

CHAPTER 157

PROPERTY

HOUSE BILL 14-1295

BY REPRESENTATIVE(S) McCann, Williams, Exum, Fields, Labuda, Lebsack, Lee, Rosenthal, Ryden, Salazar, Buckner, Court, Duran, Fischer, Foote, Garcia, Ginal, Hulinghorst, Kraft-Tharp, Melton, Moreno, Pabon, Pettersen, Schafer, Singer, Tyler, Vigil, Young, Ferrandino, Mitsch Bush;
also SENATOR(S) Ulibarri, Aguilar, Guzman, Heath, Hodge, Jones, Kefalas, Kerr, King, Newell, Nicholson, Schwartz, Steadman, Todd, Carroll.

AN ACT

**CONCERNING RESIDENTIAL MORTGAGE FORECLOSURES, AND, IN CONNECTION THEREWITH,
REQUIRING A SINGLE POINT OF CONTACT AND PROHIBITING DUAL TRACKING.**

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

SECTION 1. In Colorado Revised Statutes, 38-38-100.3, **add** (2.5), (3.5), (4.5), (13.3), (13.7), (21.3), (21.6), (23.3), and (23.6) as follows:

38-38-100.3. Definitions. As used in articles 37 to 39 of this title, unless the context otherwise requires:

(2.5) "BORROWER" MEANS A PERSON LIABLE UNDER AN EVIDENCE OF DEBT CONSTITUTING A RESIDENTIAL MORTGAGE LOAN.

(3.5) "CFPB" MEANS THE FEDERAL CONSUMER FINANCIAL PROTECTION BUREAU.

(4.5) "COMPLETE LOSS MITIGATION APPLICATION" MEANS AN APPLICATION IN CONNECTION WITH WHICH A SERVICER HAS RECEIVED ALL THE INFORMATION THAT THE SERVICER REQUIRES FROM A BORROWER IN EVALUATING APPLICATIONS FOR THE LOSS MITIGATION OPTIONS AVAILABLE TO THE BORROWER.

(13.3) "LOSS MITIGATION APPLICATION" MEANS AN ORAL OR WRITTEN REQUEST FOR A LOSS MITIGATION OPTION THAT IS ACCOMPANIED BY ANY INFORMATION REQUESTED BY A SERVICER FOR EVALUATION FOR A LOSS MITIGATION OPTION.

(13.7) "LOSS MITIGATION OPTION" MEANS AN ALTERNATIVE TO FORECLOSURE

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

OFFERED BY THE OWNER, HOLDER, OR ASSIGNEE OF A MORTGAGE LOAN THAT IS MADE AVAILABLE THROUGH THE SERVICER TO THE BORROWER.

(21.3) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN THAT IS PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD USE AND THAT IS SECURED BY A MORTGAGE, DEED OF TRUST, OR OTHER EQUIVALENT, CONSENSUAL SECURITY INTEREST ON A DWELLING OR RESIDENTIAL REAL ESTATE UPON WHICH IS CONSTRUCTED OR INTENDED TO BE CONSTRUCTED A SINGLE-FAMILY DWELLING OR MULTIPLE-FAMILY DWELLING OF FOUR OR FEWER UNITS THAT IS OR WILL BE USED BY THE BORROWER AS THE BORROWER'S PRIMARY RESIDENCE.

(21.6) "RESIDENTIAL REAL ESTATE" MEANS ANY REAL PROPERTY UPON WHICH A DWELLING IS OR WILL BE CONSTRUCTED.

(23.3) (a) "SERVICER" OR "MORTGAGE SERVICER" MEANS AN ENTITY THAT DIRECTLY SERVICES A LOAN OR THAT IS RESPONSIBLE FOR INTERACTING WITH THE BORROWER; MANAGING THE LOAN ACCOUNT ON A DAILY BASIS, INCLUDING COLLECTING AND CREDITING PERIODIC LOAN PAYMENTS; MANAGING ANY ESCROW ACCOUNT; OR ENFORCING THE NOTE AND SECURITY INSTRUMENT, EITHER AS THE CURRENT HOLDER OF THE EVIDENCE OF DEBT OR AS THE CURRENT HOLDER'S AUTHORIZED AGENT.

(b) "SERVICER" INCLUDES AN ENTITY PROVIDING SUCH SERVICES PURSUANT TO DESIGNATION AS A SUBSERVICING AGENT OR BY CONTRACT WITH A MASTER SERVICER.

(c) "SERVICER" DOES NOT MEAN A TRUSTEE, INCLUDING THE PUBLIC TRUSTEE, OR A TRUSTEE'S AUTHORIZED AGENT ACTING UNDER A POWER OF SALE PURSUANT TO A DEED OF TRUST.

(23.6) "SINGLE POINT OF CONTACT" MEANS AN INDIVIDUAL OR TEAM OF PERSONNEL, EACH OF WHOM HAS THE ABILITY AND AUTHORITY TO PERFORM THE RESPONSIBILITIES DESCRIBED IN SECTION 38-38-103.1 ON BEHALF OF THE SERVICER. THE SERVICER SHALL ENSURE THAT EACH MEMBER OF THE TEAM IS KNOWLEDGEABLE ABOUT THE BORROWER'S SITUATION AND CURRENT STATUS.

SECTION 2. In Colorado Revised Statutes, 38-38-102.5, **amend** (2) as follows:

38-38-102.5. Notice prior to residential foreclosure - hotline. (2) At least thirty days before filing a notice of election and demand and at least thirty days after default, the holder shall mail a notice addressed to the original grantor of the deed of trust at the address in the recorded deed of trust or other lien being foreclosed and, if different, at the last address shown in the holder's records, containing:

(a) The telephone number of the Colorado foreclosure hotline; ~~and~~

(b) The direct telephone number of the holder's loss mitigation representative or department; AND

(c) A STATEMENT THAT, UNDER SECTION 6-1-1107, C.R.S., IT IS ILLEGAL FOR ANY PERSON ACTING AS A FORECLOSURE CONSULTANT TO CHARGE AN UP-FRONT FEE OR

DEPOSIT TO THE BORROWER FOR SERVICES RELATED TO THE FORECLOSURE.

SECTION 3. In Colorado Revised Statutes, 38-38-103, **amend** (4) (a) introductory portion, (4) (a) (VI), and (4) (a) (VII); and **add** (4) (a) (VIII) as follows:

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

(4) (a) The combined notices required to be mailed pursuant to subsections (1), (2), and (3) of this section ~~shall~~ **MUST** contain the following:

(VI) The place of sale determined pursuant to section 38-38-110; ~~and~~

(VII) The statement as required by section 24-70-109, C.R.S.: The lien being foreclosed may not be a first lien; ~~AND~~

(VIII) A STATEMENT THAT, IF THE BORROWER BELIEVES THAT A LENDER OR SERVICER HAS VIOLATED THE REQUIREMENTS FOR A SINGLE POINT OF CONTACT IN SECTION 38-38-103.1 OR THE PROHIBITION ON DUAL TRACKING IN SECTION 38-38-103.2, THE BORROWER MAY FILE A COMPLAINT WITH THE COLORADO ATTORNEY GENERAL, THE CFPB, OR BOTH, BUT THE FILING OF A COMPLAINT WILL NOT STOP THE FORECLOSURE PROCESS. THE NOTICE MUST INCLUDE CONTACT INFORMATION FOR BOTH THE COLORADO ATTORNEY GENERAL'S OFFICE AND THE CFPB. IF THE OFFICER MAINTAINS A WEB SITE, THE OFFICER SHALL ALSO POST THIS INFORMATION ON THE WEB SITE FOR VIEWING BY ALL BORROWERS.

