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HOUSE BILL 24-1011

BY REPRESENTATIVE(S) Brown and Amabile, Bacon, Bird, Boesenecker, Clifford, Duran, English, Epps, Froelich, Hamrick, Hernandez, Herod, Jodeh, Joseph, Kipp, Lieder, Lindsay, Lindstedt, Lynch, Mabrey, Marshall, Mauro, McCormick, Parenti, Ricks, Rutinel, Sirota, Snyder, Story, Titone, Velasco, Weissman, Woodrow, Young, McCluskie; also SENATOR(S) Cutter and Marchman, Buckner, Danielson, Exum, Gonzales, Hinrichsen, Jaquez Lewis, Michaelson Jenet, Fenberg.

CONCERNING MORTGAGE SERVICERS, AND, IN CONNECTION THEREWITH,  
REQUIRING MORTGAGE SERVICERS TO TAKE CERTAIN ACTIONS  
REGARDING THE DISBURSEMENT OF INSURANCE PROCEEDS TO  
BORROWERS.

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

**SECTION 1.** In Colorado Revised Statutes, **add** 38-40-106 as follows:

**38-40-106. Mortgage servicers - requirements concerning disbursement of insurance proceeds - disclosure of mortgage interest rate - retention of communications - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

*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.*

(a) "BORROWER" HAS THE MEANING SET FORTH IN SECTION 38-38-100.3 (2.5).

(b) "MORTGAGE SERVICER" MEANS:

(I) A MORTGAGE SERVICER, AS DEFINED IN SECTION 5-21-103 (4);

(II) A MORTGAGE SERVICER, AS DEFINED IN SECTION 38-38-100.3 (23.3); OR

(III) AN AGENT OF A MORTGAGE SERVICER.

(c) "REBUILD PLAN" MEANS A WRITTEN PLAN TO REBUILD A RESIDENTIAL PROPERTY THAT HAS BEEN DESTROYED.

(d) "REPAIR PLAN" MEANS A WRITTEN PLAN TO REPAIR A RESIDENTIAL PROPERTY THAT HAS BEEN DAMAGED.

(e) "RESIDENTIAL PROPERTY" MEANS A RESIDENTIAL PROPERTY THAT IS THE SUBJECT OF A MORTGAGE.

(2) (a) UPON THE REQUEST OF A BORROWER, A MORTGAGE SERVICER SHALL PROMPTLY DISCLOSE TO THE BORROWER THE SPECIFIC CONDITIONS UNDER WHICH THE MORTGAGE SERVICER WILL DISBURSE INSURANCE PROCEEDS TO THE BORROWER IN THE EVENT THAT A RESIDENTIAL PROPERTY THAT IS THE SUBJECT OF A MORTGAGE IS DAMAGED OR DESTROYED AND AN INSURANCE COMPANY PAYS INSURANCE PROCEEDS TO SATISFY A CLAIM ASSOCIATED WITH SUCH DAMAGE OR DESTRUCTION. A MORTGAGE SERVICER MAY PROVIDE THE INFORMATION ELECTRONICALLY.

(b) IN THE EVENT THAT A RESIDENTIAL PROPERTY IS DAMAGED OR DESTROYED, A BORROWER, AFTER CONSULTING WITH THE BORROWER'S CONTRACTOR, SHALL CREATE A REPAIR PLAN OR REBUILD PLAN FOR THE RESIDENTIAL PROPERTY. THE BORROWER SHALL SUBMIT THE REPAIR PLAN OR REBUILD PLAN TO THE MORTGAGE SERVICER FOR APPROVAL. THE MORTGAGE SERVICER SHALL INDICATE APPROVAL OR DENIAL OF THE PLAN WITHIN THIRTY DAYS OF RECEIPT. THE REPAIR PLAN OR REBUILD PLAN MUST INCLUDE SPECIFIC MILESTONES THAT REQUIRE THE MORTGAGE SERVICER TO DISBURSE INSURANCE PROCEEDS IN CERTAIN AMOUNTS UPON REACHING THE

SPECIFIED MILESTONES, AS DESCRIBED IN SUBSECTIONS (2)(c)(I)(B) AND (2)(d)(II) OF THIS SECTION. IF A MORTGAGE SERVICER EMPLOYS INSPECTORS FOR THE PURPOSE OF DETERMINING WHEN SUCH MILESTONES ARE ATTAINED, THE MORTGAGE SERVICER SHALL NOTIFY THE BORROWER OF THE SPECIFIC CRITERIA THAT THE INSPECTORS USE TO MAKE SUCH DETERMINATIONS.

