HB14-1295

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL FISCAL IMPACT

Drafting Number:	LLS 14-0131	**Date:**	March 14, 2014
Prime Sponsor(s):	Rep. McCann Sen. Ulibarri	**Bill Status:**	House Business, Labor, Economic, and Workforce Development
		Fiscal Analyst:	Alex Schatz (303-866-4375)

SHORT TITLE: FORECLOSURE LOAN SINGLE CONTACT NO DUAL TRACKING

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue		
State Expenditures	Minimal workload reduction.	
FTE Position Change		
Appropriation Required: None.		

* *This summary shows changes from current law under the bill for each fiscal year.*

Summary of Legislation

This bill amends statutes governing the foreclosure of residential real estate. The bill generally applies to servicers of residential loans, including lenders and other parties that offer a borrower a loss mitigation option or seek to enforce the power to foreclose and sell the residential real estate that secures a delinquent loan. Such servicers must:

- establish a single point of contact with the borrower, which contact must inform the borrower about loss mitigation options, the status of the borrower's loan, circumstances that may result in foreclosure, and procedures if the borrower believes there is an error in the servicer's records; and

- pursue foreclosure only if the borrower has not qualified for, accepted, or complied with the terms of a loss mitigation option; if the borrower believes the servicer is engaging in prohibited "dual tracking," the public trustee must follow certain procedures, including, if dual tracking is undisputed, suspension of the foreclosure sale and withdrawal of the notice of election and demand.

The bill also requires additional language in certain notices required in the residential foreclosure process. Specifically:

- The lender's foreclosure notice to the borrower must disclose that it is illegal for a foreclosure consultant to require a deposit or charge fees in advance or providing services; and

- Both the public trustee's combined notice and the lender or servicer's posted notice must include a statement regarding he borrower's ability to file a complaint with state and federal authorities if the borrower believes the lender or servicer has violated certain provisions of the bill.

Servicers of fewer than 5,000 loans are exempt from provisions of the bill other than changes to required foreclosure notices.

Background

Foreclosure of residential real estate is governed by statutory procedure, including various notices, remedial opportunities, and judicial review of a foreclosure case prior to sale. This procedure includes various notices, including the lender's notice to the borrower required at least 30 days prior to filing a notice of election and demand (NED). For cases in which the deed of trust empowers the public trustee to foreclose, the public trustee sends a combined notice to parties involved in a residential foreclosure, mailed no more than 20 days after the notice of election and demand is recorded. Prior to a foreclosure sale, the lender or servicer posts notice regarding foreclosure proceedings on the subject property at least 14 days before the court hearing to obtain an order for sale (a "Rule 120 hearing"). Most residential foreclosure cases are managed by the office of the public trustee for the county in which a subject property is located.

Under current law, the Consumer Protection Unit in the Department of Law has enforcement authority and appropriations to respond to complaints regarding residential lenders, including complaints regarding foreclosure practices. The Consumer Protection Unit is the state's authority to enforce the 2012 national mortgage settlement that, among other provisions, prohibits dual tracking by certain large lenders and their agents. Current appropriations for the Judicial Branch also account for caseload related to residential foreclosure actions.

State Expenditures

The bill may reduce workload for trial courts in the Judicial Branch by a minimal amount. By restricting lenders' ability to engage in dual tracking, the bill may curtail a small number of cases that would proceed to a Rule 120 hearing under current law. Based on the national mortgage settlement, the majority of foreclosures in Colorado would not be newly affected by this provision of the bill, and no adjustment to Judicial Branch appropriations is required.

Local Government Impact

The bill requires public trustees to modify the combined notice form used in residential foreclosure cases and to update software or other administrative practices to account for new procedures under the bill. These changes result in a one-time workload increase for public trustees and are not expected to significantly impact the resources of any county.

To the extent the bill's dual tracking restrictions reduce the number of foreclosure cases that proceed past the initial notice, the workload of public trustees may be reduced. However, this effect is anticipated in a relatively small number of cases and will not significantly impact county expenditures.

Effective Date

The bill takes effect January 1, 2015, and applies to foreclosure proceedings initiated by a notice of election and demand filed on or after that date.

State and Local Government Contacts

Public Trustees	Counties	Law
Special Districts	Municipalities	Judicial Branch
Local Affairs	Property Taxation	Sheriffs
Regulatory Agencies	State	