

CHAPTER 350

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 10-1133

BY REPRESENTATIVE(S) Massey, Acree, Apuan, Fischer, Frangas, Kerr J., Solano, Middleton, Schafer S., Curry, Gagliardi;
also SENATOR(S) Tochtrop, Boyd, Hudak, Steadman.

AN ACT**CONCERNING AMENDMENTS TO THE "COLORADO FORECLOSURE PROTECTION ACT".**

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

SECTION 1. The introductory portion to 6-1-1103 (2) and 6-1-1103 (2) (a) and (7), Colorado Revised Statutes, are amended, and the said 6-1-1103 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

6-1-1103. Definitions. As used in this part 11, unless the context otherwise requires:

(2) "Equity purchaser" means a person, OTHER THAN A PERSON WHO ACQUIRES A PROPERTY FOR THE PURPOSE OF USING SUCH PROPERTY AS HIS OR HER PERSONAL RESIDENCE, who ~~in the course of the person's business, vocation, or occupation,~~ acquires title to a residence in foreclosure; except that the term does not include a person who acquires such title:

(a) ~~For the purpose of using such property as his or her personal residence for at least one year;~~

(h) AS A RESULT OF A SHORT SALE TRANSACTION IN WHICH A SHORT SALE ADDENDUM FORM, AS PROMULGATED BY THE COLORADO REAL ESTATE COMMISSION, IS PART OF THE CONTRACT USED TO ACQUIRE A RESIDENCE IN FORECLOSURE AND SUCH TRANSACTION COMPLIES WITH SECTION 6-1-1121.

(7) "Home owner" means the owner of a ~~residence in foreclosure~~ DWELLING WHO OCCUPIES IT AS HIS OR HER PRINCIPAL PLACE OF RESIDENCE, including a vendee under a contract for deed to real property, as that term is defined in section 38-35-126 (1) (b), C.R.S.

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

SECTION 2. The introductory portion to 6-1-1103 (4) (a) and 6-1-1103 (8), Colorado Revised Statutes, are amended, and the said 6-1-1103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

6-1-1103. Definitions. As used in this part 11, unless the context otherwise requires:

(4) (a) "Foreclosure consultant" means a person who does not, directly or through an associate, take or acquire any interest in or title to ~~the residence in foreclosure~~ A HOME OWNER'S PROPERTY and who, in the course of such person's business, vocation, or occupation, makes a solicitation, representation, or offer to a home owner to perform, in exchange for compensation from the home owner or from the proceeds of any loan or advance of funds, a service that the person represents will do any of the following:

(8) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (8), "residence in foreclosure" means a residence or dwelling, as defined in sections 5-1-201 and 5-1-301, C.R.S., that is occupied as the home owner's principal place of residence and that is encumbered by a residential mortgage loan that is at least thirty days delinquent or in default.

(b) WITH RESPECT TO SUBPART 3 OF THIS PART 11, "RESIDENCE IN FORECLOSURE" MEANS A RESIDENCE OR DWELLING, AS DEFINED IN SECTIONS 5-1-201 AND 5-1-301, C.R.S., THAT IS OCCUPIED AS THE HOME OWNER'S PRINCIPAL PLACE OF RESIDENCE, IS ENCUMBERED BY A RESIDENTIAL MORTGAGE LOAN, AND AGAINST WHICH A FORECLOSURE ACTION HAS BEEN COMMENCED OR AS TO WHICH AN EQUITY PURCHASER OTHERWISE HAS ACTUAL OR CONSTRUCTIVE KNOWLEDGE THAT THE LOAN IS AT LEAST THIRTY DAYS DELINQUENT OR IN DEFAULT.

(9) "SHORT SALE" OR "SHORT SALE TRANSACTION" MEANS A TRANSACTION IN WHICH THE RESIDENCE IN FORECLOSURE IS SOLD WHEN:

(a) A HOLDER OF EVIDENCE OF DEBT AGREES TO RELEASE ITS LIEN FOR AN AMOUNT THAT IS LESS THAN THE OUTSTANDING AMOUNT DUE AND OWING UNDER SUCH EVIDENCE OF DEBT; AND

(b) THE LIEN DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (9) IS RECORDED IN THE REAL PROPERTY RECORDS OF THE COUNTY WHERE THE RESIDENCE IN FORECLOSURE IS LOCATED.

SECTION 3. 6-1-1104 (4), Colorado Revised Statutes, is amended to read:

6-1-1104. Foreclosure consulting contract. (4) A foreclosure consulting contract shall be dated and personally signed, with each page being initialed, by each home owner ~~of the residence in foreclosure~~ and the foreclosure consultant and shall be acknowledged by a notary public in the presence of the home owner at the time the contract is signed by the home owner.

SECTION 4. 6-1-1111, Colorado Revised Statutes, is amended to read:

6-1-1111. Written contract required. Every contract shall be written in at least ~~twelve-point, bold-faced~~ NINE-POINT, LEGIBLE type and fully completed, signed, and dated by the home owner and equity purchaser prior to the execution of any instrument quit-claiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure.

