
9 UNDER ACTIVE FORECLOSURE ALTERNATIVES REVIEW, A DETAILED
10 EXPLANATION AS TO WHY IT IS NOT BEING REVIEWED. EVEN IF THE LOAN
11 WAS PREVIOUSLY REVIEWED AND WAS DENIED FOR ALL FORECLOSURE
12 ALTERNATIVES OPTIONS, THE HOLDER SHALL FILE THE CERTIFICATION
13 REQUIRED BY THIS SECTION.
14 (c) IF THE HOLDER HAS DETERMINED THAT THE BORROWER IS
15 INELIGIBLE FOR ALL FORECLOSURE ALTERNATIVES PROGRAMS, THE
16 HOLDER SHALL PROVIDE A DETAILED DENIAL NOTICE CONTAINING A LIST
17 OF ALL PROGRAMS UNDER WHICH THE BORROWER WAS REVIEWED AND
18 PROVIDING SPECIFIC DETAILS REGARDING THE REASONS FOR DENIAL. THE
19 ALLOWABLE REASONS FOR DENIAL AND THE DETAILS REQUIRED UNDER
20 EACH ARE:
21 (I) THE PROPERTY OR LOAN IS INELIGIBLE:
22 (A) THE REASON THAT THE PROPERTY OR LOAN IS INELIGIBLE; AND
23 (B) THE PROCESS AND DATA USED IN DETERMINING INELIGIBILITY;
24 (II) THE PROPERTY IS NOT OWNER-OCCUPIED:
25 (A) THE METHOD USED TO DETERMINE THE OCCUPANCY STATUS;
26 (B) THE DATE THE DETERMINATION WAS MADE; AND
27 (C) IF THE DETERMINATION WAS MADE BASED ON INFORMATION

1 FROM A CREDIT REPORTING AGENCY, THE DATES AND METHODS THAT THE
2 HOLDER USED TO RECONCILE ANY DISCREPANCY BETWEEN THE CREDIT
3 REPORT FROM THE CREDIT REPORTING AGENCY AND OTHER INFORMATION
4 INDICATING THAT THE PROPERTY WAS OWNER-OCCUPIED;

5 (III) THE CURRENT PAYMENT IS ALREADY BELOW THE ALLOWABLE
6 RATIO OF MORTGAGE PAYMENT TO GROSS INCOME:

7 (A) DATA USED IN CALCULATING GROSS INCOME; AND

8 (B) DATA USED TO DETERMINE THE CURRENT MONTHLY PAYMENT;

9 (IV) THE OFFER WAS NOT ACCEPTED OR THE REQUEST WAS
10 WITHDRAWN BY THE BORROWER:

11 (A) THE INDICATIONS OR EVIDENCE THAT THE OFFER WAS NOT
12 ACCEPTED OR THE REQUEST WAS WITHDRAWN BY THE BORROWER;

13 (B) THE DATE SUCH DETERMINATION WAS MADE;

14 (C) AN ACCOUNT OF ALL DATES ON WHICH THE HOLDER
15 ATTEMPTED TO OR DID CONTACT THE BORROWER BEFORE THE
16 DETERMINATION DATE, INCLUDING THE METHOD AND DETAILS OF THE
17 COMMUNICATIONS; AND

18 (D) WHETHER THE BORROWER CONTACTED THE HOLDER AFTER
19 THE DETERMINATION DATE TO CONTEST THE DENIAL;

20 (V) THE LOAN WAS PREVIOUSLY MODIFIED:

21 (A) THE DATE THAT THE LOAN WAS MODIFIED;

22 (B) THE TERMS OF THE MODIFICATION; AND

23 (C) WHEN THE PREVIOUS MODIFICATION WAS CANCELLED AND
24 WHY;

25 (VI) THE BORROWER DID NOT SUBMIT ALL NECESSARY
26 DOCUMENTS BY APPLICABLE DEADLINES:

27 (A) THE DOCUMENTS THAT ARE ALLEGED TO BE MISSING;

1 (B) ALL DATES ON WHICH THE HOLDER RECEIVED DOCUMENTS
2 SUBMITTED BY THE BORROWER AND THE CONTENT OF THOSE SUBMISSIONS;

3 (C) THE DATES ON WHICH THE HOLDER SENT LETTERS ADVISING
4 THE BORROWER OF THE MISSING DOCUMENTS AND THE DEADLINES LISTED
5 IN THE LETTER BY WHICH THE BORROWER WAS REQUIRED TO RETURN THE
6 MISSING DOCUMENTS; AND

7 (D) THE DATES AND CONTENTS OF ALL COMMUNICATIONS
8 INITIATED BY THE BORROWER BEFORE AND AFTER THE DENIAL;

