

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0588.03 Jerry Barry

SENATE BILL 10-045

SENATE SPONSORSHIP

Morse,

HOUSE SPONSORSHIP

Kerr, A.,

Senate Committees
State, Veterans & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING INCREASING THE RIGHTS OF HOMEOWNERS, AND, IN
102 CONNECTION THEREWITH, ENACTING THE "HOMEOWNER
103 PROTECTION ACT OF 2010".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Current law requires the holder of a residential mortgage (holder) to send written notice to a debtor 30 days prior to filing a foreclosure. The bill changes the time to 60 days and requires the notice to include information concerning:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! The holder's duty to negotiate for a mutually acceptable agreement to avoid foreclosure (mutually acceptable agreement); and
- ! If a foreclosure action is commenced, the duty of the holder to participate in mediation.

The bill requires the holder to negotiate for a mutually acceptable agreement prior to commencing a foreclosure.

Prior to issuing an order authorizing sale under a residential mortgage loan, the bill requires the court to:

- ! Appoint a mediator;
- ! Verify that the costs of mediation have been paid; and
- ! Receive from the mediator a notice that the parties were unable to reach a mutually acceptable agreement.

The mediator shall schedule a mediation. The bill specifies sanctions for persons who fail to appear, fail to provide documents requested by the mediator, or fail to negotiate in good faith. At the conclusion of the mediation, the bill requires the mediator to notify the parties and the court of the outcome. The holder is responsible for the payment of the costs of the mediation.

The bill directs the Colorado supreme court to adopt rules concerning who is qualified to act as a mediator.

The bill grants immunity from civil action to a mediator acting in good faith.

The bill makes a waiver of any rights related to a mortgage deferment prior to the date of a default void as against public policy.

The bill removes the repeal of the mortgage deferral provisions.

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

2 **SECTION 1. Short title.** This act shall be known and may be
 3 cited as the "Homeowner Protection Act of 2010".

4 **SECTION 2.** 38-38-102.5 (2), Colorado Revised Statutes, is
 5 amended to read:

6 **38-38-102.5. Notice prior to residential foreclosure - hotline.**

7 (2) At least ~~thirty~~ SIXTY days before filing a notice of election and
 8 demand and at least thirty days after default, the holder shall:

9 (a) Mail a notice addressed to the original grantor of the deed of
 10 trust at the address in the recorded deed of trust or other lien being

1 foreclosed and, if different, at the last address shown in the holder's
2 records, containing:

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

4 (II) The direct telephone number of the holder's loss mitigation
5 representative or department OR OTHER PERSON AUTHORIZED TO
6 NEGOTIATE A MUTUALLY ACCEPTABLE AGREEMENT TO AVOID
7 FORECLOSURE;

8 (III) INFORMATION CONCERNING THE HOLDER'S DUTY TO
9 NEGOTIATE A MUTUALLY ACCEPTABLE AGREEMENT TO AVOID
10 FORECLOSURE; AND

11 (IV) INFORMATION CONCERNING THE DEBTOR'S RIGHT TO
12 PARTICIPATE IN MEDIATION UNDER SECTION 38-38-105.5 WITH THE
13 HOLDER IN THE EVENT THAT A MUTUALLY ACCEPTABLE AGREEMENT TO
14 AVOID FORECLOSURE IS NOT ENTERED INTO AND THE HOLDER COMMENCES
15 A FORECLOSURE ACTION;

16 (b) ATTEMPT TO CONTACT THE ORIGINAL DEBTOR OF THE DEED OF
17 TRUST AT THE LAST-KNOWN TELEPHONE NUMBER IN THE HOLDER'S
18 RECORDS TO NEGOTIATE A MUTUALLY ACCEPTABLE AGREEMENT TO AVOID
19 FORECLOSURE; AND

20 (c) IF IN CONTACT WITH THE DEBTOR OR SOMEONE ACTING ON
21 BEHALF OF THE DEBTOR, NEGOTIATE IN GOOD FAITH FOR A MUTUALLY
22 ACCEPTABLE AGREEMENT TO AVOID FORECLOSURE.

23 **SECTION 3.** 38-38-105, Colorado Revised Statutes, is amended
24 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to
25 read:

26 **38-38-105. Court order authorizing sale mandatory -**
27 **mediator.** (3) PRIOR TO ENTERING AN ORDER AUTHORIZING SALE

1 PURSUANT TO SUBSECTION (2) OF THIS SECTION ON A RESIDENTIAL
2 MORTGAGE LOAN AS DEFINED IN SECTION 12-61-902, C.R.S., A COURT
3 SHALL:

4 (a) APPOINT A MEDIATOR TO ACT PURSUANT TO SECTION
5 38-38-105.5;

6 (b) VERIFY THAT THE HOLDER HAS PAID ALL OF THE COSTS OF THE
7 MEDIATION; AND

8 (c) RECEIVE FROM THE MEDIATOR NOTICE THAT THE PARTIES WERE
9 UNABLE TO REACH AN AGREEMENT TO AVOID FORECLOSURE.

10 (4) IF THE COURT RECEIVES A NOTICE FROM THE MEDIATOR
11 INDICATING THAT THE PARTIES HAVE REACHED AN AGREEMENT TO AVOID
12 FORECLOSURE, THE COURT SHALL DISMISS THE CASE.