SECTION 5. The introductory portion to 6-1-1112 (1) (j), Colorado Revised Statutes, is amended to read:

6-1-1112. Written contract - contents - notice. (1) Every contract shall contain the entire agreement of the parties and shall include the following terms:

(j) The following notice, in at least ~~fourteen-point~~ NINE-POINT bold-faced type, and completed with the name of the equity purchaser, immediately above the statement required by section 6-1-1114:

SECTION 6. The introductory portions to 6-1-1114 (2) and (2) (c), Colorado Revised Statutes, are amended to read:

6-1-1114. Notice of cancellation. (2) The contract shall be accompanied by duplicate completed forms, captioned "notice of cancellation" in at least ~~twelve-point~~ NINE-POINT bold-faced type if the contract is printed or in capital letters if the contract is typed, followed by a space in which the equity purchaser shall enter the date on which the home owner executed the contract. Such form shall:

(c) Contain the following statement, in at least ~~ten-point~~ NINE-POINT type if the contract is printed or in capital letters if the contract is typed:

SECTION 7. 6-1-1120, Colorado Revised Statutes, is amended to read:

6-1-1120. Language. (1) Any contract, rental agreement, lease, option or right to repurchase, and any notice, conveyance, lien, encumbrance, consent, or other document or instrument signed by a home owner, shall be written in English; ~~and shall be accompanied by a written translation from English into any other language principally spoken by the home owner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.~~ EXCEPT THAT, IF THE EQUITY PURCHASER HAS ACTUAL OR CONSTRUCTIVE KNOWLEDGE THAT THE HOME OWNER'S PRINCIPAL LANGUAGE IS OTHER THAN ENGLISH, THE HOME OWNER SHALL BE PROVIDED WITH A NOTICE, WRITTEN IN THE HOME OWNER'S PRINCIPAL LANGUAGE, SUBSTANTIALLY AS FOLLOWS:

THIS TRANSACTION INVOLVES IMPORTANT AND COMPLEX LEGAL CONSEQUENCES, INCLUDING YOUR RIGHT TO CANCEL THIS TRANSACTION WITHIN THREE BUSINESS DAYS FOLLOWING THE DATE YOU SIGN THIS CONTRACT. YOU SHOULD CONSULT WITH AN ATTORNEY OR SEEK ASSISTANCE FROM A HOUSING COUNSELOR BY CALLING THE COLORADO FORECLOSURE HOTLINE AT _____ [CURRENT, CORRECT TELEPHONE NUMBER].

(2) IF A NOTICE IN THE HOME OWNER'S PRINCIPAL LANGUAGE IS REQUIRED TO BE

PROVIDED UNDER SUBSECTION (1) OF THIS SECTION, THE NOTICE SHALL BE GIVEN TO THE HOME OWNER AS A SEPARATE DOCUMENT ACCOMPANYING THE WRITTEN CONTRACT REQUIRED BY SECTION 6-1-1111.

SECTION 8. Part 11 of article 1 of title 6, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

6-1-1121. Short sales - subsequent purchaser - definition. (1) WITH RESPECT TO ANY SHORT SALE TRANSACTION IN WHICH AN EQUITY PURCHASER INTENDS TO RESELL THE RESIDENCE IN FORECLOSURE TO A SUBSEQUENT PURCHASER, THE EQUITY PURCHASER SHALL:

(a) PROVIDE FULL DISCLOSURE TO THE HOME OWNER AND TO THE HOLDERS OF THE EVIDENCE OF DEBT ON THE RESIDENCE IN FORECLOSURE, OR SUCH HOLDERS' REPRESENTATIVES, OF THE TERMS OF THE AGREEMENT BETWEEN THE EQUITY PURCHASER AND ANY SUBSEQUENT PURCHASER, INCLUDING BUT NOT LIMITED TO THE PURCHASE PRICE TO BE PAID BY THE SUBSEQUENT PURCHASER FOR THE RESIDENCE IN FORECLOSURE, WHICH DISCLOSURE SHALL BE MADE WITHIN ONE BUSINESS DAY OF IDENTIFYING ANY SUCH SUBSEQUENT PURCHASER AND IN NO EVENT LATER THAN CLOSING ON THE SHORT SALE TRANSACTION;

(b) PROVIDE FULL DISCLOSURE TO ANY SUBSEQUENT PURCHASER AND TO ANY SUBSEQUENT PURCHASER'S LENDER, OR SUCH LENDER'S REPRESENTATIVE, AT THE TIME OF CONTRACT WITH THE EQUITY PURCHASER, OF THE TERMS OF THE AGREEMENT BETWEEN THE EQUITY PURCHASER AND THE HOME OWNER, INCLUDING BUT NOT LIMITED TO THE PURCHASE PRICE PAID BY THE EQUITY PURCHASER FOR THE RESIDENCE IN FORECLOSURE;

(c) COMPLY WITH ALL APPLICABLE RULES ADOPTED BY THE COLORADO REAL ESTATE COMMISSION WITH REGARD TO SHORT SALES; AND

(d) COMPLY WITH SECTION 38-35-125, C.R.S.

(2) AS USED IN THIS SECTION, A "SUBSEQUENT PURCHASER" MEANS ANY PERSON WHO ENTERS INTO A CONTRACT WITH AN EQUITY PURCHASER PRIOR TO THE DISBURSEMENT OF THE SHORT SALE TRANSACTION TO ACQUIRE THE RESIDENCE IN FORECLOSURE AND WHO ACQUIRES THE RESIDENCE IN FORECLOSURE WITHIN FOURTEEN DAYS AFTER THE DISBURSEMENT OF THE SHORT SALE TRANSACTION.

SECTION 9. Act subject to petition - specified effective date. This act shall take effect January 1, 2011; 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 the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on January 1, 2011, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Approved: June 7, 2010