

CHAPTER 404

PROPERTY

HOUSE BILL 09-1276

BY REPRESENTATIVE(S) Ferrandino, Apuan, Benefield, Carroll T., Casso, Court, Gagliardi, Gerou, Hullinghorst, Kerr A., Kerr J., Labuda, Marostica, Massey, McCann, Merrifield, Middleton, Miklosi, Pace, Peniston, Pommer, Ryden, Scanlan, Schafer S., Solano, Vigil, Fischer, Frangas, Green, Kefalas, Primavera, Priola, Todd; also SENATOR(S) Carroll M., Bacon, Boyd, Foster, Gibbs, Groff, Heath, Hodge, Hudak, Morse, Newell, Romer, Sandoval, Schwartz, Shaffer B., Tapia, Tochtrop, White, Williams.

AN ACT

CONCERNING A DELAY IN THE FORECLOSURE OF RESIDENTIAL PROPERTY FOR ELIGIBLE BORROWERS.

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

SECTION 1. 24-32-705 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-32-705. Functions of division. (1) The division has the following functions:

(q) TO MAKE AVAILABLE TO FORECLOSURE COUNSELORS, AS DEFINED IN SECTION 38-38-801, C.R.S., A DESCRIPTION OF THE FORECLOSURE DEFERMENT PROGRAM DESCRIBED IN PART 8 OF ARTICLE 38 OF TITLE 38, C.R.S.

SECTION 2. 38-38-101 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

38-38-101. Holder of evidence of debt may elect to foreclose. (1) **Documents required.** Whenever a holder of an evidence of debt declares a violation of a covenant of a deed of trust and elects to publish all or a portion of the property therein described for sale, the holder or the attorney for the holder shall file the following with the public trustee of the county where the property is located:

(h) A SEPARATE DOCUMENT NOTIFYING THE PUBLIC TRUSTEE THAT THE PROPERTY REFERRED TO IN THE NOTICE OF ELECTION AND DEMAND IS PROPERTY THAT REQUIRES POSTING UNDER SECTION 38-38-802. IF THE DOCUMENT REQUIRED BY THIS

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

PARAGRAPH (h) IS NOT FILED AT THE TIME THE DOCUMENTS REQUIRED BY PARAGRAPHS (a) TO (e) OF THIS SUBSECTION (1) ARE FILED WITH THE PUBLIC TRUSTEE, AND THE HOLDER DETERMINES AT A LATER DATE THAT THE PROPERTY REQUIRES POSTING, THE HOLDER SHALL REQUEST THAT THE PUBLIC TRUSTEE RERECORD THE NOTICE OF ELECTION AND DEMAND. THEREAFTER, ALL DEADLINES FOR THE FORECLOSURE ACTION SHALL BE DETERMINED ACCORDING TO THE DATE OF THE RERECORDING OF THE NOTICE OF ELECTION AND DEMAND AS THOUGH THE FORECLOSURE WAS COMMENCED ON SUCH DATE, AND THE PUBLIC TRUSTEE SHALL COLLECT A FEE OF SEVENTY-FIVE DOLLARS FROM THE HOLDER.

SECTION 3. 38-38-109 (1) (c) (I), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUB-SUBPARAGRAPH to read:

38-38-109. Continuance of sale - effect of bankruptcy - withdrawal of sale.

(1) **Continuance.** (c) (I) (C) DURING A FORECLOSURE DEFERMENT PURSUANT TO PART 8 OF THIS ARTICLE, ANY CONTINUANCE REQUIRED BY SUB-SUBPARAGRAPHS (A) AND (B) OF THIS SUBPARAGRAPH (I) SHALL RUN CONCURRENTLY WITH THE FORECLOSURE DEFERMENT.

SECTION 4. 38-38-103 (5), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

38-38-103. Combined notice - publication - providing information.

