

CHAPTER 200

PROPERTY

HOUSE BILL 10-1240

BY REPRESENTATIVE(S) Ferrandino, Apuan, Casso, Court, Frangas, Hullinghorst, Labuda, Looper, Massey, Middleton, Peniston, Pommer, Schafer S., Todd, Vigil, Carroll T., Priola;
also SENATOR(S) Carroll M., Boyd, Foster, Heath, Hudak, Newell, Romer, Steadman, Williams.

AN ACT**CONCERNING THE FORECLOSURE DEFERMENT PROCESS FOR RESIDENTIAL PROPERTIES.**

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

SECTION 1. 38-38-101 (1) (h), Colorado Revised Statutes, is amended 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 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. IF THE DOCUMENT REQUIRED BY THIS PARAGRAPH (h) IS FILED IN ERROR, THE HOLDER MAY WITHDRAW IT BY FILING WITH THE PUBLIC TRUSTEE AN AFFIDAVIT SIGNED BY THE HOLDER OR THE ATTORNEY FOR THE HOLDER AFFIRMING BOTH THAT THE DOCUMENT REQUIRED BY THIS PARAGRAPH (h) WAS FILED IN ERROR AND THAT THE PROPERTY HAS NOT BEEN POSTED PURSUANT TO SECTION 38-38-802. IN ORDER TO BE EFFECTIVE, AND THEREBY NOTIFY THE PUBLIC TRUSTEE THAT THE PROPERTY IS NOT ELIGIBLE FOR

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

POSTING, SUCH AFFIDAVIT SHALL BE FILED WITH THE PUBLIC TRUSTEE NO LATER THAN FIFTEEN CALENDAR DAYS AFTER THE DATE OF THE DETERMINATION OF THE PUBLIC TRUSTEE THAT THE FILING IS COMPLETE IN ACCORDANCE WITH SECTION 38-38-102 (1).

SECTION 2. 38-38-105, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

38-38-105. Court order authorizing sale mandatory - notice of hearing for residential properties. (3) NOT LESS THAN FIFTEEN DAYS BEFORE THE DATE SET FOR THE HEARING PURSUANT TO RULE 120 OR OTHER RULE OF THE COLORADO RULES OF CIVIL PROCEDURE, THE HOLDER OR THE ATTORNEY FOR THE HOLDER SEEKING AN ORDER AUTHORIZING SALE UNDER THIS SECTION FOR A RESIDENTIAL PROPERTY SHALL CAUSE A NOTICE OF HEARING AS DESCRIBED IN RULE 120 (b) OF THE COLORADO RULES OF CIVIL PROCEDURE TO BE POSTED IN A CONSPICUOUS PLACE ON THE PROPERTY THAT IS THE SUBJECT OF THE SALE. 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, THE NOTICE SHALL BE POSTED AT AN ALTERNATIVE CONSPICUOUS LOCATION, SUCH AS A GATE OR SIMILAR IMPEDIMENT.

SECTION 3. 24-32-705 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

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

(s) TO ESTABLISH UNIFORM STANDARDS PURSUANT TO SECTION 38-38-807.5, C.R.S.

SECTION 4. 38-38-802 (1), Colorado Revised Statutes, is amended to read:

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), AND NO EARLIER THAN THE DATE THE DETERMINATION IS MADE BY THE PUBLIC TRUSTEE, 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 PERSONALLY SERVED ON THE ELIGIBLE BORROWER OR TO BE posted in a conspicuous place on the property that is the subject of the notice of election and demand. THE NOTICE SHALL BE IN A FORM AND MANNER AS DETERMINED BY UNIFORM STANDARDS OF THE DIVISION OF HOUSING. 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.

SECTION 5. 38-38-802 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

38-38-802. Notice of the opportunity for foreclosure deferment. (2) The notice shall contain:

(d) A TELEPHONE NUMBER FOR THE HOLDER AND, IF APPLICABLE, A TELEPHONE NUMBER FOR THE ATTORNEY FOR THE HOLDER WHO FILED THE NOTICE OF ELECTION AND DEMAND;

(e) THE PUBLIC TRUSTEE FORECLOSURE NUMBER.

SECTION 6. 38-38-803 (6), Colorado Revised Statutes, is amended, and the said 38-38-803 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

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

(5.5) THE FORECLOSURE COUNSELOR SHALL NOTIFY THE HOLDER OR THE ATTORNEY FOR THE HOLDER IF AN ELIGIBLE BORROWER WHO HAS QUALIFIED FOR A FORECLOSURE DEFERMENT OPTS NOT TO TAKE PART IN THE FORECLOSURE DEFERMENT PROCESS.

(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.

SECTION 7. 38-38-804 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

38-38-804. Foreclosure deferment assessment standards - ineligible borrowers. (3) An eligible borrower shall not qualify for a foreclosure deferment if:

(f) THE ELIGIBLE BORROWER HAS TRANSFERRED TITLE TO THE PROPERTY TO ANOTHER PARTY.

SECTION 8. Part 8 of article 38 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-38-807.5. Uniform standards - division of housing. (1) THE DIVISION OF HOUSING IN THE DEPARTMENT OF LOCAL AFFAIRS CREATED IN SECTION 24-32-704, C.R.S., SHALL ESTABLISH AND MAY UPDATE UNIFORM STANDARDS AS NECESSARY FOR THE IMPLEMENTATION OF THIS PART 8. THE UNIFORM STANDARDS SHALL INCLUDE:

(a) STANDARD FORMS AND NOTICES AS DETERMINED NECESSARY BY THE

DIVISION;

(b) ACCEPTABLE FORMS OF PAYMENT FOR FORECLOSURE DEFERMENT PAYMENTS;
AND

(c) A MECHANISM FOR A FORECLOSURE COUNSELOR TO NOTIFY THE HOLDER AND
PUBLIC TRUSTEE WHEN A QUALIFIED ELIGIBLE BORROWER OPTS NOT TO PARTICIPATE
IN THE FORECLOSURE DEFERMENT PROCESS.

SECTION 9. 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: May 5, 2010