

Second Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 12-0570.01 Duane Gall x4335

**SENATE BILL 12-071**

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**SENATE SPONSORSHIP**

**Giron,**

**HOUSE SPONSORSHIP**

**Duran,**

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**Senate Committees**

Judiciary  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING A REQUIREMENT TO PURSUE AVAILABLE LOAN**  
102 **MODIFICATION REMEDIES BEFORE FORECLOSING ON**  
103 **RESIDENTIAL REAL PROPERTY.**

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**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>.)*

The bill requires the holder of an evidence of debt (typically a mortgage lender), before initiating or completing the process of foreclosing on residential real property containing 4 or fewer dwelling units, to make and fully document its efforts to:

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.*

- ! Contact the borrower directly;
- ! Negotiate in good faith with the borrower in an effort to effectuate a cure for default rather than move directly into the foreclosure process;
- ! Fully assess the eligibility of the borrower, the property, and the loan for any available public or private loan modification programs or other alternatives to foreclosure;
- ! Communicate with, and inform, the borrower about impending deadlines and the consequences of missing them at every major step of the foreclosure process;
- ! Carry the burden of proof in court proceedings regarding the holder's compliance with procedural as well as substantive requirements before obtaining an order authorizing sale of the property under rule 120 in the Colorado rules of civil procedure; and
- ! Abide by the terms of any offer of modification it makes, if the borrower signs and returns documents containing those terms.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 10 to article  
 3 38 of title 38 as follows:

4 **PART 10**

5 **LOAN MODIFICATION PRIOR TO FORECLOSURE**

6 **38-38-1001. Definitions.** AS USED IN THIS PART 10, UNLESS THE  
 7 CONTEXT OTHERWISE REQUIRES:

8 (1) "CASH FOR KEYS" MEANS AN INVESTOR PROGRAM THROUGH  
 9 WHICH A HOLDER OFFERS MONETARY RELOCATION ASSISTANCE TO THE  
 10 BORROWER.

11 (2) "FHA" MEANS THE FEDERAL HOUSING ADMINISTRATION.

12 (3) "FORECLOSURE ACTIVITY" MEANS ANY ACTION BY A HOLDER  
 13 IN WHICH THE HOLDER ATTEMPTS TO EXERCISE THE POWER-OF-SALE  
 14 CLAUSE FOUND IN A MORTGAGE NOTE OR SECURITY INSTRUMENT  
 15 ASSOCIATED WITH THE PROPERTY SECURING AN OBLIGATION. THE TERM

1 INCLUDES REFERRING A LOAN TO FORECLOSURE, ISSUING A NOTICE OF  
2 ELECTION AND DEMAND, PARTICIPATING IN A HEARING PURSUANT TO  
3 C.R.C.P. 120, AND CONDUCTING A FORECLOSURE SALE.

4 (4) "FORECLOSURE ALTERNATIVE" MEANS ANY PROGRAM  
5 DESIGNED TO AVOID FORECLOSURE, INCLUDING:

6 (a) A LOAN MODIFICATION OFFERED UNDER THE MAKING HOME  
7 AFFORDABLE PROGRAM;

8 (b) A NON-MHA LOAN MODIFICATION OFFERED BY THE HOLDER;

9 (c) A REFINANCE UNDER HAMP OR OTHER NON-HAMP  
10 REFINANCE PROGRAM OFFERED BY THE HOLDER; AND

11 (d) ANY FORBEARANCE, REPAYMENT PLAN, SHORT SALE, OR DEED  
12 IN LIEU OF FORECLOSURE IN CONNECTION WITH ANY OF WHICH THE  
13 HOLDER IS REQUIRED TO WORK WITH FHA PROGRAMS ALLOWING FOR  
14 PARTIAL CLAIMS AS WELL AS MORTGAGE INSURERS IN AN ATTEMPT TO  
15 CURE OR REDUCE THE DELINQUENCY OF A DEFAULTED LOAN.

16 (5) "HAMP" MEANS THE HOME AFFORDABLE MODIFICATION  
17 PROGRAM ESTABLISHED BY THE MAKING HOME AFFORDABLE PROGRAM.

18 (6) "HOLDER" HAS THE SAME MEANING AS "HOLDER OF AN  
19 EVIDENCE OF DEBT" AS DEFINED IN SECTION 38-38-100.3 (10).