13 **SECTION 4.** Part 1 of article 38 of title 38, Colorado Revised
14 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
15 read:

16 **38-38-105.5. Mediation during residential foreclosure.**

17 (1) (a) AS SOON AS PRACTICABLE AFTER HIS OR HER APPOINTMENT, THE
18 MEDIATOR APPOINTED PURSUANT TO SECTION 38-38-105 (3) SHALL
19 SCHEDULE, WITHIN FIFTEEN DAYS AFTER THE APPOINTMENT, A MEDIATION
20 BETWEEN THE DEBTOR AND THE HOLDER OF AN EVIDENCE OF DEBT
21 CONSTITUTING A RESIDENTIAL MORTGAGE LOAN AS DEFINED IN SECTION
22 12-61-902, C.R.S. THE DEBTOR AND THE HOLDER OR A REPRESENTATIVE
23 OF THE HOLDER WITH AUTHORITY TO NEGOTIATE A MUTUALLY
24 ACCEPTABLE AGREEMENT TO AVOID FORECLOSURE SHALL ATTEND THE
25 MEDIATION. THE DEBTOR AND THE HOLDER SHALL BRING TO THE
26 MEDIATION ANY DOCUMENTS REQUESTED BY THE MEDIATOR.

27 (b) IF THE DEBTOR DOES NOT APPEAR AT THE MEDIATION OR FAILS

1 TO BRING DOCUMENTS REQUESTED BY THE MEDIATOR, THE MEDIATOR MAY
2 CONCLUDE THE MEDIATION AND FORWARD TO THE COURT A NOTICE THAT
3 THE MEDIATION HAS CONCLUDED WITHOUT AN AGREEMENT TO AVOID
4 FORECLOSURE.

5 (c) (I) IF THE HOLDER OR A REPRESENTATIVE OF THE HOLDER WITH
6 AUTHORITY TO NEGOTIATE A MUTUALLY ACCEPTABLE AGREEMENT TO
7 AVOID FORECLOSURE DOES NOT APPEAR AT THE MEDIATION, FAILS TO
8 BRING DOCUMENTS REQUESTED BY THE MEDIATOR, OR FAILS TO
9 NEGOTIATE IN GOOD FAITH, THE MEDIATOR MAY REQUEST THAT THE
10 COURT ENTER SANCTIONS AGAINST THE HOLDER, INCLUDING BUT NOT
11 LIMITED TO DELAYING THE FORECLOSURE SALE UNTIL THE HOLDER HAS
12 COMPLIED WITH THE REQUESTS OF THE MEDIATOR.

13 (II) AFTER THE COURT ENTERS AN ORDER UNDER SUBPARAGRAPH
14 (I) OF THIS PARAGRAPH (c), IF THE HOLDER OR A REPRESENTATIVE OF THE
15 HOLDER WITH AUTHORITY TO NEGOTIATE A MUTUALLY ACCEPTABLE
16 AGREEMENT TO AVOID FORECLOSURE FAILS TO APPEAR AT THE MEDIATION,
17 FAILS TO BRING DOCUMENTS REQUESTED BY THE MEDIATOR, OR FAILS TO
18 NEGOTIATE IN GOOD FAITH, THE MEDIATOR MAY REQUEST THAT THE
19 COURT ENTER FURTHER SANCTIONS AGAINST THE HOLDER, INCLUDING BUT
20 NOT LIMITED TO DISMISSING THE ACTION.

21 (2) AT THE CONCLUSION OF THE MEDIATION, THE MEDIATOR SHALL
22 NOTIFY THE DEBTOR, THE HOLDER, AND THE COURT IN WRITING WHETHER
23 THE PARTIES WERE ABLE TO AGREE TO A MUTUALLY ACCEPTABLE
24 AGREEMENT TO AVOID FORECLOSURE.

25 (3) THE HOLDER SHALL BEAR THE COSTS OF THE MEDIATION. THE
26 MEDIATOR SHALL FORWARD TO THE COURT AN ITEMIZATION OF THE COSTS
27 OF THE MEDIATION AND, ONCE THE COSTS ARE PAID, A NOTICE THAT THE

1 COSTS HAVE BEEN PAID. THE COURT SHALL NOT ENTER AN ORDER
2 AUTHORIZING A SALE UNTIL THE COURT RECEIVES SAID NOTICE FROM THE
3 MEDIATOR.

4 (4) THE COLORADO SUPREME COURT SHALL ADOPT RULES
5 SPECIFYING THE QUALIFICATIONS REQUIRED FOR A PERSON TO BE
6 APPOINTED AS A MEDIATOR FOR PURPOSES OF THIS SECTION.

7 (5) A WAIVER OF ANY RIGHTS UNDER THIS SECTION THAT IS MADE
8 BEFORE THE DATE OF THE DEFAULT FOR WHICH THE FORECLOSURE IS
9 COMMENCED UNDER A DEED OF TRUST, MORTGAGE, OR OTHER
10 INSTRUMENT EVIDENCING A LIEN OR AN EVIDENCE OF DEBT SECURED
11 THEREBY SHALL BE VOID AS AGAINST PUBLIC POLICY.

12 (6) A PERSON ACTING AS A MEDIATOR PURSUANT TO THIS SECTION
13 IN GOOD FAITH SHALL NOT BE LIABLE FOR ANY ACTIONS TAKEN WHILE SO
14 ACTING.

15 **SECTION 5. Repeal.** 38-38-808, Colorado Revised Statutes, is
16 repealed.

17 **SECTION 6. Specified effective date - applicability.** This act
18 shall take effect upon passage and shall apply to foreclosure actions filed
19 with a public trustee on or after said date.

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