SECTION 4. In Colorado Revised Statutes, **add** 38-38-103.1 and 38-38-103.2 as follows:

38-38-103.1. Single point of contact - servicer to designate - duties - exemption. (1) NO LATER THAN THE FORTY-FIFTH DAY OF A BORROWER'S DELINQUENCY, A SERVICER SHALL PROMPTLY ESTABLISH A SINGLE POINT OF CONTACT FOR COMMUNICATIONS WITH THE BORROWER. THE SERVICER SHALL DO SO WITHIN THE TIME PERIODS PRESCRIBED IN, AND SUBJECT TO THE OTHER REQUIREMENTS IMPOSED BY, FEDERAL LAW AND CFPB RULES AND ORDERS. ONCE THE SINGLE POINT OF CONTACT IS ESTABLISHED, THE SERVICER SHALL PROMPTLY PROVIDE TO THE BORROWER, IN WRITING, ONE OR MORE DIRECT MEANS OF COMMUNICATION WITH THE SINGLE POINT OF CONTACT.

(2) A SINGLE POINT OF CONTACT SHALL:

(a) PROVIDE THE BORROWER WITH ACCURATE INFORMATION ABOUT:

(I) LOSS MITIGATION OPTIONS AVAILABLE TO THE BORROWER FROM THE OWNER OR ASSIGNEE OF THE BORROWER'S MORTGAGE LOAN;

(II) ACTIONS THE BORROWER MUST TAKE TO BE EVALUATED FOR LOSS MITIGATION OPTIONS, INCLUDING ACTIONS THE BORROWER MUST TAKE TO SUBMIT A COMPLETE LOSS MITIGATION APPLICATION AND, IF APPLICABLE, ACTIONS THE BORROWER MUST TAKE TO APPEAL THE SERVICER'S DETERMINATION TO DENY A BORROWER'S LOSS MITIGATION APPLICATION FOR ANY TRIAL OR PERMANENT LOAN MODIFICATION PROGRAM OFFERED BY THE SERVICER;

(III) THE STATUS OF ANY LOSS MITIGATION APPLICATION THAT THE BORROWER HAS SUBMITTED TO THE SERVICER;

(IV) THE CIRCUMSTANCES UNDER WHICH THE SERVICER MAY MAKE A REFERRAL TO FORECLOSURE; AND

(V) APPLICABLE LOSS MITIGATION DEADLINES ESTABLISHED BY AN OWNER OR ASSIGNEE OF THE BORROWER'S MORTGAGE LOAN OR BY SECTION 38-38-103.2;

(b) RETRIEVE, IN A TIMELY MANNER:

(I) A COMPLETE RECORD OF THE BORROWER'S PAYMENT HISTORY; AND

(II) ALL WRITTEN INFORMATION THE BORROWER HAS PROVIDED TO THE SERVICER AND, IF AVAILABLE, TO PRIOR SERVICERS IN CONNECTION WITH A LOSS MITIGATION APPLICATION;

(c) PROVIDE THE DOCUMENTS AND INFORMATION IDENTIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (2) TO OTHER PERSONS REQUIRED TO EVALUATE A BORROWER FOR LOSS MITIGATION OPTIONS MADE AVAILABLE BY THE SERVICER, IF APPLICABLE; AND

(d) PROVIDE A DELINQUENT BORROWER WITH INFORMATION ABOUT THE PROCEDURES FOR SUBMITTING A NOTICE OF ERROR OR AN INFORMATION REQUEST.

(3) A SERVICER IS EXEMPT FROM THIS SECTION IF THE SERVICER SERVICES FIVE THOUSAND OR FEWER MORTGAGE LOANS FOR ALL OF WHICH THE SERVICER, OR AN AFFILIATE OF THE SERVICER, IS THE CREDITOR OR ASSIGNEE. IN DETERMINING WHETHER A SERVICER SERVICES FIVE THOUSAND OR FEWER MORTGAGES, THE SERVICER IS EVALUATED BASED ON THE NUMBER OF MORTGAGE LOANS SERVICED BY THE SERVICER AND ANY AFFILIATES AS OF JANUARY 1 FOR THE REMAINDER OF THE CALENDAR YEAR. A SERVICER THAT CROSSES THE THRESHOLD HAS SIX MONTHS AFTER CROSSING THE THRESHOLD OR UNTIL THE NEXT JANUARY 1, WHICHEVER IS LATER, TO COMPLY WITH THIS SECTION.