(c) (I) IF A BORROWER IS NOT DELINQUENT IN MAKING PAYMENTS ON THE MORTGAGE OR THE BORROWER IS LESS THAN THIRTY-ONE DAYS DELINQUENT IN MAKING PAYMENTS ON THE MORTGAGE, A MORTGAGE SERVICER SHALL DISBURSE THE INSURANCE PROCEEDS TO THE BORROWER AS FOLLOWS:

(A) IF THE AMOUNT OF THE INSURANCE PROCEEDS IS LESS THAN OR EQUAL TO FORTY THOUSAND DOLLARS, THE MORTGAGE SERVICER SHALL DISBURSE THE ENTIRE AMOUNT TO THE BORROWER IN ONE PAYMENT; AND

(B) IF THE AMOUNT OF THE INSURANCE PROCEEDS IS MORE THAN FORTY THOUSAND DOLLARS, THE MORTGAGE SERVICER SHALL INITIALLY DISBURSE TO THE BORROWER AN AMOUNT THAT IS FORTY THOUSAND DOLLARS OR THIRTY-THREE PERCENT OF THE TOTAL PROCEEDS, WHICHEVER AMOUNT IS GREATER. THEREAFTER, THE MORTGAGE SERVICER SHALL DISBURSE THE REMAINING PROCEEDS BASED ON PERIODIC INSPECTIONS AND PROGRESS ON THE WORK IN ACCORDANCE WITH THE MILESTONES IN THE REPAIR PLAN OR REBUILD PLAN DESCRIBED IN SUBSECTION (2)(b) OF THIS SECTION AND, WHERE REQUIRED BY FEDERAL LAW OR REGULATION, AFTER APPROVAL BY THE FEDERAL HOME LOAN BANKS OR APPLICABLE FEDERAL AGENCY.

(II) FOR THE PURPOSES OF THIS SUBSECTION (2)(c), IF A BORROWER HAS MADE ADVANCE PAYMENTS TO A CONTRACTOR OR TO PURCHASE MATERIALS, AS EVIDENCED BY PAID RECEIPTS, THE MORTGAGE SERVICER MAY REIMBURSE THE BORROWER FOR SUCH PAYMENTS.

(d) IF A BORROWER IS MORE THAN THIRTY-ONE DAYS DELINQUENT IN MAKING PAYMENTS ON THE MORTGAGE, A MORTGAGE SERVICER SHALL DISBURSE THE INSURANCE PROCEEDS TO THE BORROWER AS FOLLOWS:

(I) IF THE AMOUNT OF THE INSURANCE PROCEEDS IS LESS THAN OR EQUAL TO FIVE THOUSAND DOLLARS, THE MORTGAGE SERVICER SHALL DISBURSE THE ENTIRE AMOUNT TO THE BORROWER IN ONE PAYMENT; AND

(II) IF THE AMOUNT OF THE INSURANCE PROCEEDS IS MORE THAN FIVE THOUSAND DOLLARS, THE MORTGAGE SERVICER SHALL INITIALLY DISBURSE TO THE BORROWER AN AMOUNT THAT IS TWENTY-FIVE PERCENT OF THE TOTAL PROCEEDS; EXCEPT THAT THE AMOUNT OF THIS INITIAL DISBURSEMENT MAY NOT EXCEED TEN THOUSAND DOLLARS OR THE AMOUNT BY WHICH THE TOTAL PROCEEDS EXCEED THE SUM OF THE UNPAID BALANCE ON THE MORTGAGE, ANY INTEREST ACCRUED ON THE MORTGAGE, AND ANY ADVANCES MADE ON THE MORTGAGE. THEREAFTER, THE MORTGAGE SERVICER SHALL DISBURSE THE REMAINING PROCEEDS IN AMOUNTS NOT TO EXCEED TWENTY-FIVE PERCENT OF THE REMAINING PROCEEDS, IN ACCORDANCE WITH THE MILESTONES ESTABLISHED IN THE REPAIR PLAN OR THE REBUILD PLAN PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION; EXCEPT THAT THE MORTGAGE SERVICER SHALL NOT DISBURSE ANY REMAINING PROCEEDS UNTIL THE MORTGAGE SERVICER OR THE MORTGAGE SERVICER'S AGENT HAS INSPECTED THE REPAIRS, IF ANY, THAT HAVE BEEN MADE PURSUANT TO A REPAIR PLAN ESTABLISHED PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION.