9 (VII) AN AFFORDABLE PAYMENT CANNOT BE REACHED UNDER
10 APPLICABLE GUIDELINES:

11 (A) DATA USED TO DETERMINE GROSS INCOME;

12 (B) DATA USED TO CALCULATE THE MODIFIED PRINCIPAL AND
13 INTEREST PAYMENT;

14 (C) DATA USED TO CALCULATE THE TAXES AND INSURANCE;

15 (D) THE STEPS TAKEN AND THE DATA USED WHILE ATTEMPTING TO
16 MEET ANY APPLICABLE LOAN-TO-INCOME THRESHOLD FOR LOAN
17 MODIFICATION; AND

18 (E) WHETHER THERE WAS AN EXCESSIVE FORBEARANCE AND IF SO,
19 THE DOLLAR AMOUNT ALLOWED TO BE FORBORNE AND THE FORBEARANCE
20 AMOUNT ON THE LOAN THAT WOULD BE NECESSARY TO ACHIEVE AN
21 AFFORDABLE PAYMENT;

22 (VIII) THE INVESTOR OR GUARANTOR IS NOT PARTICIPATING IN
23 FORECLOSURE ALTERNATIVES PROGRAMS:

24 (A) THE NAME OF THE INVESTOR OR GUARANTOR;

25 (B) THE APPROXIMATE DATE ON WHICH THE HOLDER APPROACHED
26 THE INVESTOR OR GUARANTOR IN A GOOD-FAITH EFFORT TO PERSUADE THE
27 INVESTOR OR GUARANTOR TO CONSIDER FORECLOSURE ALTERNATIVES;

1 (C) WHETHER THE LOAN HAS PRIVATE MORTGAGE INSURANCE
2 THAT PROHIBITED THE MODIFICATION; AND

3 (D) WHETHER THE LOAN IS GUARANTEED BY AN ENTITY AND, IF
4 SO, WHETHER THAT ENTITY DENIED THE MODIFICATION;

5 (IX) MODIFICATION WAS NOT APPROVED BY THE COURT OR
6 TRUSTEE IN A BANKRUPTCY PROCEEDING:

7 (A) THE GUIDELINE THAT THE HOLDER IS DEPENDING ON TO ALLOW
8 A MODIFICATION TO BE DENIED BASED ON THE FILING OF BANKRUPTCY;

9 (B) THE DATE THAT THE HOLDER DETERMINED THE BORROWER
10 WAS INELIGIBLE; AND

11 (C) ANY REASON OTHER THAN THE ACT OF FILING BANKRUPTCY
12 THAT THE HOLDER USED IN DENYING THE MODIFICATION;

13 (X) A NEGATIVE NPV ANALYSIS UNDER THE APPLICABLE
14 INVESTOR GUIDELINES:

15 (A) THE DATA SET FORTH IN SUBSECTION (3) OF THIS SECTION; AND

16 (B) THE INVESTOR'S FORECASTED LOSS OR GAIN BASED ON THE
17 NPV ANALYSIS;

18 (XI) THE BORROWER WAS DENIED CONVERSION FROM A TRIAL
19 PERIOD PLAN (TPP) TO A PERMANENT MODIFICATION BECAUSE TPP WAS
20 NOT FULFILLED:

21 (A) HOW THE BORROWER VIOLATED THE PROVISIONS OF THE TPP;

22 (B) IF THE ALLEGED VIOLATION IS DUE TO MISSED PAYMENTS,
23 THEN THE PAYMENT DUE DATES AND AMOUNTS; AND

24 (C) THE DATES AND AMOUNTS OF PAYMENTS RECEIVED BY THE
25 HOLDER;

26 (XII) INVESTOR GUIDELINES PREVENT ELIGIBILITY FOR
27 MODIFICATION:

1 (A) THE REASON THE BORROWER WAS DEEMED INELIGIBLE FOR
2 THE MODIFICATION;

3 (B) A DESCRIPTION OF THE INVESTOR GUIDELINES OR
4 RESTRICTIONS ON WHICH THE DETERMINATION WAS BASED;

5 (C) DATE OF THE DENIAL; AND

6 (D) DATA USED IN DETERMINING THAT THE BORROWER WAS
7 INELIGIBLE FOR A MODIFICATION, INCLUDING INCOME AND EXPENSE DATA.