(4) A SERVICER WHO COMPLIES WITH 12 CFR 1024.40, AS PROMULGATED BY THE CFPB, OR IS EXEMPT FROM COMPLIANCE WITH THAT REGULATION UNDER FEDERAL LAW OR CFPB RULES, REGULATIONS, OR ORDERS, IS DEEMED IN COMPLIANCE WITH THIS SECTION.

38-38-103.2. Dual tracking prohibited - notice to officer - continuation of sale pending inquiry. (1) A SERVICER IS SUBJECT TO THE TIME LIMITS AND OTHER REQUIREMENTS OF FEDERAL LAW AND CFPB RULES IN CONNECTION WITH A FORECLOSURE UNDER THIS ARTICLE.

(2) THE SERVICER SHALL:

(a) NOTIFY THE BORROWER IN WRITING WHEN IT RECEIVES A COMPLETE LOSS MITIGATION APPLICATION FROM THE BORROWER; AND

(b) EXERCISE REASONABLE DILIGENCE IN OBTAINING DOCUMENTS AND

INFORMATION TO COMPLETE A LOSS MITIGATION APPLICATION.

(3) IF THE BORROWER HAS RECEIVED CONFIRMATION FROM THE SERVICER THAT THE BORROWER HAS SUBMITTED A COMPLETE LOSS MITIGATION APPLICATION OR HAS BEEN OFFERED AND HAS ACCEPTED A LOSS MITIGATION OPTION AND IS COMPLYING WITH ITS PROVISIONS, AND YET A NOTICE OF ELECTION AND DEMAND PURSUANT TO SECTION 38-38-101 HAS BEEN FILED OR ACTION IS BEING TAKEN PURSUANT TO SECTION 38-38-105 OR 38-38-106 WITH REGARD TO THE BORROWER, THEN, IN ORDER TO STOP THE FORECLOSURE SALE, NO LATER THAN FOURTEEN CALENDAR DAYS BEFORE THE SALE DATE, THE BORROWER MUST PRESENT TO THE OFFICER THE BORROWER'S WRITTEN NOTIFICATION FROM THE SERVICER INDICATING RECEIPT OF A COMPLETE LOSS MITIGATION APPLICATION DATED AT LEAST THIRTY-SEVEN DAYS PRIOR TO THE SALE DATE OR ACCEPTANCE OF A LOSS MITIGATION OPTION, AND, IF THE BORROWER DOES SO:

(a) AS SOON AS POSSIBLE, BUT NO LATER THAN THREE BUSINESS DAYS AFTER RECEIPT OF THE NOTIFICATION, THE OFFICER SHALL CONTACT THE ATTORNEY FOR THE SERVICER OR HOLDER OR THE SERVICER OR HOLDER, IF NOT REPRESENTED BY AN ATTORNEY, BY TELEPHONE, ELECTRONIC MAIL, OR FIRST-CLASS MAIL AND INQUIRE AS TO THE STATUS OF THE LOSS MITIGATION OPTION. THE OFFICER SHALL DOCUMENT THIS INQUIRY. UNTIL THE SERVICER OR ITS ATTORNEY RESPONDS TO THE INQUIRY, THE OFFICER SHALL CONTINUE THE SALE IN ACCORDANCE WITH SECTION 38-38-109 (1) (a).

(b) IF THE ATTORNEY FOR THE SERVICER OR HOLDER OR THE SERVICER OR HOLDER, IF NOT REPRESENTED BY AN ATTORNEY, FAILS TO RESPOND WITHIN SEVEN CALENDAR DAYS TO AN INQUIRY UNDER PARAGRAPH (a) OF THIS SUBSECTION (3), THEN, AS SOON AS POSSIBLE BUT NO LATER THAN THE FOURTEENTH DAY AFTER THE DATE OF THE INQUIRY, THE OFFICER SHALL SEND A CERTIFIED LETTER TO THE ATTORNEY FOR THE SERVICER OR HOLDER OR TO THE SERVICER OR HOLDER, IF NOT REPRESENTED BY AN ATTORNEY, AS LISTED ON THE NOTICE OF ELECTION AND DEMAND, INQUIRING AS TO THE STATUS OF THE LOSS MITIGATION OPTION. THE SERVICER OR HOLDER SHALL REIMBURSE THE OFFICER FOR THE COST OF MAILING THE LETTER.

