

First Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0056.01 Duane Gall x4335

HOUSE BILL 13-1249

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A BILL FOR AN ACT

101 CONCERNING RESIDENTIAL FORECLOSURES, AND, IN CONNECTION  
102 THEREWITH, REQUIRING THAT FORECLOSURES BE INITIATED  
103 ONLY BY PERSONS WITH A SECURITY INTEREST IN THE PROPERTY  
104 AND REQUIRING GOOD-FAITH DEALING IN LOAN MODIFICATION  
105 NEGOTIATIONS.

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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>.)*

Current law allows a "holder of an evidence of debt" (holder),

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.

generally a bank or other financial institution, to foreclose on real property under a deed of trust even if the holder's interest is based on an assignment from the original lender and the assignment or other intermediate documents are not produced, simply by providing a statement from the holder's attorney that the holder's interest in the property is valid. **Section 2** of the bill removes this provision and otherwise tightens the rules for documentation of the holder's interest that must be filed with the public trustee and with a court before a foreclosure sale is authorized. Section 2 also removes an existing limitation on the liability of a holder that forecloses without having possession of the original documents, to all parties damaged by the foreclosure.

**Section 1** adds and amends definitions used throughout the bill. **Section 3** requires the notice that a residential borrower receives when a holder seeks an order authorizing sale (OAS) under rule 120, C.R.C.P., to include new disclosures specifying that:

- ! A statement or opinion offered by the holder or its attorneys or agents is not advice to the borrower, and that those persons' sole loyalty is to the party that claims to be the holder;
- ! In response to the motion for an OAS, the borrower may challenge the sale on specified grounds, including whether the applicant has a right to enforce a recorded security interest in the real property affected by the foreclosure; and
- ! It is illegal for a foreclosure consultant to charge an up-front fee.

**Section 4** addresses "dual tracking", in which a lender simultaneously negotiates with the borrower for a loan modification and pursues foreclosure through the public trustee. This section requires the servicer of the loan to establish a single point of contact by which the borrower may stay apprised of the status of his or her application for a loan modification. Section 4 also prohibits the lender from starting or continuing with the foreclosure process if the borrower is complying with the terms of a trial payment plan or other foreclosure prevention alternative.

**Section 5** explicitly authorizes any party to an OAS proceeding to raise, and requires the court to consider, the issue of whether the moving party has an enforceable legal interest in the property. Section 5 also requires that the notice posted on the property in advance of the OAS proceeding contain a prominent disclosure that the borrower must respond in writing by a specific date or lose the right to object to a sale of the property.

1           **SECTION 1.** In Colorado Revised Statutes, 38-38-100.3, **amend**  
2 (10) introductory portion and (10) (d); and **add** (2.5), (9.5), (21.3), (21.6),  
3 and (23.5) as follows:

4           **38-38-100.3. Definitions.** As used in articles 37 to 39 of this title,  
5 unless the context otherwise requires:

6           (2.5) "BORROWER" MEANS A PERSON LIABLE UNDER AN EVIDENCE  
7 OF DEBT CONSTITUTING A RESIDENTIAL MORTGAGE LOAN.

8           (9.5) "FORECLOSURE PREVENTION ALTERNATIVE" MEANS A LOAN  
9 MODIFICATION OR OTHER AVAILABLE LOSS MITIGATION OPTION,  
10 INCLUDING A SHORT SALE, LOAN MODIFICATION, OR DEED IN LIEU OF  
11 FORECLOSURE, WITH RESPECT TO A RESIDENTIAL MORTGAGE LOAN.

12           (10) "HOLDER" OR "holder of an evidence of debt" means the  
13 person in actual possession of or person entitled to enforce an evidence  
14 of debt; except that ~~"holder of an evidence of debt"~~ THE TERM does not  
15 include a person acting as a nominee solely for the purpose of holding the  
16 evidence of debt or deed of trust as an electronic registry without any  
17 authority to enforce the evidence of debt or deed of trust. For the purposes  
18 of articles 37 to 40 of this title, the following persons are presumed to be  
19 the holder of an evidence of debt:

20           (d) The person in possession of an evidence of debt with  
21 EVIDENCE THAT PROVES THE PERSON'S authority ~~which may be granted by~~  
22 ~~the original evidence of debt or deed of trust~~, to enforce the evidence of  
23 debt as agent, nominee, or trustee or in a similar capacity for the obligee  
24 of the evidence of debt.

25           (21.3) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN THAT IS  
26 PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD USE AND THAT IS  
27 SECURED BY A MORTGAGE, DEED OF TRUST, OR OTHER EQUIVALENT,

1        CONSENSUAL SECURITY INTEREST ON A DWELLING OR RESIDENTIAL REAL  
2        ESTATE UPON WHICH IS CONSTRUCTED OR INTENDED TO BE CONSTRUCTED  
3        A SINGLE-FAMILY DWELLING OR MULTIPLE-FAMILY DWELLING OF FOUR OR  
4        FEWER UNITS THAT IS OR WILL BE USED BY THE BORROWER AS THE  
5        BORROWER'S PRIMARY RESIDENCE.

6            (21.6) "RESIDENTIAL REAL ESTATE" MEANS ANY REAL PROPERTY  
7        UPON WHICH A DWELLING IS OR WILL BE CONSTRUCTED.