(5) (d) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE OFFICER SHALL NOT BEGIN PUBLICATION OR SEND THE MAILING REQUIRED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION UNLESS THE HOLDER HAS PROVIDED THE AFFIDAVIT REQUIRED BY SECTION 38-38-802, IF APPLICABLE. IF THE AFFIDAVIT HAS NOT BEEN PROVIDED, THE FOLLOWING SHALL OCCUR:

(I) THE OFFICER SHALL NOTIFY THE HOLDER OR THE HOLDER'S ATTORNEY, IN WRITING, THAT NO AFFIDAVIT WAS PROVIDED AND INDICATE THAT THE PUBLICATIONS REQUIRED PURSUANT TO THIS SECTION SHALL NOT BE MADE UNTIL THE HOLDER PROVIDES THE REQUIRED AFFIDAVIT. THE OFFICER IS NOT OBLIGATED TO PROVIDE MORE THAN ONE NOTICE TO THE HOLDER OR THE HOLDER'S ATTORNEY.

(II) AFTER NOTICE IS MADE PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (d) THAT NO AFFIDAVIT WAS PROVIDED AND UNTIL THE REQUIRED AFFIDAVIT IS PROVIDED, THE OFFICER SHALL CONTINUE THE SALE OF THE PROPERTY IN ACCORDANCE WITH SECTION 38-38-109 AN ADDITIONAL WEEK FOR EACH WEEK THAT THE HOLDER FAILS TO PROVIDE THE REQUIRED AFFIDAVIT.

SECTION 5. Article 38 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 8
FORECLOSURE DEFERMENT

38-38-801. Definitions. AS USED IN THIS PART 8, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ELIGIBLE BORROWER" MEANS A GRANTOR UNDER A DEED OF TRUST SECURING

AN EVIDENCE OF DEBT THAT MEETS THE DESCRIPTION IN SECTION 38-38-102.5 (1), AND THAT IS A FIRST LIEN UPON THE PROPERTY. THE ELIGIBLE BORROWER SHALL:

(a) RESIDE AT THE PROPERTY THAT IS SUBJECT TO A NOTICE OF ELECTION AND DEMAND THAT WAS FILED WITH THE PUBLIC TRUSTEE IN THE COUNTY IN WHICH ALL OR A PORTION OF THE PROPERTY IS LOCATED ON THE DATE WHEN THE NOTICE OF ELECTION AND DEMAND IS FILED;

(b) OCCUPY THE PROPERTY AS THE GRANTOR'S PRIMARY RESIDENCE AS OF THE DATE WHEN THE NOTICE OF ELECTION AND DEMAND WAS FILED WITH THE PUBLIC TRUSTEE;

(c) HAVE OCCUPIED THE PROPERTY AS THE BORROWER'S PRIMARY RESIDENCE WITHIN NINETY DAYS AFTER THE DATE OF THE DEED OF TRUST;

(d) INTEND TO CONTINUE TO RESIDE AT THE PROPERTY; AND

(e) BE PERSONALLY OBLIGATED ON THE DEBT, WHICH WAS INCURRED PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, HAD AN ORIGINAL PRINCIPAL AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS OR LESS, AND IS SECURED BY THE DEED OF TRUST IN THE NOTICE OF ELECTION AND DEMAND.

(2) "FORECLOSURE COUNSELOR" MEANS A HOUSING COUNSELOR EMPLOYED BY AN AGENCY APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. FORECLOSURE COUNSELORS INCLUDE HOUSING COUNSELORS AFFILIATED WITH THE COLORADO FORECLOSURE HOTLINE AND THE HOPE NOW ALLIANCE, OR ITS SUCCESSOR ORGANIZATION.

(3) "FORECLOSURE DEFERMENT" MEANS A PERIOD, NOT TO EXCEED NINETY CALENDAR DAYS OR NOT TO EXTEND PAST THE NEXT SCHEDULED SALE DATE AFTER NINETY DAYS, EXCEPT AS MAY BE EXTENDED PURSUANT TO SECTION 38-38-103 (5) (d), DURING WHICH THE PUBLIC TRUSTEE OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED CONTINUES THE SCHEDULED SALE OF A PROPERTY SUBJECT TO A NOTICE OF ELECTION AND DEMAND.