(c) IF, AFTER BEING CONTACTED IN ACCORDANCE WITH PARAGRAPH (a) OR (b) OF THIS SUBSECTION (3), THE ATTORNEY FOR THE SERVICER OR HOLDER OR THE SERVICER OR HOLDER, IF NOT REPRESENTED BY AN ATTORNEY, GIVES THE OFFICER A WRITTEN STATEMENT VIA ELECTRONIC MAIL OR FIRST-CLASS MAIL DISPUTING THAT A LOSS MITIGATION OPTION HAS BEEN OFFERED AND ACCEPTED OR THAT THE BORROWER IS COMPLYING WITH ITS TERMS, THE OFFICER SHALL PROCEED WITH THE SALE.

(d) (I) IF THE ATTORNEY FOR THE SERVICER OR HOLDER OR THE SERVICER OR HOLDER, IF NOT REPRESENTED BY AN ATTORNEY, ACKNOWLEDGES THAT A LOSS MITIGATION OPTION HAS BEEN OFFERED AND ACCEPTED AND THAT THE BORROWER IS COMPLYING WITH ITS TERMS, THE OFFICER SHALL CONTINUE THE SALE IN ACCORDANCE WITH SECTION 38-38-109 (1) (a), AND THE HOLDER SHALL WITHDRAW THE NOTICE OF ELECTION AND DEMAND WITHIN ONE HUNDRED EIGHTY CALENDAR DAYS AFTER THE DATE OF THE ACKNOWLEDGMENT IF THE BORROWER CONTINUES TO COMPLY WITH THE TERMS OF THE LOSS MITIGATION OPTION.

(II) IF, WITHIN ONE HUNDRED EIGHTY CALENDAR DAYS AFTER THE DATE OF THE ACKNOWLEDGMENT, THE ATTORNEY FOR THE SERVICER OR HOLDER OR THE SERVICER OR HOLDER, IF NOT REPRESENTED BY AN ATTORNEY, HAS NOT WITHDRAWN THE NOTICE OF ELECTION AND DEMAND AND NEITHER THE ATTORNEY FOR THE SERVICER OR HOLDER NOR THE SERVICER OR HOLDER, IF NOT REPRESENTED BY AN ATTORNEY, HAS NOTIFIED THE OFFICER THAT THE BORROWER IS NOT COMPLYING WITH THE TERMS OF THE LOSS MITIGATION OPTION, THE OFFICER MAY ADMINISTRATIVELY WITHDRAW THE NOTICE OF ELECTION AND DEMAND.

(III) IF, WITHIN ONE HUNDRED EIGHTY CALENDAR DAYS AFTER THE DATE OF THE ACKNOWLEDGMENT, THE BORROWER FAILS TO COMPLY WITH THE TERMS OF THE LOSS MITIGATION OPTION, THE HOLDER OR THE ATTORNEY FOR THE HOLDER MAY GIVE WRITTEN NOTICE TO THE OFFICER THAT THE LOSS MITIGATION OPTION HAS BEEN BREACHED, AND, NO LATER THAN TEN BUSINESS DAYS AFTER RECEIVING THE NOTICE, THE OFFICER SHALL MAIL AN AMENDED COMBINED NOTICE CONTAINING THE DATE OF THE RESCHEDULED SALE TO EACH PERSON APPEARING ON THE MOST RECENT MAILING LIST, OR ON AN UPDATED MAILING LIST IF PROVIDED BY THE HOLDER OR THE HOLDER'S ATTORNEY. THE RESCHEDULED SALE DATE MUST NOT BE FEWER THAN SEVEN CALENDAR DAYS AFTER THE DATE THE AMENDED COMBINED NOTICE IS MAILED. ALL FEES AND COSTS OF PROVIDING THE AMENDED COMBINED NOTICE MAY BE INCLUDED AS PART OF THE FORECLOSURE COSTS.