8            (23.5) (a) "SERVICER" OR "MORTGAGE SERVICER" MEANS AN  
9        ENTITY THAT DIRECTLY SERVICES A LOAN, OR THAT IS RESPONSIBLE FOR  
10       INTERACTING WITH THE BORROWER, MANAGING THE LOAN ACCOUNT ON  
11       A DAILY BASIS, INCLUDING COLLECTING AND CREDITING PERIODIC LOAN  
12       PAYMENTS, MANAGING ANY ESCROW ACCOUNT, OR ENFORCING THE NOTE  
13       AND SECURITY INSTRUMENT, EITHER AS THE CURRENT HOLDER OF THE  
14       EVIDENCE OF DEBT OR AS THE CURRENT HOLDER'S AUTHORIZED AGENT.

15            (b) "SERVICER" INCLUDES AN ENTITY PROVIDING SUCH SERVICES  
16       PURSUANT TO DESIGNATION AS A SUBSERVICING AGENT OR BY CONTRACT  
17       WITH A MASTER SERVICER.

18            (c) "SERVICER" DOES NOT INCLUDE A TRUSTEE OR A TRUSTEE'S  
19       AUTHORIZED AGENT ACTING UNDER A POWER OF SALE PURSUANT TO A  
20       DEED OF TRUST.

21            **SECTION 2.** In Colorado Revised Statutes, 38-38-101, **amend**  
22       (1) introductory portion, (1) (b) introductory portion, (1) (b) (II), (1) (c)  
23       introductory portion, (1) (c) (II), (1) (g), (2) (a), and (8); and **repeal** (6)  
24       (b) as follows:

25            **38-38-101. Holder of evidence of debt may elect to foreclose.**  
26       (1) **Documents required.** Whenever a holder of an evidence of debt  
27       declares a violation of a covenant of a deed of trust and elects to publish

1 all or a portion of the property ~~therein~~ described IN THE DEED OF TRUST  
2 for sale, the holder or the attorney for the holder shall file the following  
3 with the public trustee of the county where the property is located:

4 (b) The original evidence of debt, including COPIES OF any  
5 modifications to the original evidence of debt, ~~together with~~ AND the  
6 original indorsement or assignment ~~thereof~~ OF THE EVIDENCE OF DEBT, if  
7 any, to the holder of the evidence of debt or other proper indorsement or  
8 assignment in accordance with subsection (6) of this section or, in lieu of  
9 the original evidence of debt AND AN ORIGINAL INDORSEMENT OR  
10 ASSIGNMENT, one of the following:

11 (II) A copy of the evidence of debt and ANY MODIFICATION OR  
12 INDORSEMENT TOGETHER WITH a certification signed and properly  
13 acknowledged by ~~a~~ THE holder of ~~an~~ THE evidence of debt, acting for  
14 itself or as agent, nominee, or trustee under subsection (2) of this section,  
15 or a statement signed by the attorney for such holder citing the paragraph  
16 of section 38-38-100.3 (20) under which the holder claims to be a  
17 qualified holder and certifying ~~or stating~~ UNDER PENALTY OF PERJURY that  
18 the copy of the evidence of debt is true and correct and that the use of the  
19 copy is subject to the conditions described in paragraph (a) of subsection  
20 (2) of this section; or

21 (c) The original recorded deed of trust securing the evidence of  
22 debt and any original recorded modifications of the deed of trust or any  
23 recorded partial releases of the deed of trust, or in lieu ~~thereof~~ OF THE  
24 ORIGINAL RECORDED DEED OF TRUST, MODIFICATIONS, OR PARTIAL  
25 RELEASES, one of the following:

26 (II) Copies of the recorded deed of trust and any recorded  
27 modifications of the deed of trust or recorded partial releases of the deed

1 of trust and a certification signed and properly acknowledged by a THE  
2 holder of an THE evidence of debt, acting for itself or as an agent,  
3 nominee, or trustee under subsection (2) of this section, or a signed  
4 statement by the attorney for such holder citing the paragraph of section  
5 38-38-100.3 (20) under which the holder claims to be a qualified holder  
6 and certifying ~~or stating~~ UNDER PENALTY OF PERJURY that the copies of  
7 the recorded deed of trust and any recorded modifications of the deed of  
8 trust or recorded partial releases of the deed of trust are true and correct  
9 and that the use of the copies is subject to the conditions described in  
10 paragraph (a) of subsection (2) of this section;

11 (g) A statement, executed by the holder of an THE evidence of  
12 debt, or the attorney for such holder, identifying, to the best knowledge  
13 of the person executing ~~such~~ THE statement, the name and address of the  
14 current owner of the property described in the notice of election and  
15 demand; and

16 (2) **Foreclosure by qualified holder without original evidence**  
17 **of debt, original or certified copy of deed of trust, or proper**  
18 **indorsement.** (a) (I) A qualified holder, whether acting for itself or as  
19 agent, nominee, or trustee under section 38-38-100.3 (20) (j), that elects  
20 to foreclose without the original evidence of debt pursuant to  
21 subparagraph (II) of paragraph (b) of subsection (1) of this section, or  
22 without the original recorded deed of trust or a certified copy ~~thereof~~ OF  
23 THE ORIGINAL RECORDED DEED OF TRUST pursuant to subparagraph (II) of  
24 paragraph (c) of subsection (1) of this section, or without the proper  
25 indorsement or assignment of an evidence of debt under paragraph (b) of  
26 subsection (1) of this section, ~~shall~~, by operation of law, ~~be deemed to~~  
27 ~~have agreed~~ AGREES to indemnify, ~~and~~ defend, AND PAY DAMAGES AND

1 REASONABLE ATTORNEY FEES TO:

2 (A) Any person liable for repayment of any portion of the original  
3 evidence of debt in the event that the original evidence of debt is  
4 presented for payment to the extent of any amount, other than the amount  
5 of a deficiency remaining under the evidence of debt after deducting the  
6 amount bid at sale; and

7 (B) Any person who sustains a loss due to any title defect that  
8 results from reliance upon a sale at which the original evidence of debt  
9 was not presented. The indemnity granted by this subsection (2) ~~shall be~~  
10 IS limited to actual economic loss suffered ~~together with~~ PLUS any court  
11 costs and reasonable attorney fees and costs incurred in defending a claim  
12 brought as a direct and proximate cause of the failure to produce the  
13 original evidence of debt. ~~but such~~ THE indemnity ~~shall~~ DOES not include,  
14 and no claimant ~~shall be~~ IS entitled to, ~~any special, incidental,~~  
15 ~~consequential, reliance, expectation,~~ NONECONOMIC or punitive damages  
16 of any kind.

17 (II) A qualified holder acting as agent, nominee, or trustee ~~shall~~  
18 ~~be~~ IS liable for the indemnity pursuant to this subsection (2).

19 (6) **Indorsement or assignment.** (b) ~~Notwithstanding the~~  
20 ~~provisions of paragraph (a) of this subsection (6), the original evidence~~  
21 ~~of debt or a copy thereof without proper indorsement or assignment shall~~  
22 ~~be deemed to be properly indorsed or assigned if a qualified holder~~  
23 ~~presents the original evidence of debt or a copy thereof to the officer~~  
24 ~~together with a statement in the certification of the qualified holder or in~~  
25 ~~the statement of the attorney for the qualified holder pursuant to~~  
26 ~~subparagraph (H) of paragraph (b) of subsection (1) of this section that~~  
27 ~~the party on whose behalf the foreclosure was commenced is the holder~~

1 of the evidence of debt.

2 (8) **Assignment or transfer of debt during foreclosure.** (a) The  
3 holder of the evidence of debt may assign or transfer the secured  
4 indebtedness EVIDENCE OF DEBT at any time during the pendency of a  
5 foreclosure action. ~~without affecting the validity of the secured~~  
6 ~~indebtedness.~~ Upon receipt of written notice signed by the holder who  
7 commenced the foreclosure action or the attorney for the holder stating  
8 that the evidence of debt has been assigned and transferred and  
9 identifying the assignee or transferee, AND UPON RECEIPT OF THE  
10 DOCUMENTS REQUIRED BY PARAGRAPHS (b) AND (c) OF SUBSECTION (1)  
11 OF THIS SECTION, the public trustee shall complete the foreclosure as  
12 directed by the assignee or transferee or the attorney for the assignee or  
13 transferee. ~~No~~ A holder of an evidence of debt, certificate of purchase, or  
14 certificate of redemption ~~shall be~~ IS NOT liable to any third party for the  
15 acts or omissions of any assignee or transferee that occur after the date of  
16 the assignment or transfer.

17 (b) ~~The assignment or transfer of the secured indebtedness during~~  
18 ~~the pendency of a foreclosure shall be deemed made without recourse~~  
19 ~~unless otherwise agreed in a written statement signed by the assignor or~~  
20 ~~transferor. The holder of the evidence of debt, certificate of purchase, or~~  
21 ~~certificate of redemption making the assignment or transfer and the~~  
22 ~~attorney for the holder shall have no duty, obligation, or liability to the~~  
23 ~~assignee or transferee or to any third party for any act or omission with~~  
24 ~~respect to the foreclosure or the loan servicing of the secured~~  
25 ~~indebtedness after the assignment or transfer. If an assignment or transfer~~  
26 ~~is made by a qualified holder that commenced the foreclosure pursuant to~~  
27 ~~subsection (2) of this section, the qualified holder's indemnity under said~~



1 subsection (2) shall remain in effect with respect to all parties except to  
2 the assignee or transferee, unless otherwise agreed in a writing signed by  
3 the assignee or transferee if the assignee or transferee is a qualified  
4 holder.

5 (c) If an assignment or transfer is made to a NEW holder of an  
6 evidence of debt other than THAT IS NOT a qualified holder, the NEW  
7 holder must SHALL file with the officer the original evidence of debt and  
8 the original recorded deed of trust or, in lieu thereof OF THE ORIGINAL  
9 DOCUMENTS, the documents required in paragraphs (b) and (c) of  
10 subsection (1) of this section. An assignee or transferee shall be presumed  
11 to not be a qualified holder, and as such, shall be subject to the provisions  
12 of this paragraph (c), unless a signed statement by the attorney for such  
13 assignee or transferee that cites the paragraph of section 38-38-100.3(20)  
14 under which the assignee or transferee claims to be a qualified holder is  
15 filed with the officer.

16 **SECTION 3.** In Colorado Revised Statutes, 38-38-102.5, **amend**  
17 (2) as follows:

18 **38-38-102.5. Notice prior to residential foreclosure - hotline.**

19 (2) At least thirty days before filing a notice of election and demand and  
20 at least thirty days after default, the holder shall mail a notice addressed  
21 to the original grantor of the deed of trust at the address in the recorded  
22 deed of trust or other lien being foreclosed and, if different, at the last  
23 address shown in the holder's records, containing:

24 (a) The telephone number of the Colorado foreclosure hotline and  
25 the direct telephone number of the holder's loss mitigation representative  
26 or department;

27 (b) A DISCLOSURE THAT, IN ANY DISCUSSION WITH THE HOLDER OR

1 ANY AGENT OR REPRESENTATIVE OF THE HOLDER, INCLUDING THE  
2 HOLDER'S ATTORNEY, A STATEMENT OR OPINION OF THE AGENT,  
3 REPRESENTATIVE, OR ATTORNEY IS NOT ADVICE TO OR FOR THE  
4 BORROWER, AND THAT THE AGENT, REPRESENTATIVE, OR ATTORNEY OWES  
5 LOYALTY ONLY TO THE PARTY THAT CLAIMS TO BE THE HOLDER;

6 (c) A STATEMENT THAT, IN RESPONSE TO A MOTION FOR AN ORDER  
7 AUTHORIZING SALE UNDER SECTION 38-38-105, A BORROWER OR ANY  
8 INTERESTED PARTY MAY OBJECT TO THE SALE AND REQUEST A HEARING  
9 CONCERNING WHETHER THE PERSON SEEKING THE ORDER HAS THE LEGAL  
10 RIGHT TO FORECLOSE, WHETHER A DEFAULT HAS OCCURRED, WHETHER  
11 THE BORROWER IS IN MILITARY SERVICE, AND WHETHER THERE ARE  
12 ONGOING NEGOTIATIONS FOR A RESIDENTIAL MORTGAGE LOAN  
13 MODIFICATION OR OTHER FORECLOSURE PREVENTION ALTERNATIVE; AND

14 (d) A STATEMENT THAT, UNDER SECTION 6-1-1107, C.R.S., IT IS  
15 ILLEGAL FOR ANY PERSON ACTING AS A FORECLOSURE CONSULTANT TO  
16 CHARGE AN UP-FRONT FEE OR DEPOSIT TO THE BORROWER FOR SERVICES  
17 RELATED TO THE FORECLOSURE.

18 **SECTION 4.** In Colorado Revised Statutes, **add** 38-38-103.4 and  
19 38-38-103.6 as follows:

20 **38-38-103.4. Single point of contact.** (1) IF A BORROWER  
21 REQUESTS A FORECLOSURE PREVENTION ALTERNATIVE, A SERVICER SHALL  
22 PROMPTLY ESTABLISH A SINGLE POINT OF CONTACT AND PROVIDE TO THE  
23 BORROWER ONE OR MORE DIRECT MEANS OF COMMUNICATION WITH THE  
24 SINGLE POINT OF CONTACT.

25 (2) A SINGLE POINT OF CONTACT IS RESPONSIBLE FOR:

26 (a) COMMUNICATING THE PROCESS BY WHICH A BORROWER MAY  
27 APPLY FOR AN AVAILABLE FORECLOSURE PREVENTION ALTERNATIVE AND

1 THE DEADLINE FOR ANY REQUIRED SUBMISSIONS TO BE CONSIDERED FOR  
2 THESE OPTIONS;

3 (b) COORDINATING RECEIPT OF ALL DOCUMENTS ASSOCIATED WITH  
4 AVAILABLE FORECLOSURE PREVENTION ALTERNATIVES AND NOTIFYING  
5 THE BORROWER OF ANY MISSING DOCUMENTS NECESSARY TO COMPLETE  
6 THE APPLICATION;

7 (c) HAVING ACCESS TO CURRENT INFORMATION AND PERSONNEL  
8 SUFFICIENT TO TIMELY, ACCURATELY, AND ADEQUATELY INFORM THE  
9 BORROWER OF THE CURRENT STATUS OF THE FORECLOSURE PREVENTION  
10 ALTERNATIVE;

11 (d) ENSURING THAT A BORROWER IS CONSIDERED FOR ALL  
12 FORECLOSURE PREVENTION ALTERNATIVES OFFERED BY OR THROUGH THE  
13 MORTGAGE SERVICER AND FOR WHICH THE BORROWER IS OR MAY BE  
14 ELIGIBLE; AND

15 (e) HAVING ACCESS TO INDIVIDUALS WITH THE ABILITY AND  
16 AUTHORITY TO STOP FORECLOSURE PROCEEDINGS WHEN NECESSARY.

17 (3) A SINGLE POINT OF CONTACT SHALL REMAIN ASSIGNED TO THE  
18 BORROWER'S ACCOUNT UNTIL THE SERVICER DETERMINES THAT ALL  
19 FORECLOSURE PREVENTION ALTERNATIVES OFFERED BY OR THROUGH THE  
20 SERVICER AND FOR WHICH THE BORROWER IS OR MAY BE ELIGIBLE HAVE  
21 BEEN EXHAUSTED OR THE BORROWER'S ACCOUNT BECOMES CURRENT.

22 (4) THE SERVICER SHALL ENSURE THAT A SINGLE POINT OF  
23 CONTACT REFERS AND TRANSFERS A BORROWER TO AN APPROPRIATE  
24 SUPERVISOR UPON REQUEST OF THE BORROWER, IF THE SINGLE POINT OF  
25 CONTACT HAS A SUPERVISOR.

26 (5) AS USED IN THIS SECTION, "SINGLE POINT OF CONTACT" MEANS  
27 AN INDIVIDUAL OR TEAM OF PERSONNEL, EACH OF WHOM HAS THE ABILITY

1 AND AUTHORITY TO PERFORM THE RESPONSIBILITIES DESCRIBED IN THIS  
2 SECTION. THE SERVICER SHALL ENSURE THAT EACH MEMBER OF THE TEAM  
3 IS KNOWLEDGEABLE ABOUT THE BORROWER'S SITUATION AND CURRENT  
4 STATUS.

5 (6) THIS SECTION DOES NOT APPLY TO A SERVICER OR HOLDER  
6 THAT HAS FILED FEWER THAN ONE HUNDRED NOTICES OF ELECTION AND  
7 DEMAND PERTAINING TO RESIDENTIAL MORTGAGE LOANS DURING THE  
8 IMMEDIATELY PRECEDING CALENDAR YEAR.

9 **38-38-103.6. Dual tracking prohibited - penalties.** (1) IF A  
10 BORROWER SUBMITS A COMPLETE APPLICATION FOR A FIRST LIEN LOAN  
11 MODIFICATION OR OTHER FORECLOSURE PREVENTION ALTERNATIVE  
12 OFFERED BY OR THROUGH THE BORROWER'S MORTGAGE SERVICER OR BY  
13 OR THROUGH THE HOLDER OF THE DEBT, THEN, WHILE THE APPLICATION IS  
14 PENDING, A MORTGAGE SERVICER, MORTGAGEE, TRUSTEE, BENEFICIARY,  
15 HOLDER, OR AUTHORIZED AGENT SHALL:

16 (a) NOT FILE A NOTICE OF ELECTION AND DEMAND UNDER SECTION  
17 38-38-101; OR

18 (b) RECALL THE NOTICE OF ELECTION AND DEMAND FROM THE  
19 PUBLIC TRUSTEE, IF A NOTICE OF ELECTION AND DEMAND HAS ALREADY  
20 BEEN FILED BUT IS NOT YET RECORDED; OR

21 (c) NOT TAKE ANY FURTHER ACTION UNDER SECTION 38-38-105 OR  
22 38-38-106, IF A NOTICE OF ELECTION AND DEMAND HAS BEEN FILED AND  
23 RECORDED, UNTIL ONE OF THE FOLLOWING OCCURS:

24 (I) THE SERVICER OR HOLDER OF THE EVIDENCE OF DEBT MAKES A  
25 WRITTEN DETERMINATION THAT THE BORROWER IS NOT ELIGIBLE FOR A  
26 FIRST LIEN LOAN MODIFICATION OR OTHER FORECLOSURE PREVENTION  
27 ALTERNATIVE, AND ANY APPEAL PERIOD HAS EXPIRED;

1           (II) THE BORROWER DOES NOT ACCEPT AN OFFERED FIRST LIEN  
2 LOAN MODIFICATION OR OTHER FORECLOSURE PREVENTION ALTERNATIVE  
3 WITHIN FOURTEEN DAYS AFTER THE DATE OF THE OFFER; OR

4           (III) THE BORROWER ACCEPTS A WRITTEN MODIFICATION OR  
5 OTHER FORECLOSURE ALTERNATIVE BUT DEFAULTS ON, OR OTHERWISE  
6 BREACHES THE BORROWER'S OBLIGATIONS UNDER, THE MODIFICATION.

7           (2) (a) WHEN A BORROWER ACCEPTS AN OFFERED FORECLOSURE  
8 PREVENTION ALTERNATIVE, THE HOLDER OR SERVICER SHALL PROVIDE THE  
9 BORROWER WITH A COPY OF THE COMPLETE AGREEMENT EVIDENCING THE  
10 FORECLOSURE PREVENTION ALTERNATIVE, SIGNED BY THE HOLDER OR AN  
11 AUTHORIZED REPRESENTATIVE OF THE HOLDER.

12           (b) THE HOLDER OR SERVICER SHALL FILE A NOTICE OF  
13 WITHDRAWAL OF A NOTICE OF ELECTION AND DEMAND AND CANCEL ANY  
14 PENDING FORECLOSURE SALE IF THE BORROWER ACCEPTS A PERMANENT  
15 FORECLOSURE PREVENTION ALTERNATIVE.

16           (c) IF THE HOLDER OR SERVICER DENIES THE BORROWER'S  
17 APPLICATION FOR A FORECLOSURE PREVENTION ALTERNATIVE, THE  
18 HOLDER OR SERVICER SHALL PROVIDE THE BORROWER WITH A WRITTEN  
19 STATEMENT OF:

20           (I) THE REASONS FOR THE DENIAL;

21           (II) THE AMOUNT OF TIME THE BORROWER HAS TO REQUEST AN  
22 APPEAL OF THE DENIAL, WHICH MUST BE NO LESS THAN THIRTY DAYS; AND

23           (III) INSTRUCTIONS REGARDING HOW TO APPEAL, INCLUDING HOW  
24 TO PROVIDE EVIDENCE THAT THE HOLDER'S OR MORTGAGE SERVICER'S  
25 DETERMINATION WAS ERRONEOUS.

26           (3) IF THE BORROWER APPLIES FOR A FIRST LIEN LOAN  
27 MODIFICATION OR OTHER FORECLOSURE PREVENTION ALTERNATIVE AND

1 THE APPLICATION IS DENIED, THE HOLDER OF THE EVIDENCE OF DEBT AND  
2 ANY SERVICER, MORTGAGEE, TRUSTEE, BENEFICIARY, OR AUTHORIZED  
3 AGENT SHALL NOT FILE OR RECORD A NOTICE OF ELECTION AND DEMAND  
4 OR TAKE FURTHER ACTION ON A PREVIOUSLY RECORDED NOTICE OF  
5 ELECTION AND DEMAND UNTIL THE LAST TO OCCUR OF ANY OF THE  
6 FOLLOWING:

7 (a) THIRTY-ONE DAYS AFTER THE DATE OF THE WRITTEN  
8 STATEMENT OF REASONS FOR THE DENIAL, AS REQUIRED BY PARAGRAPH  
9 (c) OF SUBSECTION (2) OF THIS SECTION;

10 (b) IF THE BORROWER APPEALS THE DENIAL:

11 (I) FIFTEEN DAYS AFTER THE DENIAL OF THE APPEAL; OR

12 (II) IF THE APPEAL IS SUCCESSFUL, FOURTEEN DAYS AFTER A  
13 FORECLOSURE PREVENTION ALTERNATIVE IS OFFERED BUT DECLINED BY  
14 THE BORROWER; OR

15 (III) IF THE APPEAL IS SUCCESSFUL AND A FORECLOSURE  
16 PREVENTION ALTERNATIVE IS OFFERED AND ACCEPTED, THE DATE ON  
17 WHICH THE BORROWER FAILS TO TIMELY SUBMIT THE FIRST PAYMENT OR  
18 OTHERWISE BREACHES THE TERMS OF THE OFFER.

