

**STATE
FISCAL IMPACT**

Drafting Number: LLS 13-0056

Date: April 11, 2013

Prime Sponsor(s): Rep. McCann
Sen. Giron

Bill Status: House Business, Labor, Economic and
Workforce Development

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

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue General Fund	See State Revenue section.	
State Expenditures Cash Funds Consumer Protection Custodial Fund	\$12,677	\$12,677
FTE Position Change	0.2 FTE	0.2 FTE
Effective Date: July 1, 2013.		
Appropriation Summary for FY 2013-2014: See State Appropriations section.		
Local Government Impact: None.		

Summary of Legislation

This bill modifies current law regarding the foreclosure process for residential properties. As described below, the bill generally creates new duties for holders or servicers of residential mortgage debt (servicers) and prescribes the rights of borrowers in the foreclosure process and after initiating a loan modification or other foreclosure prevention alternative (loan modification).

Under current law, the servicer must file either the original or a copy of the evidence of debt (typically a promissory note) as a requirement prior to foreclosure, but any transfer of interest in the debt may be attested by the servicer's attorney. The bill requires the servicer to file either the originals or a copy of the recorded instruments assigning or transferring the residential debt to successive parties leading to the servicer's present interest. Falsely certifying the validity of documents filed with a foreclosure is perjury.

The servicer must make certain disclosures in the notice provided to a borrower prior to initiating foreclosure proceedings, including the borrower's right to object to the foreclosure. The servicer must also provide specific statements, including the borrower's right to object, in the posted notice after the servicer has filed a notice of election and demand (NED) to initiate the foreclosure process.

The bill establishes a hearing procedure under Colorado Rule of Civil Procedure 120 (CRCP 120) if the borrower challenges the right of the servicer to foreclose the debt. If the borrower challenges the servicer's motion to authorize sale, the court must consider the legal standing of the foreclosing party, any pending loan modification process, and the sufficiency of documents filed with the foreclosure. If the court issues an order denying the servicer's motion, no motion for sale on the same debt is permitted until at least six months have elapsed and new evidence is presented.

The bill prohibits "dual tracking," which occurs when a lender is negotiating a loan modification at the same time it is pursuing foreclosure. If a borrower has completed an application for a loan modification, the bill prohibits initiation or continuation of the foreclosure process while the application or the appeal of an application's denial is pending. The servicer is not authorized to collect fees for loan modification applications or late fees during the application and appeal process. Penalties for dual tracking violations apply to servicers that filed at least 100 NEDs in the preceding calendar year. Two or more violations of dual tracking provisions within a 3-month period is presumed to be a deceptive trade practice under the Colorado Consumer Protection Act (CCPA). The Attorney General may assess a civil penalty of up to \$7,500 for this CCPA violation, or a private party may pursue remedies under the CCPA.

Servicers must designate a single point of contact when a borrower requests a loan modification.

Background

The Antitrust, Tobacco and Consumer Protection Unit (ATCPU) in the Department of Law currently investigates complaints concerning mortgage fraud, deceptive practices by mortgage professionals, and other mortgage-related consumer protection complaints, including allegations stemming from dual tracking. Based on legislation enacted in 2007, the ATPCU has resources dedicated to these investigations and related enforcement activities, including 2 investigators and an attorney.

Currently, ATPCU is implementing the settlement of nationwide litigation related to foreclosure and loan servicing practices, brought by Attorneys General and federal agencies. The settlement involves 5 of the nation's major mortgage servicing companies (Bank of America, Wells Fargo, JPMorgan Chase, Citibank, and Ally/GMAC) and includes terms that protect consumers in the conduct of foreclosures and loan modifications.

State Revenue

The bill may increase state revenue from fines by a minimal amount. The Attorney General may collect a civil penalty of up to \$7,500 for each repeated dual tracking violation. This fines revenue under the CCPA will be credited to the General Fund. However, the fiscal note assumes that the increase in revenue related to dual tracking violations will be minimal due to the effect of the national servicing company settlement and the deterrent effect of the bill after a first violation is established.

State Expenditures

The bill increases state expenditures in FY 2013-14 and future fiscal years by \$12,677 and 0.2 FTE. As described below, the Department of Law and the Judicial Branch will experience increased workload under the bill.

Department of Law. The bill identifies specific conduct that constitutes a dual tracking violation for the purposes of the CCPA. The current resources and scope of investigations in the ATCPU will continue to generate and screen most of the caseload related to dual tracking violations. However, the bill requires the development of specific facts, as well as monitoring and enforcement activities in addition to the current efforts of the ATCPU. The bill generates an additional 400 hours of work for an ATCPU investigator, resulting in the expenditure of \$12,677 and 0.2 FTE. The Consumer Protection Custodial Fund covers costs in the ATCPU.

Judicial Branch. The time expended by trial courts on CRCP 120 cases will increase under the bill. Additional hearings will occur based on borrower objections, and following these hearings written findings will be required in the court's order on the servicer's motion to authorize the foreclosure sale. Based on current caseload, approximately 25,000 CRCP 120 cases are estimated in FY 2013-14. An additional 10 to 15 minutes of hearing time in up to 10 percent of cases results in less than 0.3 FTE workload increase for judicial officers statewide. This increase in workload will not require new appropriations for trial courts.

The bill also adds a civil perjury penalty for filing false documents in a foreclosure proceeding. However, this provision is assumed to result in no significant increase in workload for the Judicial Branch based on the small number of civil perjury claims in all cases.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 1.

Table 1. Expenditures Not Included Under HB13-1249*		
Cost Components	FY 2013-14	FY 2014-15
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$1,347	\$1,347
Supplemental Employee Retirement Payments	778	880
TOTAL	\$2,125	\$2,227

*More information is available at: <http://colorado.gov/fiscalnotes>

Local Government Impact

The bill may minimally increase civil enforcement activity by district attorneys (DAs) under the CCPA. County governments are responsible for funding the majority of costs associated with DA offices. Based on the scope of the bill and the statewide distribution of foreclosure cases, the potential for increased costs to county governments is expected to be minimal.

State Appropriations

For FY 2013-14, the Department of Law requires a cash funds appropriation of \$12,677 from the Consumer Protection Custodial Fund, and 0.2 FTE.

Departments Contacted

Judicial
Local Affairs
Law

Regulatory Agencies
Public Trustees

Property Tax
Counties