

Foreclosure Process

1 **Amendment__ proposes amending the Colorado Constitution to:**

- 2 ♦ prohibit the commencement of foreclosure proceedings until the party
3 claiming the right to foreclose files competent evidence of its right to
4 foreclose with the clerk and recorder of the county in which the real
5 property is located.

6 **Summary and Analysis**

7 **Background.** In 1894, the Colorado General Assembly established an office of
8 the public trustee in each county of the state to serve as a neutral party between
9 borrowers and lenders. The public trustee is either appointed by the Governor or is
10 the elected county treasurer depending on the size of the county. In Colorado, a deed
11 of trust gives the public trustee the authority to foreclose on a property if a borrower
12 does not make a certain number of loan payments.

13 **Evidence of debt.** A loan document represents a borrower's promise to pay and
14 a lender's evidence of debt. Most home loans are originated by one lender and then
15 sold to another financial institution, freeing up money that allows the original lender to
16 make more loans. The entity that owns the loan is referred to as the holder, because
17 it holds the evidence of debt. The borrower is then notified where to send payments
18 which could be to the original lender, the holder, or a third party that specializes in
19 servicing loans. A loan may be sold, assigned, and transferred several times over the
20 life of the loan. These transactions do not change the status of the public trustee
21 named in the deed of trust, and do not need to be filed with the county clerk and
22 recorder.

23 **Foreclosure process.** Under current law, if a borrower stops making payments
24 on a loan, a holder can initiate a foreclosure by filing with the public trustee either the
25 original evidence of debt, or a copy of the original evidence of debt along with a
26 statement signed by the holder or holder's attorney certifying that the copy is true and
27 correct.

28 Amendment__ adds a requirement that a holder file the loan document, records of
29 all sales, assignments, and transfers associated with the loan with the county clerk
30 and recorder prior to initiating the foreclosure process. For example, if a loan is sold
31 by the original lender, and again by subsequent entities, all those transactions must be
32 recorded by the county clerk and recorder prior to a foreclosure.

1 **Arguments For**

2 1) Requiring the foreclosing party to provide competent evidence demonstrating
3 its right to foreclose gives homeowners additional due process protections in the
4 foreclosure process. The measure increases transparency, allowing homeowners an
5 opportunity to review the accuracy of the documents filed. Currently, the public
6 trustee has no legal authority to request that the holder provide the original evidence
7 of debt.

8 **Arguments Against**

9 1) Amendment __ is unnecessary and may have serious unintended
10 consequences to the availability of home loans. Sufficient safeguards for
11 homeowners already exist under Colorado's public trustee system which ensures that
12 homeowners and lenders comply with the law. The increased recording requirements
13 may deter investors from purchasing loans from Colorado lenders thereby reducing
14 available credit for new loans.