8 (d) IF THE HOLDER HAS DETERMINED THAT THE BORROWER IS NOT
9 ELIGIBLE FOR FORECLOSURE ALTERNATIVES OTHER THAN MODIFICATION,
10 THE HOLDER SHALL PROVIDE A NOTICE DETAILING:

11 (I) THE DATA USED IN CALCULATING AFFORDABILITY FOR EACH
12 ALTERNATIVE;

13 (II) THE REASON THE BORROWER WAS DENIED FOR SHORT SALE OR
14 DEED IN LIEU OF THE FORECLOSURE;

15 (III) THE DATE THE HOLDER RECEIVED A SHORT SALE OFFER ON
16 THE PROPERTY;

17 (IV) THE OFFER AMOUNT;

18 (V) THE LOWEST OFFER THE INVESTOR WOULD ACCEPT FOR A
19 SHORT SALE; OR

20 (VI) WHETHER THE BORROWER IS ELIGIBLE FOR CASH FOR KEYS
21 AND, IF NOT, AN EXPLANATION OF WHY NOT.

22 (3) IF THE DENIAL WAS BASED ON NEGATIVE NPV UNDER THE
23 APPLICABLE INVESTOR'S PROGRAM GUIDELINES, DATA MUST BE INPUT INTO
24 THE FOLLOWING FIELDS, WITH SUPPLEMENTAL INFORMATION WHERE
25 NECESSARY TO DETERMINE HOW THE DATA WERE DERIVED:

26 (a) CURRENT BORROWER CREDIT SCORE;

27 (b) CURRENT CO-BORROWER CREDIT SCORE, WHERE APPLICABLE;

1 (c) MONTHLY GROSS INCOME. IF THERE ARE MULTIPLE SOURCES OF
2 INCOME USED IN THE CALCULATION, THEN THE MONTHLY GROSS INCOME
3 FIGURE USED FOR EACH SOURCE OF INCOME SHALL BE PROVIDED SEPARATE
4 FROM ONE ANOTHER.

5 (d) STATE AND ZIP CODE IN WHICH THE PROPERTY IS LOCATED;

6 (e) PROPERTY VALUE;

7 (f) PROPERTY VALUATION TYPE;

8 (g) DATE THE DATA WERE COLLECTED;

9 (h) INVESTOR CODE;

10 (i) UNPAID PRINCIPAL BALANCE AT ORIGINATION;

11 (j) FIRST PAYMENT DATE AT ORIGINATION OF THE LOAN;

12 (k) MORTGAGE PRODUCT TYPE;

13 (l) ADJUSTABLE-RATE MORTGAGE RESET DATE, WHERE
14 APPLICABLE;

15 (m) NEXT ADJUSTABLE-RATE MORTGAGE RESET DATE;

16 (n) UNPAID PRINCIPAL BALANCE BEFORE MODIFICATION;

17 (o) INTEREST RATE BEFORE MODIFICATION;

18 (p) REMAINING MONTHS LEFT ON LOAN;

19 (q) PRINCIPAL AND INTEREST PAYMENT ON LOAN BEFORE
20 MODIFICATION;

21 (r) MONTHLY REAL ESTATE TAXES;

22 (s) MONTHLY HAZARD AND FLOOD INSURANCE;

23 (t) HOME OWNERS' ASSOCIATION FEES;

24 (u) NUMBER OF MONTHS THE LOAN IS DELINQUENT;

25 (v) WHETHER THE LOAN IS IN IMMINENT DEFAULT;

26 (w) MORTGAGE INSURANCE COVERAGE PERCENT;

27 (x) NPV ANALYSIS DATE;

- 1 (y) NEW PRINCIPAL BALANCE AFTER THE PROPOSED MODIFICATION;
- 2 (z) INTEREST RATE AFTER THE PROPOSED MODIFICATION;
- 3 (aa) AMORTIZATION TERM OF THE PROPOSED MODIFICATION;
- 4 (bb) PRINCIPAL AND INTEREST PAYMENT OF THE PROPOSED
- 5 MODIFICATION;
- 6 (cc) PRINCIPAL FORBEARANCE AMOUNT OF THE PROPOSED
- 7 MODIFICATION;
- 8 (dd) PRINCIPAL FORGIVENESS AMOUNT OF THE PROPOSED
- 9 MODIFICATION, WHERE APPLICABLE;
- 10 (ee) MODIFICATION FEES; AND
- 11 (ff) MORTGAGE INSURANCE PARTIAL CLAIM AMOUNT OF THE
- 12 PROPOSED MODIFICATION, WHERE APPLICABLE.

13 (4) (a) DOCUMENTATION SUPPORTING THE DECLARATIONS IN THE
14 HOLDER'S CERTIFICATION MUST BE PROVIDED TO THE HOLDER'S ATTORNEY
15 BEFORE RECORDATION OF THE NOTICE OF ELECTION AND DEMAND AND THE
16 HEARING PURSUANT TO C.R.C.P. 120. THE DOCUMENTATION MUST
17 INCLUDE A SCREEN SHOT OR PRINTOUT OF THE HOLDER'S ELECTRONIC
18 RECORDS SHOWING FULL DETAILS OF ALL ATTEMPTS TO CONTACT THE
19 BORROWER AND THE CONTENT OF THOSE COMMUNICATIONS, THE DATES
20 AND CONTENT OF ALL WRITTEN COMMUNICATIONS SENT TO OR RECEIVED
21 FROM THE BORROWER, AND ANY INFORMATION USED IN EVALUATING THE
22 BORROWER FOR FORECLOSURE ALTERNATIVES.

23 (b) THE FORECLOSING ATTORNEY SHALL RECORD THE DOCUMENTS
24 SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (4) WITH THE NOTICE OF
25 ELECTION AND DEMAND AND INCLUDE THEM IN ANY NOTIFICATION SENT
26 TO THE BORROWER OR ANY PARTY REPRESENTING THE BORROWER, AND
27 SHALL INCLUDE THE CERTIFICATION AND DOCUMENTS WITH THE PAPERS

1 SUBMITTED TO THE COURT FOR THE HEARING PURSUANT TO C.R.C.P. 120.

2 (5) ANY PARTY MAY CONTEST THE TRUTH AND SUFFICIENCY OF
3 THE HOLDER'S CERTIFICATION REQUIRED UNDER THIS SECTION, FILED WITH
4 THE NOTICE OF ELECTION AND DEMAND UNDER SECTION 38-38-101 (1) OR
5 ACCOMPANYING THE DOCUMENTS REQUIRED BY C.R.C.P. 120, AND THE
6 COURT MAY REFRAIN FROM ENTERING THE ORDER AUTHORIZING SALE
7 UNTIL THE HOLDER CERTIFIES THAT IT HAS COMPLIED WITH ALL
8 REQUIREMENTS OF THIS PART 10.

9 (6) IF THE HOLDER PARTICIPATES IN THE FEDERAL MHA PROGRAM
10 AND THE LOAN UNDER REVIEW MEETS THE REQUIREMENTS TO BE ELIGIBLE
11 FOR REVIEW AS SPECIFIED IN THE MHA GUIDELINES, THE HOLDER MUST
12 ABIDE BY ALL THE REQUIREMENTS FOUND IN THE APPLICABLE MHA
13 GUIDELINES. FAILURE TO DO SO CONSTITUTES A VIOLATION OF THIS PART
14 10, PRECLUDES THE HOLDER FROM OBTAINING THE CERTIFICATIONS
15 REQUIRED BY THIS SECTION AND SECTION 38-38-1008, AND VOIDS ANY
16 SUCH CERTIFICATION THAT WAS ALREADY PROVIDED.

17 **38-38-1008. Content of presale certification.** (1) NO SOONER
18 THAN SEVEN BUSINESS DAYS BEFORE THE SCHEDULED FORECLOSURE SALE,
19 THE HOLDER SHALL PROVIDE TO THE FORECLOSURE ATTORNEY A WRITTEN
20 CERTIFICATION THAT CONTAINS A STATEMENT CERTIFYING THAT ONE OF
21 THE CIRCUMSTANCES IN SECTION 38-38-1002 (3) (a) HAS OCCURRED, ALL
22 OTHER AVAILABLE FORECLOSURE ALTERNATIVES HAVE BEEN EXHAUSTED,
23 AND A NON-FORECLOSURE OUTCOME COULD NOT BE REACHED.

24 (2) THE TRUTH AND SUFFICIENCY OF THE PRESALE CERTIFICATION
25 REQUIRED UNDER THIS SECTION MAY BE CHALLENGED AND ENFORCED IN
26 ACCORDANCE WITH SECTION 38-38-1006 (4) (a).

27 **38-38-1009. Execution of foreclosure alternatives modification**

1 **documents.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF
2 THIS SECTION, A MODIFICATION DOCUMENT THAT HAS BEEN RECEIVED BY
3 THE BORROWER CONSTITUTES AN OFFER TO CONTRACT AND IS CONSIDERED
4 A BINDING CONTRACT IMMEDIATELY UPON THE BORROWER'S ACCEPTANCE,
5 WHICH HAS OCCURRED ONCE THE BORROWER SIGNS THE MODIFICATION
6 DOCUMENT AND TAKES ACTION TO RETURN THE SIGNED DOCUMENT TO THE
7 HOLDER.

8 (2) THE MODIFICATION IS NOT BINDING IF THE HOLDER WITHDRAWS
9 THE OFFER BEFORE THE BORROWER EXECUTES THE DOCUMENTS AND
10 RETURNS THEM BY THE METHOD REQUESTED BY THE HOLDER.

11 **SECTION 2. Effective date - applicability.** This act takes effect
12 upon passage and applies to foreclosures in which the notice of election
13 and demand is filed on or after said date.

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