(e) FOR THE PURPOSES OF DISBURSEMENT OF INSURANCE PROCEEDS AS DESCRIBED IN SUBSECTIONS (2)(c) AND (2)(d) OF THIS SECTION:

(I) A MORTGAGE SERVICER SHALL MAKE THE FIRST DISBURSEMENT OF INSURANCE PROCEEDS TO THE BORROWER:

(A) WITHIN FOURTEEN DAYS AFTER THE MORTGAGE SERVICER RECEIVES THE INSURANCE PROCEEDS IF THE MORTGAGE IS INSURED BY THE FEDERAL GOVERNMENT OR SECURITIZED BY THE FEDERAL NATIONAL MORTGAGE ASSOCIATION OR THE FEDERAL HOME LOAN MORTGAGE CORPORATION; AND

(B) AS SOON AS REASONABLY POSSIBLE AND NO LATER THAN THIRTY DAYS AFTER THE MORTGAGE SERVICER RECEIVES THE INSURANCE PROCEEDS IF THE MORTGAGE IS NOT INSURED BY THE FEDERAL GOVERNMENT OR SECURITIZED BY THE FEDERAL NATIONAL MORTGAGE ASSOCIATION OR THE FEDERAL HOME LOAN MORTGAGE CORPORATION; AND

(II) A MORTGAGE SERVICER MAY DISBURSE FUNDS DIRECTLY TO A DESIGNEE OF A BORROWER SO LONG AS:

(A) THE DESIGNEE IS AGREED TO BY BOTH THE BORROWER AND THE

MORTGAGE SERVICER; AND

(B) THE DESIGNATION IS PERMITTED BY FEDERAL AND STATE LAW AND ANY ASSOCIATED RULES.

(f) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A MORTGAGE SERVICER SHALL PROMPTLY DISBURSE TO A BORROWER ANY AMOUNT OF INSURANCE PROCEEDS IN EXCESS OF THE REMAINING AMOUNT THAT THE BORROWER OWES ON THE MORTGAGE UNLESS:

(I) THE PROPERTY IS AN AFFORDABLE RESIDENTIAL RENTAL PROPERTY THAT IS SUBJECT TO RENT OR INCOME RESTRICTIONS AS REQUIRED BY FEDERAL, STATE, LOCAL, OR POLITICAL SUBDIVISION PROGRAM REQUIREMENTS; AND

(II) THE INSURANCE PROCEEDS IN EXCESS OF THE REMAINING AMOUNT THAT THE BORROWER OWES ON THE MORTGAGE ARE NECESSARY TO RETURN THE PROPERTY TO THE SAME CONDITION IN WHICH THE PROPERTY EXISTED PRIOR TO THE DAMAGE OR DESTRUCTION.

(g) A MORTGAGE SERVICER SHALL HOLD IN AN INTEREST-BEARING ACCOUNT ANY INSURANCE PROCEEDS THAT THE MORTGAGE SERVICER DOES NOT IMMEDIATELY DISBURSE TO A BORROWER AS REQUIRED BY THIS SECTION. SUCH AN ACCOUNT MUST GENERATE INTEREST AT A RATE THAT IS NOT LESS THAN THE NATIONAL RATE FOR MONEY MARKET ACCOUNTS, AS DETERMINED ACCORDING TO 12 CFR 337.7. A MORTGAGE SERVICER SHALL ENSURE THAT ANY INTEREST THAT IS CREDITED TO THE ACCOUNT IS CREDITED AND DISBURSED TO THE BORROWER.

(3) IMMEDIATELY UPON COMMENCING THE SERVICING OF A MORTGAGE, AND AT ANY TIME THEREAFTER AT THE REQUEST OF THE BORROWER, A MORTGAGE SERVICER SHALL:

(a) DISCLOSE TO THE BORROWER THE INTEREST RATE ASSOCIATED WITH THE MORTGAGE; AND

(b) PROVIDE THE BORROWER, IN WRITING, WITH A PRIMARY POINT OF CONTACT FOR THE PURPOSE OF COMMUNICATING WITH THE MORTGAGE SERVICER.

(4) A MORTGAGE SERVICER SHALL RETAIN FOR AT LEAST FOUR YEARS ALL WRITTEN AND ELECTRONIC COMMUNICATIONS BETWEEN THE MORTGAGE SERVICER AND A BORROWER.

(5) NOTHING IN THIS SECTION:

(a) PROHIBITS A MORTGAGE SERVICER FROM RELEASING INSURANCE PROCEEDS IN AMOUNTS GREATER THAN REQUIRED BY THIS SECTION;

(b) PROHIBITS OR LIMITS A MORTGAGE SERVICER FROM DISTRIBUTING ADDITIONAL MONEY THAT IS MADE AVAILABLE DURING A DECLARED STATE OF EMERGENCY OR NATURAL DISASTER; OR

(c) PROHIBITS A MORTGAGE SERVICER FROM COMPLYING WITH FEDERAL RULES, REGULATIONS, AND REQUIREMENTS.

**SECTION 2.** In Colorado Revised Statutes, 38-40-104, **amend** (1) as follows:

**38-40-104. Cause of action - attorney fees.** (1) If any applicant or debtor is aggrieved by a violation of section 38-40-102, 38-40-103, ~~or~~ 38-40-103.5, OR 38-40-106 and the violation is not remedied in a reasonable, timely, and good faith manner by the party obligated to do so, and after a good faith effort to resolve the dispute is made by the debtor or borrower, the debtor or borrower may bring an action in a court of competent jurisdiction for any such violation. If the court finds that actual damages have occurred, the court shall award to the debtor or borrower, in addition to actual damages, the amount of one thousand dollars, together with costs and reasonable attorney fees.

**SECTION 3.** In Colorado Revised Statutes, **add** 5-21-107.5 as follows:

**5-21-107.5. Disbursement of insurance proceeds to borrowers - disclosure of mortgage interest rate - retention of communications.** A MORTGAGE SERVICER SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 38-40-106 REGARDING DISBURSEMENT OF INSURANCE PROCEEDS TO BORROWERS, DISCLOSURE OF MORTGAGE INTEREST RATES, AND RETENTION OF COMMUNICATIONS.

**SECTION 4.** In Colorado Revised Statutes, **repeal** 10-4-112 as follows:

**10-4-112. Property damage - time of payment.** ~~(1) After an insurer has issued a draft or check to a loss payee and the insured under the terms of a property damage policy for the repair of property damage to a one-to-four-family dwelling unit or an owner-operated commercial property when the mortgage or deed of trust secures a debt not in excess of two hundred thousand dollars, such draft or check, if satisfactory in an amount to the insured, shall be properly endorsed by the insured in favor of the loss payee and delivered to the loss payee.~~

~~(2) If the draft or check is for the full amount of the loss and is in an amount of one thousand dollars or less, the loss payee shall return the draft or check, properly endorsed, to the insured within ten days after the date of its receipt by the loss payee, unless the evidence of the debt or the instrument given as security for the debt is in default.~~

~~(3) If the draft or check is in an amount in excess of one thousand dollars, or is a partial payment on a loss in an amount in excess of one thousand dollars, the loss payee shall either:~~

~~(a) Send the draft or check, properly endorsed, to the insured within ten days after the date of its receipt by the loss payee;~~

~~(b) Process the draft or check for collection or deposit, except as provided in paragraph (c) of this subsection (3). Any loss payee holding funds under this paragraph (b), upon its approval of contracts or plans for the completion of repairs, shall make reasonable advances or progress payments as appropriate to be applied to the completion of repairs and shall be entitled to require appropriate lien waivers and to inspect the repairs during the progress of the repairs. The loss payee shall be entitled to retain up to fifteen percent of the amount of the draft or check as retainage until completion and inspection, satisfactory to the insured, of the work.~~

~~(c) Process the draft or check for collection or deposit. Any loss payee holding funds under this paragraph (c) shall hold such funds for the payment of the cost of repairs unless any one of the following circumstances is present:~~

~~(I) The evidence of the debt or the instrument given as security for the debt is in default. If the default is a result of failure to make payments in a timely manner as required by the evidence of debt or the instrument securing the debt, the loss payee may apply an amount of such proceeds sufficient to cure the default, including taxes, penalties, and late charges, and hold the balance for the cost of repairs, pursuant to paragraph (b) of this subsection (3).~~

~~(II) The restoration of the property would violate local, state, or federal laws or regulations;~~

~~(III) The property cannot reasonably be restored to its condition prior to the loss at a cost of not to exceed the amount of the draft, reduced by an amount applied to cure a default pursuant to subparagraph (I) of this paragraph (c).~~

~~(d) Advise the insurer and insured that it is not satisfied with the amount of the draft or check and pursue a claim for the loss under the terms of the policy. Upon such notification the insured shall not be precluded from pursuing, either singly or jointly with the loss payee, a claim for the loss under the terms of the policy.~~

~~(4) Neither approval of contracts, plans for the completion of repairs, nor inspection of the work shall make the loss payee liable to any person for any improper, negligent, or unsatisfactory repairs.~~

**SECTION 5. Safety clause.** The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for



the support and maintenance of the departments of the state and state institutions.

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Julie McCluskie  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Steve Fenberg  
PRESIDENT OF  
THE SENATE

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Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

(Date and Time)

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Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO