

NOTE: The governor signed this measure on 4/7/2014.

An Act

SENATE BILL 14-022

BY SENATOR(S) Kefalas, Ulibarri, Aguilar, Guzman, Johnston, Jones, Kerr, Nicholson, Schwartz, Todd, Carroll;
also REPRESENTATIVE(S) Fields, Exum, Pettersen, Becker, Fischer, Ginal, Hullinghorst, Labuda, Lee, Melton, Rosenthal, Salazar, Schafer, Singer, Tyler, Williams, Young.

CONCERNING CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS, AND, IN CONNECTION THEREWITH, AUTHORIZING SUCH INSTITUTIONS TO SERVE AS A QUALIFIED HOLDER AND TO PRESENT A REQUEST FOR FULL OR PARTIAL RELEASE OF COLLATERAL PLEDGED WITHOUT PRESENTATION OF THE ORIGINAL PROMISSORY NOTE.

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

SECTION 1. In Colorado Revised Statutes, 38-38-100.3, **amend** (20) (i) and (20) (j); and **add** (20) (k) and (20) (l) as follows:

38-38-100.3. Definitions. As used in articles 37 to 39 of this title, unless the context otherwise requires:

(20) "Qualified holder" means a holder of an evidence of debt, certificate of purchase, certificate of redemption, or confirmation deed that is also one of the following:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(i) An entity created or sponsored by the federal or state government that originates, insures, guarantees, or purchases loans or a person acting on behalf of such an entity to enforce an evidence of debt or the deed of trust securing an evidence of debt; or

~~(j) Any entity listed in paragraphs (a) to (i) of this subsection (20) acting in the capacity of agent, nominee except as otherwise specified in subsection (10) of this section, or trustee for another person~~ COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION THAT HAS BEEN CERTIFIED AND MAINTAINS SUCH CURRENT STATUS FROM THE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND ADMINISTERED BY THE UNITED STATES DEPARTMENT OF THE TREASURY, REFERRED TO IN THIS SECTION AS THE "FUND". IN ORDER TO BE A QUALIFIED HOLDER UNDER THIS ARTICLE, THE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION MUST:

(I) BE A LEGAL ENTITY;

(II) HAVE A PRIMARY MISSION OF PROMOTING COMMUNITY DEVELOPMENT;

(III) BE A FINANCING ENTITY;

(IV) PRIMARILY SERVE ONE OR MORE TARGET MARKETS AS DEFINED BY THE FUND;

(V) PROMOTE DEVELOPMENT SERVICES IN CONJUNCTION WITH ITS FINANCING ACTIVITIES;

(VI) MAINTAIN ACCOUNTABILITY TO ITS DEFINED TARGET MARKET;
AND

(VII) BE A NONGOVERNMENTAL ENTITY AND NOT BE UNDER THE CONTROL OF ANY GOVERNMENTAL ENTITY; EXCEPT THAT A TRIBAL GOVERNMENT IS EXEMPT FROM THE REQUIREMENTS OF THIS SUBPARAGRAPH (VII).

(k) ANY ENTITY WITH ACTIVE CERTIFICATION UNDER THE FUND THAT ORIGINATES, INSURES, GUARANTEES, OR PURCHASES LOANS OR A PERSON ACTING ON BEHALF OF SUCH AN ENTITY TO ENFORCE AN EVIDENCE

OF DEBT OR THE DEED OF TRUST SECURING AN EVIDENCE OF DEBT; OR

(l) ANY ENTITY LISTED IN PARAGRAPHS (a) TO (k) OF THIS SUBSECTION (20) ACTING IN THE CAPACITY OF AGENT, NOMINEE EXCEPT AS OTHERWISE SPECIFIED IN SUBSECTION (10) OF THIS SECTION, OR TRUSTEE FOR ANOTHER PERSON.

SECTION 2. In Colorado Revised Statutes, 38-38-101, **amend** (2) (a) as follows:

38-38-101. Holder of evidence of debt may elect to foreclose.
(2) Foreclosure by qualified holder without original evidence of debt, original or certified copy of deed of trust, or proper indorsement.
(a) A qualified holder, whether acting for itself or as agent, nominee, or trustee under ~~section 38-38-100.3 (20) (j)~~ SECTION 38-38-100.3 (20), that elects to foreclose without the original evidence of debt pursuant to subparagraph (II) of paragraph (b) of subsection (1) of this section, or without the original recorded deed of trust or a certified copy thereof pursuant to subparagraph (II) of paragraph (c) of subsection (1) of this section, or without the proper indorsement or assignment of an evidence of debt under paragraph (b) of subsection (1) of this section shall, by operation of law, be deemed to have agreed to indemnify and defend any person liable for repayment of any portion of the original evidence of debt in the event that the original evidence of debt is presented for payment to the extent of any amount, other than the amount of a deficiency remaining under the evidence of debt after deducting the amount bid at sale, and any person who sustains a loss due to any title defect that results from reliance upon a sale at which the original evidence of debt was not presented. The indemnity granted by this subsection (2) shall be limited to actual economic loss suffered together with any court costs and reasonable attorney fees and costs incurred in defending a claim brought as a direct and proximate cause of the failure to produce the original evidence of debt, but such indemnity shall not include, and no claimant shall be entitled to, any special, incidental, consequential, reliance, expectation, or punitive damages of any kind. A qualified holder acting as agent, nominee, or trustee shall be liable for the indemnity pursuant to this subsection (2).

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August

6, 2014, if adjournment sine die is on May 7, 2014); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Morgan Carroll
PRESIDENT OF
THE SENATE

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO