

CHAPTER 76

PROPERTY

HOUSE BILL 26-1089

BY REPRESENTATIVE(S) Espenoza, Bacon, Carter, Duran;
also SENATOR(S) Snyder, Carson, Exum, Jodeh, Wallace, Weissman, Coleman.

AN ACT

**CONCERNING MORTGAGE MODIFICATIONS, AND, IN CONNECTION THEREWITH, ENACTING THE
"UNIFORM MORTGAGE MODIFICATION ACT".**

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

SECTION 1. In Colorado Revised Statutes, **add** article 40.5 to title 38 as follows:

ARTICLE 40.5
Uniform Mortgage Modification Act

38-40.5-101. Short title.

THIS ARTICLE 40.5 MAY BE CITED AS THE "UNIFORM MORTGAGE MODIFICATION ACT".

38-40.5-102. Definitions.

IN THIS ARTICLE 40.5:

(1) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(2) "FINANCIAL COVENANT" MEANS AN UNDERTAKING TO DEMONSTRATE AN OBLIGOR'S CREDITWORTHINESS OR THE ADEQUACY OF SECURITY PROVIDED BY AN OBLIGOR.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(3) "MODIFICATION" INCLUDES CHANGE, AMENDMENT, REVISION, CORRECTION, ADDITION, SUPPLEMENTATION, ELIMINATION, WAIVER, AND RESTATEMENT.

(4) "MORTGAGE":

(A) MEANS AN AGREEMENT THAT CREATES A CONSENSUAL INTEREST IN REAL PROPERTY TO SECURE PAYMENT OR PERFORMANCE OF AN OBLIGATION, REGARDLESS OF:

(i) HOW THE AGREEMENT IS DENOMINATED, INCLUDING A MORTGAGE, DEED OF TRUST, TRUST DEED, SECURITY DEED, INDENTURE, AND DEED TO SECURE DEBT; AND

(ii) WHETHER THE AGREEMENT ALSO CREATES A SECURITY INTEREST IN PERSONAL PROPERTY; AND

(B) DOES NOT INCLUDE AN AGREEMENT THAT CREATES A CONSENSUAL INTEREST TO SECURE A LIABILITY OWED BY A UNIT OWNER TO A CONDOMINIUM ASSOCIATION, OWNERS' ASSOCIATION, OR COOPERATIVE HOUSING ASSOCIATION FOR ASSOCIATION DUES, FEES, OR ASSESSMENTS.

(5) "MORTGAGE MODIFICATION" MEANS MODIFICATION OF:

(A) A MORTGAGE;

(B) AN AGREEMENT THAT CREATES AN OBLIGATION, INCLUDING A PROMISSORY NOTE, LOAN AGREEMENT, OR CREDIT AGREEMENT; OR

(C) AN AGREEMENT THAT CREATES OTHER SECURITY OR CREDIT ENHANCEMENT FOR AN OBLIGATION, INCLUDING AN ASSIGNMENT OF LEASES OR RENTS OR A GUARANTY.

(6) "OBLIGATION" MEANS A DEBT, DUTY, OR OTHER LIABILITY SECURED BY A MORTGAGE.

(7) "OBLIGOR" MEANS A PERSON THAT:

(A) OWES PAYMENT OR PERFORMANCE OF AN OBLIGATION;

(B) SIGNS A MORTGAGE; OR

(C) IS OTHERWISE ACCOUNTABLE, OR WHOSE PROPERTY SERVES AS COLLATERAL, FOR PAYMENT OR PERFORMANCE OF AN OBLIGATION.

(8) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR NONPROFIT ENTITY, GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY OR OTHER LEGAL ENTITY.

(9) "RECOGNIZED INDEX" MEANS AN INDEX TO WHICH CHANGES IN THE INTEREST RATE MAY BE LINKED THAT IS:

(A) READILY AVAILABLE TO, AND VERIFIABLE BY, THE OBLIGOR; AND

(B) BEYOND THE CONTROL OF THE PERSON TO WHOM THE OBLIGATION IS OWED.

(10) "RECORD", USED AS A NOUN, MEANS INFORMATION:

(A) INSCRIBED ON A TANGIBLE MEDIUM; OR

(B) STORED IN AN ELECTRONIC OR OTHER MEDIUM AND RETRIEVABLE IN PERCEIVABLE FORM.

(11) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR ADOPT A RECORD:

(A) EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

(B) ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN ELECTRONIC SYMBOL, SOUND, OR PROCESS.

38-40.5-103. Scope.

(a) EXCEPT AS PROVIDED IN SUBSECTION (c) OF THIS SECTION, THIS ARTICLE 40.5 APPLIES TO A MORTGAGE MODIFICATION.

(b) THIS ARTICLE 40.5 DOES NOT AFFECT:

(1) LAW GOVERNING THE REQUIRED CONTENT OF A MORTGAGE;

(2) A STATUTE OF LIMITATIONS OR OTHER LAW, INCLUDING PART 2 OF ARTICLE 39 OF THIS TITLE 38, GOVERNING THE EXPIRATION OR TERMINATION OF A RIGHT TO ENFORCE AN OBLIGATION OR A MORTGAGE;

(3) A RECORDING STATUTE;

(4) A STATUTE GOVERNING THE PRIORITY OF A TAX LIEN OR OTHER GOVERNMENTAL LIEN;

(5) A STATUTE OF FRAUDS OR ARTICLE 71 OF TITLE 24; OR

(6) EXCEPT AS PROVIDED IN SECTION 38-40.5-104 (b)(8), LAW GOVERNING THE PRIORITY OF A FUTURE ADVANCE.

(c) THIS ARTICLE 40.5 DOES NOT APPLY TO ANY OF THE FOLLOWING MODIFICATIONS:

(1) A RELEASE OF, OR ADDITION TO, PROPERTY ENCUMBERED BY A MORTGAGE;

(2) A RELEASE OF, ADDITION OF, OR OTHER CHANGE IN AN OBLIGOR; OR

(3) AN ASSIGNMENT OR OTHER TRANSFER OF A MORTGAGE OR AN OBLIGATION.

38-40.5-104. Effect of Mortgage Modification.

(a) FOR A MORTGAGE MODIFICATION DESCRIBED IN SUBSECTION (b) OF THIS SECTION:

- (1) THE MORTGAGE CONTINUES TO SECURE THE OBLIGATION AS MODIFIED;
- (2) THE PRIORITY OF THE MORTGAGE IS NOT AFFECTED BY THE MODIFICATION;
- (3) THE MORTGAGE RETAINS ITS PRIORITY REGARDLESS OF WHETHER A RECORD OF THE MORTGAGE MODIFICATION IS RECORDED IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY WHERE THE PROPERTY IS LOCATED; AND
- (4) THE MODIFICATION IS NOT A NOVATION.

(b) SUBSECTION (a) OF THIS SECTION APPLIES TO ONE OR MORE OF THE FOLLOWING MORTGAGE MODIFICATIONS:

- (1) AN EXTENSION OF THE MATURITY DATE OF AN OBLIGATION;
- (2) A DECREASE IN THE INTEREST RATE OF AN OBLIGATION;
- (3) IF THE CHANGE DOES NOT RESULT IN AN INCREASE IN THE INTEREST RATE OF AN OBLIGATION AS CALCULATED ON THE DATE THE MODIFICATION BECOMES EFFECTIVE:
 - (A) A CHANGE TO A DIFFERENT INDEX THAT IS A RECOGNIZED INDEX IF THE PREVIOUS INDEX TO WHICH CHANGES IN THE INTEREST RATE WERE LINKED IS NO LONGER AVAILABLE;
 - (B) A CHANGE IN THE DIFFERENTIAL BETWEEN THE INDEX AND THE INTEREST RATE;
 - (C) A CHANGE FROM A FLOATING OR ADJUSTABLE RATE TO A FIXED RATE; OR
 - (D) A CHANGE FROM A FIXED RATE TO A FLOATING OR ADJUSTABLE RATE BASED ON A RECOGNIZED INDEX;
- (4) A CAPITALIZATION OF UNPAID INTEREST OR OTHER UNPAID MONETARY OBLIGATION;
- (5) A FORGIVENESS, FORBEARANCE, OR OTHER REDUCTION OF PRINCIPAL, ACCRUED INTEREST, OR OTHER MONETARY OBLIGATION;
- (6) A MODIFICATION OF A REQUIREMENT FOR MAINTAINING AN ESCROW OR RESERVE ACCOUNT FOR PAYMENT OF AN OBLIGATION, INCLUDING TAXES AND INSURANCE PREMIUMS;
- (7) A MODIFICATION OF A REQUIREMENT FOR ACQUIRING OR MAINTAINING INSURANCE;
- (8) A MODIFICATION OF AN EXISTING CONDITION TO ADVANCE FUNDS;

(9) A MODIFICATION OF A FINANCIAL COVENANT; AND

(10) A MODIFICATION OF THE PAYMENT AMOUNT OR SCHEDULE RESULTING FROM ANOTHER MODIFICATION DESCRIBED IN THIS SUBSECTION (b).

(c) THE EFFECT OF A MORTGAGE MODIFICATION NOT DESCRIBED IN SUBSECTION (b) OF THIS SECTION IS GOVERNED BY OTHER LAW.

38-40.5-105. Uniformity of Application and Construction.

IN APPLYING AND CONSTRUING THIS UNIFORM ACT, A COURT SHALL CONSIDER THE PROMOTION OF UNIFORMITY OF THE LAW AMONG JURISDICTIONS THAT ENACT IT.

38-40.5-106. Relation to Electronic Signatures in Global and National Commerce Act.

THIS ACT MODIFIES, LIMITS, OR SUPERSEDES THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 U.S.C. SEC. 7001 ET SEQ., AS AMENDED, BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE 15 U.S.C. SEC. 7001 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN 15 U.S.C. SEC. 7003 (b).

38-40.5-107. Transitional Provision.

THIS ARTICLE 40.5 APPLIES TO A MORTGAGE MODIFICATION MADE ON OR AFTER THE EFFECTIVE DATE OF THIS ACT REGARDLESS OF WHEN THE MORTGAGE OR THE OBLIGATION WAS CREATED.

SECTION 2. 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 12, 2026, if adjournment sine die is on May 13, 2026); 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 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 27, 2026