19 (4) THE HOLDER OR SERVICER SHALL NOT CHARGE OR COLLECT  
20 ANY:

21 (a) APPLICATION, PROCESSING, OR OTHER FEE FOR A FORECLOSURE  
22 PREVENTION ALTERNATIVE; OR

23 (b) LATE FEES FOR PERIODS DURING WHICH A FORECLOSURE  
24 PREVENTION ALTERNATIVE IS UNDER CONSIDERATION OR A DENIAL IS  
25 BEING APPEALED; THE BORROWER IS MAKING TIMELY MODIFICATION  
26 PAYMENTS; OR A FORECLOSURE PREVENTION ALTERNATIVE IS BEING  
27 EVALUATED OR EXERCISED.

1 (5) IN ORDER TO MINIMIZE THE RISK OF BORROWERS SUBMITTING  
2 MULTIPLE APPLICATIONS FOR FORECLOSURE PREVENTION ALTERNATIVES,  
3 THE HOLDER OR SERVICER IS NOT OBLIGATED TO EVALUATE AN  
4 APPLICATION FROM A BORROWER WHO HAS PREVIOUSLY BEEN EVALUATED  
5 OR AFFORDED A FAIR OPPORTUNITY TO BE EVALUATED UNLESS:

6 (a) THERE HAS BEEN A MATERIAL CHANGE IN THE BORROWER'S  
7 FINANCIAL CIRCUMSTANCES SINCE THE DATE OF THE BORROWER'S  
8 PREVIOUS APPLICATION; AND

9 (b) THAT CHANGE IS DOCUMENTED AND SUPPLIED TO THE HOLDER  
10 OR SERVICER.

11 (6) A HOLDER OR SERVICER THAT VIOLATES THIS SECTION TWO OR  
12 MORE TIMES IN ANY THREE-MONTH PERIOD IS LIABLE FOR A CIVIL PENALTY  
13 OF UP TO SEVEN THOUSAND FIVE HUNDRED DOLLARS PER MORTGAGE OR  
14 DEED OF TRUST IN AN ACTION BROUGHT BY THE ATTORNEY GENERAL AND,  
15 IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL PENALTY, DISCIPLINARY  
16 ACTION, OR OTHER REMEDY AVAILABLE UNDER THE LAW, THE SERVICER  
17 IS PRESUMED TO HAVE ENGAGED IN A DECEPTIVE TRADE PRACTICE AND TO  
18 HAVE HAD A PUBLIC IMPACT FOR PURPOSES OF APPLICATION OF THE  
19 "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6, C.R.S.

20 (7) THIS SECTION DOES NOT APPLY TO A HOLDER OR SERVICER  
21 THAT HAS FILED FEWER THAN ONE HUNDRED NOTICES OF ELECTION AND  
22 DEMAND PERTAINING TO RESIDENTIAL MORTGAGE LOANS DURING THE  
23 IMMEDIATELY PRECEDING CALENDAR YEAR.

24 **SECTION 5.** In Colorado Revised Statutes, 38-38-105, **amend**  
25 (2) (a) and (3) as follows:

26 **38-38-105. Court order authorizing sale mandatory - notice of**  
27 **hearing for residential properties.** (2) (a) (I) ~~On and after January 1,~~

1     ~~2008~~, Whenever a public trustee forecloses upon a deed of trust under this  
2 article, the holder of the evidence of debt or the attorney for the holder  
3 shall ~~obtain~~ MOVE FOR THE ISSUANCE OF an order authorizing sale from  
4 a court of competent jurisdiction ~~to issue the same~~ pursuant to rule 120  
5 or other rule of the Colorado rules of civil procedure. THE COURT MAY  
6 GRANT OR DENY THE MOTION. The order shall AUTHORIZING SALE, IF  
7 ISSUED, MUST recite the date the hearing was scheduled if no hearing was  
8 held, or the date the hearing was completed if a hearing was held, which  
9 date in either case must be NO SOONER THAN THE SIXTY-FIFTH DAY AFTER  
10 THE FILING OF THE NOTICE OF ELECTION AND DEMAND AND no later than  
11 the day prior to the last day on which an effective notice of intent to cure  
12 may be filed with the public trustee under section 38-38-104.

13           (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A  
14 BORROWER OR OTHER INTERESTED PARTY THAT FILES A WRITTEN  
15 RESPONSE TO THE MOTION SEEKING AN ORDER AUTHORIZING SALE MAY,  
16 EITHER IN THE RESPONSE OR AT THE HEARING, CHALLENGE THE STANDING  
17 OR LEGAL INTEREST OF THE MOVING PARTY, IN WHICH CASE THE COURT  
18 SHALL SET AND HOLD A HEARING PURSUANT TO RULE 120 TO REVIEW THE  
19 APPLICATION AND SUPPORTING DOCUMENTS FILED BY THE APPLICANT,  
20 PROVIDE THE BORROWER A MEANINGFUL OPPORTUNITY TO BE HEARD, AND  
21 MAKE SPECIFIC FINDINGS ON WHETHER:

22           (A) THE MOVING PARTY IS THE HOLDER OF THE EVIDENCE OF DEBT;

23           (B) THE MOVING PARTY IS THE REAL PARTY IN INTEREST TO  
24 FORECLOSE THE DEBT;

25           (C) THE MOVING PARTY HAS LEGAL STANDING TO FORECLOSE THE  
26 DEBT;

27           (D) THE FORECLOSURE SHOULD BE DEFERRED PENDING THE



1 OUTCOME OF ANY ONGOING NEGOTIATIONS REGARDING LOAN  
2 MODIFICATION EFFORTS OR OTHER FORECLOSURE PREVENTION  
3 ALTERNATIVES IN WHICH THE BORROWER IS PARTICIPATING IN GOOD  
4 FAITH; AND

5 (E) THE DOCUMENTS PROVIDED BY THE MOVING PARTY ARE  
6 AUTHENTIC AND SUFFICIENT TO RESOLVE THE ISSUES IDENTIFIED IN  
7 SUB-SUBPARAGRAPHS (A) TO (C) OF THIS SUBPARAGRAPH (II). IF THE  
8 DOCUMENTS PROVIDED BY THE MOVING PARTY INCLUDE A COPY OF THE  
9 EVIDENCE OF DEBT WITH A CERTIFICATION AS SPECIFIED IN SECTION  
10 38-38-101 (1) (b) (II) OR A COPY OF THE RECORDED DEED OF TRUST,  
11 MODIFICATION, OR PARTIAL RELEASE WITH A CERTIFICATION AS SPECIFIED  
12 IN SECTION 38-38-101 (1) (c) (II), THE CERTIFICATION ALONE IS NOT  
13 SUFFICIENT TO AUTHENTICATE THE COPY.

14 (III) THE COURT SHALL SET FORTH ALL FINDINGS ON THE ISSUES  
15 IDENTIFIED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a) IN THE COURT'S  
16 ORDER, WHICH MUST EITHER GRANT OR DENY THE MOTION FOR AN ORDER  
17 AUTHORIZING SALE. IF THE STANDING OR LEGAL INTEREST OF THE MOVING  
18 PARTY IS CHALLENGED BY ANY PARTY'S RESPONSE, THE BURDEN OF PROOF  
19 IS ON THE MOVING PARTY TO DEMONSTRATE COMPLIANCE WITH ALL  
20 DOCUMENTATION REQUIREMENTS SET FORTH IN THIS ARTICLE AS PART OF  
21 ITS MOTION FOR AN ORDER AUTHORIZING SALE.

22 (IV) A sale held without an order authorizing sale issued in  
23 compliance with this paragraph (a) ~~shall be~~ IS invalid.

24 (V) (A) AN ORDER AUTHORIZING SALE THAT IS ISSUED PURSUANT  
25 TO THIS SECTION DOES NOT CONSTITUTE A FINAL, APPEALABLE ORDER OR  
26 JUDGMENT AND IS ENTERED WITHOUT PREJUDICE TO ANY PARTY SEEKING  
27 INJUNCTIVE OR OTHER RELIEF, INCLUDING A COMPLETE ADJUDICATION OF

1 ALL CLAIMS OF RIGHTS AND INTERESTS IN THE SUBJECT PROPERTY UNDER  
2 C.R.C.P. 105 IN A COURT OF COMPETENT JURISDICTION. AN ADJUDICATION  
3 UNDER C.R.C.P. 105 AS CONTEMPLATED BY THIS SUB-SUBPARAGRAPH (A)  
4 IS NOT A COLLATERAL ATTACK ON A FINAL JUDGMENT, WHETHER FILED  
5 BEFORE OR AFTER A SALE OCCURS.

6 (B) IF THE COURT DENIES A MOTION FOR AN ORDER AUTHORIZING  
7 SALE FOR REASONS SPECIFIED IN SUB-SUBPARAGRAPH (A), (B), (C), OR (E)  
8 OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), AND IF THE APPLICANT  
9 FILES AN ACTION FOR JUDICIAL FORECLOSURE UNDER C.R.C.P. 105, THEN,  
10 NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THE DEED OF  
11 TRUST, THE EVIDENCE OF DEBT, OR ANY OTHER LAW, THE APPLICANT  
12 SHALL PAY THE ATTORNEY FEES AND COSTS INCURRED BY THE APPLICANT  
13 IN THAT ACTION AND SHALL NOT BE CHARGED TO THE BORROWER.

14 (C) IF THE COURT GRANTS A MOTION FOR ORDER AUTHORIZING  
15 SALE, AND IF THE BORROWER OR OTHER INTERESTED PARTY FILES AN  
16 ACTION FOR INJUNCTIVE OR OTHER RELIEF PURSUANT TO C.R.C.P. 105,  
17 THE COURT SHALL AWARD ATTORNEY FEES AND COSTS INCURRED IN THAT  
18 ACTION TO THE PREVAILING PARTY.

19 (D) A BORROWER MAY BRING AN ACTION PURSUANT TO C.R.C.P.  
20 105 FOR INJUNCTIVE RELIEF TO ENJOIN A VIOLATION OF SECTION  
21 38-38-103.4 OR 38-38-103.6 AND TO ENJOIN THE MOVING PARTY FROM  
22 PROCEEDING WITH FORECLOSURE. ANY INJUNCTION THUS OBTAINED  
23 REMAINS IN PLACE, AND ANY FORECLOSURE SALE SHALL BE ENJOINED,  
24 UNTIL THE COURT DETERMINES THAT THE MOVING PARTY HAS CORRECTED  
25 AND REMEDIED THE VIOLATION OR VIOLATIONS GIVING RISE TO THE  
26 ACTION FOR INJUNCTIVE RELIEF. AN ENJOINED ENTITY MAY MOVE TO  
27 DISSOLVE AN INJUNCTION BASED ON A SHOWING THAT THE VIOLATION HAS

1 BEEN CORRECTED AND REMEDIED.

2 (VI) A PARTY THAT SEEKS AN ORDER AUTHORIZING SALE AND IS  
3 DENIED RELIEF, AND ANY SUCCESSOR IN INTEREST OF THAT PARTY, IS  
4 PRECLUDED FROM FILING A NEW MOTION FOR AN ORDER AUTHORIZING  
5 SALE OF THE SAME PROPERTY UNLESS THE MOVING PARTY ADDUCES  
6 SIGNIFICANT NEW OR DIFFERENT EVIDENCE IN SUPPORT OF THE NEW  
7 MOTION AND AT LEAST SIX MONTHS HAVE PASSED SINCE THE FILING OF THE  
8 PRIOR MOTION.

9 (3) (a) Not less than fourteen days before the date set for the  
10 hearing pursuant to rule 120 or other rule of the Colorado rules of civil  
11 procedure, AND NOT LESS THAN FOURTEEN DAYS BEFORE ANY  
12 SUBSEQUENT DATE IF THE HEARING IS POSTPONED OR CONTINUED FOR ANY  
13 REASON, the holder or the attorney for the holder seeking an order  
14 authorizing sale under this section for a residential property shall cause  
15 a notice of hearing as described in rule 120 (b) of the Colorado rules of  
16 civil procedure to be posted in a conspicuous place on the property that  
17 is the subject of the sale. If possible, the notice ~~shall~~ MUST be posted on  
18 the front door of the residence, but if access to the door is not possible or  
19 is restricted, the notice ~~shall~~ MUST be posted at an alternative conspicuous  
20 location, such as a gate or similar impediment. If a person at the residence  
21 is impeding posting at the residence at the time of the attempted posting,  
22 the notice may be handed to that person to satisfy this posting  
23 requirement.

24 (b) THE FOLLOWING STATEMENT MUST APPEAR ON THE FIRST PAGE  
25 OF THE NOTICE, IN AT LEAST FOURTEEN-POINT, BOLD-FACED TYPE:

26 **YOU MUST RESPOND TO THIS NOTICE IN**  
27 **WRITING BY \_\_\_\_\_ [A SPECIFIED DATE, SEVEN DAYS**

1           **BEFORE THE HEARING] OR YOU MAY LOSE YOUR**  
2           **RIGHT TO OBJECT TO THE SALE OF THIS**  
3           **PROPERTY.**

4           (c) IN ADDITION TO THE NOTICE REQUIRED BY PARAGRAPH (b) OF  
5 THIS SUBSECTION (3), THE FOLLOWING NOTICE MUST APPEAR IN AT LEAST  
6 TEN-POINT TYPE:

7                   **THE ISSUES THAT MAY BE RAISED IN OBJECTION TO**  
8           **THE SALE INCLUDE: WHETHER A DEFAULT IN PAYMENT**  
9           **HAS OCCURRED; WHETHER THE PERSON RESPONSIBLE**  
10          **FOR MAKING PAYMENTS IS IN MILITARY SERVICE;**  
11          **WHETHER THE PARTY SEEKING FORECLOSURE HAS THE**  
12          **RIGHT TO ENFORCE A RECORDED SECURITY INTEREST IN**  
13          **THE PROPERTY ENTITLING THAT PARTY TO FORECLOSE;**  
14          **AND WHETHER FORECLOSURE SHOULD BE DEFERRED**  
15          **PENDING THE OUTCOME OF ANY ONGOING NEGOTIATION**  
16          **OF A MODIFIED LOAN OR OTHER FORECLOSURE**  
17          **PREVENTION ALTERNATIVE.**

18                   **IF YOU OBJECT, YOUR PROPERTY CANNOT BE SOLD**  
19          **UNTIL A HEARING IS HELD.**

20                   **IF THE HEARING DATE IS POSTPONED, YOU MAY**  
21          **FILE AN OBJECTION SEVEN DAYS BEFORE THE NEXT**  
22          **HEARING DATE, AND THE PROPERTY CANNOT BE SOLD**  
23          **UNTIL A SCHEDULED HEARING IS HELD.**

24           (d) The notice required by this subsection (3) is sufficient if it  
25 complies with the requirements of this section without regard to any  
26 requirements for service of process in a civil action required by court rule.

27           (e) IF AN OBJECTION IS FILED, THE PARTIES ARE REQUIRED TO

1 EXCHANGE COPIES OF ANY DOCUMENTARY EVIDENCE THEY INTEND TO  
2 RELY ON AT THE HEARING AT LEAST FIVE DAYS BEFORE THE HEARING.

3 **SECTION 6. Effective date - applicability.** This act takes effect  
4 July 1, 2013, and applies to foreclosure proceedings in which the notice  
5 of election and demand is filed on or after said date.

6 **SECTION 7. Safety clause.** The general assembly hereby finds,  
7 determines, and declares that this act is necessary for the immediate  
8 preservation of the public peace, health, and safety.