(4) IF A FORECLOSURE SALE IS CONTINUED AS A RESULT OF COMPLIANCE WITH THE REQUIREMENTS OF SUBSECTION (3) OF THIS SECTION, THE PERIODS FOR WHICH THE SALE MAY BE CONTINUED ARE IN ADDITION TO THE TWELVE-MONTH PERIOD OF CONTINUANCE PROVIDED BY SECTION 38-38-109 (1).

(5) A SERVICER IS EXEMPT FROM THIS SECTION IF THE SERVICER SERVICES FIVE THOUSAND OR FEWER MORTGAGE LOANS FOR ALL OF WHICH THE SERVICER, OR AN AFFILIATE OF THE SERVICER, IS THE CREDITOR OR ASSIGNEE. IN DETERMINING WHETHER A SERVICER SERVICES FIVE THOUSAND OR FEWER MORTGAGES, THE SERVICER IS EVALUATED BASED ON THE NUMBER OF MORTGAGE LOANS SERVICED BY THE SERVICER AND ANY AFFILIATES AS OF JANUARY 1 FOR THE REMAINDER OF THE CALENDAR YEAR. A SERVICER THAT CROSSES THE THRESHOLD HAS SIX MONTHS AFTER CROSSING THE THRESHOLD OR UNTIL THE NEXT JANUARY 1, WHICHEVER IS LATER, TO COMPLY WITH THIS SECTION.

(6) A SERVICER WHO COMPLIES WITH 12 CFR 1024.41, AS PROMULGATED BY THE CFPB, OR IS EXEMPT FROM COMPLIANCE WITH THAT REGULATION UNDER FEDERAL LAW OR CFPB RULES, REGULATIONS, OR ORDERS, IS DEEMED IN COMPLIANCE WITH THIS SECTION.

SECTION 5. In Colorado Revised Statutes, 38-38-105, **amend** (3) as follows:

38-38-105. Court order authorizing sale mandatory - notice of hearing for residential properties - definition. (3) (a) Not less than fourteen 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. If a person at the residence is impeding posting at the residence at the time of the attempted posting, the notice may be handed to that person to satisfy this posting requirement. The notice required by this subsection (3) is sufficient if it complies with the requirements of this section without regard to any requirements for service of process in a civil action required by court rule.

(b) FOR SERVICERS WHO ARE NOT EXEMPT PURSUANT TO SECTION 38-38-103.1 (3) OR 38-38-103.2 (4), THE NOTICE MUST CONTAIN OR BE ACCOMPANIED BY A CONSPICUOUS STATEMENT, SUBSTANTIALLY AS FOLLOWS, TOGETHER WITH CONTACT INFORMATION FOR BOTH THE COLORADO ATTORNEY GENERAL'S OFFICE AND THE CFPB:

IF YOU BELIEVE THAT THE LENDER OR SERVICER OF THIS MORTGAGE HAS VIOLATED THE REQUIREMENTS FOR A SINGLE POINT OF CONTACT IN SECTION 38-38-103.1, COLORADO REVISED STATUTES, OR THE PROHIBITION ON DUAL TRACKING IN SECTION 38-38-103.2, COLORADO REVISED STATUTES, YOU MAY FILE A COMPLAINT WITH THE COLORADO ATTORNEY GENERAL, THE FEDERAL CONSUMER FINANCIAL PROTECTION BUREAU, OR BOTH, AT _____ [INSERT CONTACT INFORMATION FOR BOTH]. THE FILING OF A COMPLAINT WILL NOT STOP THE FORECLOSURE PROCESS.

SECTION 6. Effective date - applicability. This act takes effect January 1, 2015, and applies to foreclosure proceedings in which the notice of election and demand is filed 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: May 9, 2014