

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

REVISED

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

LLS NO. 13-0286.01 Duane Gall x4335

HOUSE BILL 13-1017

HOUSE SPONSORSHIP

Lebsock,

SENATE SPONSORSHIP

Tochtrop and Giron,

House Committees

Business, Labor, Economic, & Workforce
Development

Senate Committees

Judiciary

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT SUCCESSOR SERVICERS OF**
102 **RESIDENTIAL MORTGAGE LOANS FOLLOW THROUGH WITH LOAN**
103 **MODIFICATIONS OFFERED TO BORROWERS, AND, IN CONNECTION**
104 **THEREWITH, REQUIRING A SERVICER TO INFORM A SUCCESSOR**
105 **SERVICER OF THE TERMS OF ANY MODIFICATION OFFER UPON**
106 **ANY TRANSFER OF SERVICING RIGHTS FOR THE LOAN.**

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>.)

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
2nd Reading Unamended
February 28, 2013

HOUSE
3rd Reading Unamended
January 29, 2013

HOUSE
Amended 2nd Reading
January 28, 2013

The bill addresses situations in which a homeowner has been offered a modified payment schedule or other loan modifications by one loan servicer, but the loan is then transferred to another loan servicer, which enforces the loan according to its original terms without regard to the modification offer.

Section 1 of the bill requires a loan servicer that has made any such offer to notify a successor loan servicer of the terms of the offer upon transfer of the servicing rights, and states that the successor servicer is subject to, and shall honor the homeowner's acceptance of, the offer.

Section 2 adds a violation of these requirements to the existing list of violations for which a homeowner may sue for actual damages plus a \$1,000 additional penalty, attorney fees, and costs.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 38-40-103.5 as
3 follows:

4 **38-40-103.5. Notice upon transfer of servicing rights - prior**
5 **servicer's offer to borrower survives transfer.** (1) AS USED IN THIS
6 SECTION:

7 (a) "BORROWER" MEANS A PERSON LIABLE UNDER AN
8 EVIDENCE OF DEBT CONSTITUTING A RESIDENTIAL MORTGAGE LOAN.

9 (b) "EVIDENCE OF DEBT" HAS THE MEANING SET FORTH IN SECTION
10 38-38-100.3 (8).

11 (c) "HOLDER" MEANS THE HOLDER OF AN EVIDENCE OF DEBT
12 CONSTITUTING A RESIDENTIAL MORTGAGE LOAN.

13 (d) "RESIDENTIAL MORTGAGE LOAN" HAS THE MEANING SET FORTH
14 IN SECTION 12-61-902, C.R.S.

15 (e) (I) "SERVICER" MEANS A PERSON WHO COLLECTS, RECEIVES, OR
16 HAS THE RIGHT TO COLLECT OR RECEIVE PAYMENTS ON BEHALF OF A
17 HOLDER, INCLUDING PAYMENTS OF PRINCIPAL, INTEREST, ESCROW
18 AMOUNTS, AND OTHER AMOUNTS DUE ON OBLIGATIONS DUE AND OWING

1 TO THE HOLDER.

2 (II) "SERVICER" INCLUDES:

3 (A) THE PERSON OR ENTITY TO WHOM PAYMENTS ARE TO BE SENT,
4 AS LISTED ON THE MOST RECENT BILLING STATEMENT OR PAYMENT
5 COUPON PROVIDED TO THE BORROWER; OR

6 (B) A SUBSIDIARY, AFFILIATE, OR ASSIGNEE OF A SERVICER,
7 HOWEVER DESIGNATED, INCLUDING A PERSON DESIGNATED AS A
8 SUBSERVICER.

9 (2) A SERVICER TO WHOM SERVICING RIGHTS FOR A RESIDENTIAL
10 MORTGAGE LOAN HAVE BEEN SOLD OR TRANSFERRED BY THE HOLDER OR
11 BY A PREDECESSOR SERVICER IS SUBJECT TO, AND SHALL HONOR, THE
12 BORROWER'S ACCEPTANCE, PRIOR TO THE SALE OR TRANSFER OF
13 SERVICING RIGHTS, OF ANY OFFER PREVIOUSLY MADE BY THE HOLDER OR
14 PREDECESSOR SERVICER IN CONNECTION WITH A MODIFICATION OF A
15 RESIDENTIAL MORTGAGE LOAN.

16 (3) AT THE TIME OF THE TRANSFER OR SALE OF SERVICING RIGHTS
17 FOR A RESIDENTIAL MORTGAGE LOAN, THE TRANSFEROR OR SELLER SHALL
18 INFORM THE BUYER OR TRANSFEREE OF THE SERVICING RIGHTS WHETHER
19 A LOAN MODIFICATION IS PENDING.

20 (4) A CONTRACT FOR THE TRANSFER OR SALE OF SERVICING RIGHTS
21 FOR A RESIDENTIAL MORTGAGE LOAN MUST OBLIGATE THE SUCCESSOR
22 SERVICER TO:

23 (a) ACCEPT AND CONTINUE PROCESSING ANY PENDING LOAN
24 MODIFICATION REQUESTS; AND

25 (b) HONOR ANY TRIAL AND PERMANENT LOAN MODIFICATION
26 AGREEMENTS ENTERED INTO BY THE PRIOR SERVICER.

27 **SECTION 2.** In Colorado Revised Statutes, **amend** 38-40-104 as

1 follows:

2 **38-40-104. Cause of action - attorney fees.** (1) If any applicant
3 or debtor is aggrieved by a violation of section 38-40-102, ~~or~~ 38-40-103,
4 ~~which~~ OR 38-40-103.5 AND THE violation is not remedied in a reasonable,
5 timely, and good faith manner by the party obligated to do so, and after
6 a good faith effort to resolve the dispute is made by the debtor or
7 borrower, ~~such~~ THE debtor or borrower may bring an action in a court of
8 competent jurisdiction for any such violation. ~~and~~; If the court finds that
9 actual damages have occurred, the court shall award TO THE DEBTOR OR
10 BORROWER, in addition to actual damages, the amount of one thousand
11 dollars, together with ~~and~~ costs and reasonable attorney fees.

12 (2) ~~No~~ A transferee from a lender ~~shall be~~ IS NOT liable for any act
13 or omission of the lender under section 38-40-102. ~~No~~ A transferee of
14 servicing or collection rights ~~shall be~~ IS NOT liable for any act or omission
15 of the transferor of those rights under section 38-40-103 OR 38-40-103.5.

16 **SECTION 3. Applicability.** This act applies to loan modification
17 offers made on or after the effective date of this act.

18 **SECTION 4. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.