38-38-802. Notice of the opportunity for foreclosure deferment. (1) NO LATER THAN FIFTEEN CALENDAR DAYS FOLLOWING THE FILING OF THE COMPLETE AND ACCURATE DOCUMENTS REQUIRED BY AND IN ACCORDANCE WITH SECTION 38-38-101 (1), AND THE DETERMINATION OF THE PUBLIC TRUSTEE THAT THE FILING IS COMPLETE IN ACCORDANCE WITH SECTION 38-38-102 (1), THE HOLDER OR THE ATTORNEY FOR THE HOLDER WHO FILED THE NOTICE OF ELECTION AND DEMAND SHALL CAUSE A NOTICE AS DESCRIBED IN THIS SECTION TO BE POSTED IN A CONSPICUOUS PLACE ON THE PROPERTY THAT IS THE SUBJECT OF THE NOTICE OF ELECTION AND DEMAND. IF POSSIBLE, THE NOTICE SHALL BE POSTED ON THE FRONT DOOR OF THE RESIDENCE, BUT IF ACCESS TO THE DOOR IS NOT POSSIBLE OR IS RESTRICTED, THEN THE NOTICE SHALL BE POSTED AT AN ALTERNATIVE CONSPICUOUS LOCATION, SUCH AS A GUARD GATE OR SIMILAR IMPEDIMENT.

(2) THE NOTICE SHALL CONTAIN:

(a) A DESCRIPTION OF THE FORECLOSURE DEFERMENT OPPORTUNITY DESCRIBED

IN THIS PART 8 AND THE PROCEDURES AN ELIGIBLE BORROWER MAY FOLLOW TO SEEK A FORECLOSURE DEFERMENT;

(b) THE NUMBER OF THE COLORADO FORECLOSURE HOTLINE AND THE ADDRESS OF THE UNITED STATES HOUSING AND URBAN DEVELOPMENT WEB SITE IDENTIFYING APPROVED HOUSING COUNSELOR AGENCIES IN COLORADO;

(c) THE DATE THAT THE NOTICE WAS POSTED AND THE DEADLINE BY WHICH AN ELIGIBLE BORROWER SEEKING A FORECLOSURE DEFERMENT SHALL CONTACT A FORECLOSURE COUNSELOR, WHICH DEADLINE SHALL BE TWENTY DAYS AFTER THE POSTING OF THE NOTICE.

(3) THE NOTICE SHALL BE IN BOTH ENGLISH AND SPANISH ON A SINGLE PIECE OF PAPER, IN AT LEAST FOURTEEN-POINT, BOLD-FACED TYPE.

(4) NO LATER THAN THIRTY CALENDAR DAYS AFTER THIS PART 8 IS ENACTED AND BECOMES LAW, THE DIVISION OF HOUSING IN THE DEPARTMENT OF LOCAL GOVERNMENT SHALL MAKE AVAILABLE A STANDARD FORM IN ENGLISH AND SPANISH THAT MEETS THE REQUIREMENTS OF THIS SECTION.

(5) (a) NO LATER THAN TWENTY CALENDAR DAYS AFTER THE FILING OF THE DOCUMENTS REQUIRED BY AND IN ACCORDANCE WITH SECTION 38-38-101 (1), THE HOLDER SHALL PROVIDE TO THE PUBLIC TRUSTEE AN AFFIDAVIT STATING THAT THE POSTING REQUIRED BY THIS SECTION WAS MADE.

(b) IF THE HOLDER DOES NOT PROVIDE THE AFFIDAVIT REQUIRED BY THIS SUBSECTION (5) TO THE PUBLIC TRUSTEE WITHIN THE TWENTY-DAY PERIOD, THE SALE OF THE PROPERTY SHALL BE CONTINUED IN ACCORDANCE WITH SECTION 38-38-103 (5) (d).

(c) THE AFFIDAVIT REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (5) SHALL CONTAIN AT LEAST THE FOLLOWING INFORMATION:

- (I) THE FORECLOSURE CASE NUMBER;
- (II) THE BORROWER'S NAME OR NAMES;
- (III) THE ADDRESS OF THE PROPERTY AT WHICH THE POSTING WAS MADE; AND
- (IV) THE DATE OF THE POSTING.

(d) AN AFFIDAVIT FILED BY A QUALIFIED HOLDER SHALL BE SIGNED BY EITHER THE HOLDER OR THE ATTORNEY FOR THE HOLDER. AN AFFIDAVIT FILED BY A NONQUALIFIED HOLDER SHALL BE SIGNED BY THE HOLDER AND PROPERLY ACKNOWLEDGED BY A NOTARY PUBLIC.

38-38-803. Procedures for foreclosure deferment - notification - process.

(1) AN ELIGIBLE BORROWER SHALL BE GRANTED THE OPPORTUNITY FOR A FORECLOSURE DEFERMENT IF THE BORROWER MEETS THE REQUIREMENTS OF THIS PART 8.

(2) TO QUALIFY FOR A FORECLOSURE DEFERMENT, AN ELIGIBLE BORROWER SHALL CONTACT A FORECLOSURE COUNSELOR WITHIN TWENTY DAYS AFTER THE POSTING OF THE NOTICE REQUIRED BY SECTION 38-38-802 FOR THE PURPOSE OF OBTAINING A QUALIFICATION DECISION AS SET FORTH IN SUBSECTION (5) OF THIS SECTION. THE INITIAL CONTACT MAY TAKE PLACE BY TELEPHONE, ELECTRONICALLY, OR IN PERSON.

(3) THE FORECLOSURE COUNSELOR SHALL NOTIFY THE HOLDER PROMPTLY THAT HE OR SHE HAS BEEN CONTACTED BY AN ELIGIBLE BORROWER AND SPECIFY THE DATE OF THE CONTACT. UPON INITIAL CONTACT FROM AN ELIGIBLE BORROWER, THE FORECLOSURE COUNSELOR SHALL PROVIDE INFORMATION TO THE ELIGIBLE BORROWER REGARDING THE FEDERAL GOVERNMENT'S "MAKING HOME AFFORDABLE" PROGRAM AND ADVISE THE ELIGIBLE BORROWER WHETHER HE OR SHE WOULD BENEFIT FROM THE FEDERAL PROGRAM.

(4) WITHIN TEN CALENDAR DAYS AFTER RECEIVING NOTICE THAT THE ELIGIBLE BORROWER HAS CONTACTED A FORECLOSURE COUNSELOR, THE HOLDER SHALL NOTIFY THE COUNSELOR AND THE ELIGIBLE BORROWER IN WRITING OF THE ADDRESS TO WHICH PAYMENTS REQUIRED BY SECTION 38-38-805 (2) SHALL BE SENT IF THE BORROWER QUALIFIES FOR A FORECLOSURE DEFERMENT AND INFORMATION ON HOW PAYMENTS CAN BE MADE ELECTRONICALLY.

(5) NO LATER THAN THIRTY CALENDAR DAYS AFTER AN ELIGIBLE BORROWER'S INITIAL CONTACT WITH THE FORECLOSURE COUNSELOR, THE COUNSELOR SHALL:

(a) DETERMINE WHETHER THE BORROWER IS QUALIFIED FOR A FORECLOSURE DEFERMENT; AND

(b) CERTIFY THE DETERMINATION TO THE ELIGIBLE BORROWER AND THE HOLDER. IF THE FORECLOSURE COUNSELOR DETERMINES THAT THE ELIGIBLE BORROWER QUALIFIES FOR A FORECLOSURE DEFERMENT, THE COUNSELOR SHALL ALSO NOTIFY THE PUBLIC TRUSTEE WITHIN THE SAME THIRTY-DAY PERIOD.

(6) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE PUBLIC TRUSTEE RECEIVES CERTIFICATION FROM THE FORECLOSURE COUNSELOR THAT THE ELIGIBLE BORROWER QUALIFIES FOR A FORECLOSURE DEFERMENT, THE PUBLIC TRUSTEE SHALL IMMEDIATELY CANCEL ANY REMAINING PUBLICATIONS OF THE COMBINED NOTICE, SHALL NOT MAIL THE NOTICE REQUIRED BY SECTION 38-38-103 (1) (a) (II), AND SHALL CONTINUE THE SALE OF THE PROPERTY IN ACCORDANCE WITH SECTION 38-38-109 (1) (a). THE SALE SHALL BE CONTINUED FROM WEEK TO WEEK UNTIL RECEIPT OF CERTIFICATION PURSUANT TO SECTION 38-38-805 (4) THAT THE DEFERMENT HAS BEEN TERMINATED OR, IF NO CERTIFICATION IS RECEIVED, FOR NINETY CALENDAR DAYS OR UNTIL THE NEXT SCHEDULED SALE DATE AFTER THE END OF THE NINETY-DAY PERIOD. WHEN THE DEFERMENT HAS BEEN TERMINATED OR HAS ENDED, THE PUBLIC TRUSTEE SHALL COLLECT A FEE OF SEVENTY-FIVE DOLLARS AND THEREAFTER SHALL BEGIN PUBLICATION OF THE COMBINED NOTICE AS REQUIRED IN SECTION 38-38-103 (5) (a), AS TO THE DEFERRED SALE, AND SEND THE NOTICE REQUIRED BY SECTION 38-38-103 (1) (a), AS SOON AS POSSIBLE AND NO MORE THAN TWENTY CALENDAR DAYS AFTER THE COMPLETION OF THE DEFERMENT.

38-38-804. Foreclosure deferment assessment standards - ineligible borrowers. (1) A FORECLOSURE COUNSELOR SHALL DETERMINE WHETHER AN

ELIGIBLE BORROWER QUALIFIES FOR A FORECLOSURE DEFERMENT BY CALCULATING WHETHER, CONSIDERING THE ELIGIBLE BORROWER'S HOUSEHOLD EXPENSES AND GROSS MONTHLY INCOME, THE NATURE OF THE LOAN, ANY WRITTEN LOAN MODIFICATION AGREEMENT BETWEEN THE ELIGIBLE BORROWER AND THE HOLDER ENTERED INTO DURING THE PRECEDING TWELVE MONTHS, AND ANY OTHER RELEVANT FACTORS, THERE IS A REASONABLE LIKELIHOOD THAT THE HOLDER AND ELIGIBLE BORROWER CAN ACHIEVE A MUTUALLY ACCEPTABLE AGREEMENT TO AVOID FORECLOSURE. IN MAKING HIS OR HER DETERMINATION, THE COUNSELOR SHALL USE ANALYTICAL TOOLS DESIGNED TO INDICATE BOTH:

(a) WHAT THE ELIGIBLE BORROWER IS ABLE TO PAY IN MONTHLY HOUSING EXPENSES, INCLUDING PRINCIPAL, INTEREST, TAXES, INSURANCE, AND ANY APPLICABLE HOMEOWNERS ASSOCIATION DUES ON A SUSTAINABLE BASIS; AND

(b) WHETHER THE HOLDER WOULD BE LIKELY TO RECEIVE GREATER REVENUE FROM THE MODIFICATION NECESSARY TO ACHIEVE SUCH A MONTHLY PAYMENT THAN THE HOLDER WOULD BE LIKELY TO RECEIVE FROM A COMPLETED FORECLOSURE.

(2) THE ANALYTICAL TOOLS USED IN SUBSECTION (1) OF THIS SECTION SHALL BE CONSISTENT WITH THE NET PRESENT VALUE TEST SET OUT IN THE FEDERAL DEPOSIT INSURANCE CORPORATION LOAN MODIFICATION PROGRAM GUIDELINES, EFFECTIVE OCTOBER 2008, OR ANY SUCCESSOR PROGRAM.

(3) AN ELIGIBLE BORROWER SHALL NOT QUALIFY FOR A FORECLOSURE DEFERMENT IF:

(a) THE ELIGIBLE BORROWER HAS ABANDONED THE PROPERTY;

(b) THE BORROWER PROVIDED MATERIALLY FALSE INFORMATION TO OBTAIN CREDIT. THE FACT THAT THE DEBT OBLIGATION REFLECTS A STATED-INCOME LOAN IS NOT SUFFICIENT TO ESTABLISH THAT THE ELIGIBLE BORROWER SUBMITTED MATERIALLY FALSE INFORMATION.

(c) THE ELIGIBLE BORROWER HAS ENGAGED IN GROSS WASTE OF THE PROPERTY, HAS BEEN CITED FOR MAJOR CODE VIOLATIONS, OR HAS USED THE PROPERTY FOR ILLEGAL PURPOSES;

(d) THE BORROWER IS CURRENTLY IN A BANKRUPTCY PROCEEDING IN WHICH THE PROPERTY SUBJECT TO THE NOTICE OF ELECTION AND DEMAND IS PROPERTY OF THE BANKRUPTCY ESTATE OR WITHIN THE PRECEDING TWENTY-FOUR MONTHS HAS BEEN DISCHARGED FROM A CHAPTER SEVEN BANKRUPTCY IN WHICH THE PROPERTY SUBJECT TO THE NOTICE OF ELECTION AND DEMAND WAS PROPERTY OF THE BANKRUPTCY ESTATE; OR

(e) WITHIN THE IMMEDIATELY PRECEDING TWENTY-FOUR MONTHS, THE ELIGIBLE BORROWER HAS BEEN DISCHARGED FROM A CHAPTER THIRTEEN BANKRUPTCY WITH A MODIFIED LOAN AGREEMENT FOR WHICH THE PROPERTY SUBJECT TO THE NOTICE OF ELECTION AND DEMAND IS THE SECURITY.

(4) IF THE ELIGIBLE BORROWER HAS RECEIVED A FORECLOSURE DEFERMENT, THE ELIGIBLE BORROWER SHALL NOT QUALIFY FOR A SUBSEQUENT FORECLOSURE

DEFERMENT IN CONNECTION WITH THE SAME DEBT OBLIGATION, INCLUDING ANY MODIFICATION OF THE DEBT.

38-38-805. Foreclosure deferment. (1) IF A HOLDER HAS RECEIVED NOTICE FROM AN ELIGIBLE BORROWER'S FORECLOSURE COUNSELOR THAT THE ELIGIBLE BORROWER QUALIFIES FOR A FORECLOSURE DEFERMENT, THE HOLDER AND THE ELIGIBLE BORROWER SHALL NEGOTIATE THE TERMS OF THE DEBT OBLIGATION SECURED BY THE DEED OF TRUST, SUBJECT TO THE TERMS OF ANY AGREEMENT APPLICABLE TO THE DEBT OBLIGATION OR ANY APPLICABLE GOVERNMENT-SUPPORTED ENTERPRISE SERVICING GUIDELINES.

(2) (a) DURING THE FORECLOSURE DEFERMENT, THE ELIGIBLE BORROWER SHALL MAKE MONTHLY LOAN PAYMENTS TO THE HOLDER OR THE HOLDER'S DESIGNATED REPRESENTATIVE THAT EQUAL SIXTY-SIX AND TWO-THIRDS PERCENT OF THE MONTHLY PAYMENT DUE PRIOR TO DELINQUENCY, LESS ANY PORTION OF THE MONTHLY PAYMENT THAT REPRESENTS TAXES AND INSURANCE. IF THE ELIGIBLE BORROWER HAS AN OBLIGATION TO MAKE MONTHLY PAYMENTS FOR TAXES AND INSURANCE TO THE HOLDER, THE ELIGIBLE BORROWER SHALL PAY THE HOLDER, ON THE SAME SCHEDULE, ONE-TWELFTH OF THE ANNUAL AMOUNT DUE FOR TAXES AND INSURANCE PRIOR TO DELINQUENCY.

(b) THE FIRST PAYMENT SHALL BE DUE TO THE ADDRESS PROVIDED BY THE HOLDER PURSUANT TO SECTION 38-38-803 (4) BY THE FIFTH DAY FOLLOWING THE FORECLOSURE COUNSELOR'S CERTIFICATE OF QUALIFICATION FOR THE FORECLOSURE DEFERMENT. SUBSEQUENT PAYMENTS SHALL BE DUE EVERY THIRTY CALENDAR DAYS THEREAFTER UNTIL THE CONCLUSION OF THE FORECLOSURE DEFERMENT.

(c) IN ORDER TO PRESERVE EVIDENCE OF THE DATE OF THE PAYMENT, THE ELIGIBLE BORROWER MAY MAKE THE PAYMENTS ELECTRONICALLY OR BY CERTIFIED FUNDS DELIVERED BY A METHOD THAT PROVIDES EVIDENCE OF THE DATE OF PAYMENT.

(3) ACCEPTANCE OF PAYMENTS MADE DURING THE FORECLOSURE DEFERMENT PERIOD SHALL NOT CONSTITUTE A WAIVER OF DEFAULT OR MODIFICATION OF ANY AMOUNTS DUE ON THE ORIGINAL DEBT OR ANY OTHER RIGHTS OF THE HOLDER. THE PAYMENTS SHALL BE APPLIED BY THE HOLDER PURSUANT TO THE APPLICABLE PROVISIONS OF THE NOTE AND DEED OF TRUST OR, IF THERE ARE NO SUCH APPLICABLE PROVISIONS, IN THE FOLLOWING ORDER: PAYMENT OF THE HOLDER'S COSTS AND EXPENSES INCURRED IN THE FORECLOSURE, PAYMENT FOR PRESERVATION OF THE PROPERTY, ESCROW ADVANCES OR SHORTAGES, LATE CHARGES AND INTEREST, AND PRINCIPAL.

(4) THE FORECLOSURE DEFERMENT SHALL TERMINATE EARLY UPON CERTIFICATION BY THE FORECLOSURE COUNSELOR TO THE PUBLIC TRUSTEE. IF THE HOLDER SEEKS EARLY TERMINATION, THE HOLDER SHALL DEMONSTRATE TO THE FORECLOSURE COUNSELOR THAT ADEQUATE GROUNDS FOR EARLY TERMINATION EXIST. THE FORECLOSURE COUNSELOR SHALL MAKE A DETERMINATION WITHIN TEN CALENDAR DAYS AFTER A HOLDER'S REQUEST AND ISSUE A CERTIFICATION OF EARLY TERMINATION IF HE OR SHE DETERMINES:

(a) THAT THE ELIGIBLE BORROWER HAS ABANDONED THE PROPERTY;

(b) THAT THE ELIGIBLE BORROWER HAS FAILED TO COMPLY WITH THE CONDITIONS OF FORECLOSURE DEFERMENT, INCLUDING FAILURE TO MAKE PAYMENTS ON TIME AND IN ACCORDANCE WITH THIS SECTION;

(c) THAT THE ELIGIBLE BORROWER HAS CONVEYED, TRANSFERRED, OR FURTHER ENCUMBERED THE PROPERTY IN VIOLATION OF THE DEED OF TRUST;

(d) THAT A FORECLOSURE HAS BEEN INITIATED BY A DIFFERENT PARTY ON ANOTHER LIEN ENCUMBERING THE PROPERTY; OR

(e) THAT THE ELIGIBLE BORROWER HAS FILED BANKRUPTCY DURING THE FORECLOSURE DEFERMENT.

38-38-806. Foreclosure counselor immunity. A FORECLOSURE COUNSELOR ACTING IN GOOD FAITH SHALL NOT BE LIABLE TO ANY PERSON FOR APPROVING OR FAILING TO APPROVE A BORROWER FOR A FORECLOSURE DEFERMENT OR FOR CERTIFYING OR DECLINING TO CERTIFY AN EARLY TERMINATION.

38-38-807. Remedies. IF THE HOLDER FAILS TO POST THE NOTICE REQUIRED BY SECTION 38-38-802 WITHIN THE TIME SPECIFIED, THE ELIGIBLE BORROWER SHALL HAVE TWENTY CALENDAR DAYS AFTER THE DATE OF ACTUAL POSTING TO CONTACT A FORECLOSURE COUNSELOR. THE HOLDER IS RESPONSIBLE FOR ALL FEES INCURRED BETWEEN THE DEADLINE FOR POSTING AND TWENTY CALENDAR DAYS AFTER THE DATE OF THE ACTUAL POSTING. INTEREST FOR THE PERIOD BETWEEN THE DEADLINE FOR POSTING AND THE DATE OF ACTUAL POSTING SHALL BE ALLOWED ONLY AT THE REGULAR RATE AND NOT AT THE DEFAULT RATE AS MAY BE SPECIFIED IN THE DEED OF TRUST.

38-38-808. Repeal. THIS PART 8 IS REPEALED, EFFECTIVE JUNE 30, 2011.

SECTION 6. Effective date - applicability. This act shall take effect upon passage and shall apply to foreclosures that are commenced by the filing of a notice of election and demand sixty days on or after said date.

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

Approved: June 2, 2009