20 (7) "HOLDER CERTIFICATION" MEANS THE CERTIFICATE AND  
21 SUPPORTING DOCUMENTATION THAT A HOLDER MUST PRESENT TO THE  
22 ATTORNEY REPRESENTING THE HOLDER IN CONNECTION WITH A  
23 FORECLOSURE BEFORE THE ATTORNEY ISSUES A NOTICE OF ELECTION AND  
24 DEMAND AND BEFORE THE ATTORNEY PROCEEDS WITH A HEARING  
25 PURSUANT TO C.R.C.P. 120. EACH HOLDER CERTIFICATION ATTESTS TO  
26 THE FACT THAT THE HOLDER HAS COMPLIED WITH ALL THE PROVISIONS OF  
27 THIS PART 10 REQUIRED TO BE COMPLETED BEFORE PROCEEDING WITH THE

1 FORECLOSURE STEP TO WHICH THE CERTIFICATION PERTAINS.

2 (8) "MHA" MEANS THE MAKING HOME AFFORDABLE PROGRAM  
3 IMPLEMENTED BY THE UNITED STATES DEPARTMENT OF THE TREASURY  
4 PURSUANT TO ITS AUTHORITY UNDER THE TROUBLED ASSET RELIEF  
5 PROGRAM, ESTABLISHED IN TITLE I OF THE "EMERGENCY ECONOMIC  
6 STABILIZATION ACT OF 2008", PUB.L. 110-343, CODIFIED AT 12 U.S.C.  
7 SEC. 5211 ET SEQ.

8 (9) "NPV" MEANS THE NET PRESENT VALUE EVALUATION OF A  
9 MORTGAGE.

10 (10) "PARTIAL CLAIM" MEANS A MONETARY CONTRIBUTION,  
11 WHETHER IN THE FORM OF A LOAN OR GRANT, FROM A MORTGAGE INSURER  
12 OR OTHER PARTY GUARANTYING THE LOAN THAT IS USED TO CURE OR  
13 REDUCE DELINQUENCY.

14 (11) "PRESALE CERTIFICATION" MEANS THE CERTIFICATE THAT A  
15 HOLDER MUST PRESENT TO THE FORECLOSING ATTORNEY AND PUBLIC  
16 TRUSTEE ATTESTING TO THE FACT THAT IT HAS MET ALL STATUTORY  
17 REQUIREMENTS CONTAINED IN THIS PART 10 AND IS AUTHORIZED TO  
18 PROCEED WITH THE SCHEDULED FORECLOSURE SALE.

19 (12) "REASONABLE EFFORTS", WITH REGARD TO MAKING  
20 RIGHT-PARTY CONTACT, MEANS EFFORTS COMPLYING WITH THE MINIMUM  
21 STANDARDS SET FORTH IN SECTION 38-38-1004.

22 (13) "RIGHT-PARTY CONTACT" MEANS MAKING CONTACT, EITHER  
23 VIA WRITTEN OR ORAL COMMUNICATION, WITH A BORROWER OR  
24 CO-BORROWER ON THE LOAN AS TO WHICH THE HOLDER IS CONSIDERING  
25 OR PURSUING FORECLOSURE.

26 **38-38-1002. Scope of part - actions required - conditions**  
27 **precedent to foreclosure.** (1) THIS PART 10 DOES NOT CREATE A

1 SUBSTANTIVE RIGHT TO A LOAN MODIFICATION.

2 (2) THIS PART 10 APPLIES TO ALL OWNER-OCCUPIED RESIDENTIAL  
3 REAL PROPERTY CONTAINING NO MORE THAN FOUR DWELLING UNITS AND  
4 THAT SECURES AN OBLIGATION AS TO WHICH A MORTGAGE NOTE AND DEED  
5 OF TRUST WERE EXECUTED, AND THE DEED OF TRUST RECORDED, AFTER  
6 JANUARY 1, 2001.

7 (3) A HOLDER SHALL NOT COMMENCE FORECLOSURE ACTIVITY  
8 UNTIL:

9 (a) (I) THE HOLDER HAS MADE RIGHT-PARTY CONTACT, OR MADE  
10 REASONABLE EFFORTS TO MAKE RIGHT-PARTY CONTACT AND, IF  
11 RIGHT-PARTY CONTACT IS MADE AND THE PROPERTY MEETS THE CRITERIA  
12 OF SUBSECTION (2) OF THIS SECTION, WORKED WITH THE BORROWER TO  
13 PLACE THE BORROWER IN A FORECLOSURE ALTERNATIVE PROGRAM; OR

14 (II) ALL REVIEWS FOR FORECLOSURE ALTERNATIVES UNDER  
15 GOVERNMENT PROGRAMS AND ALL PROGRAMS OFFERED BY AN INVESTOR  
16 HAVE BEEN EXHAUSTED AND IT HAS BECOME OBJECTIVELY  
17 DEMONSTRABLE THAT FORECLOSURE IS THE ONLY PRACTICABLE MEANS OF  
18 PROTECTING THE HOLDER'S INTERESTS;

19 (b) THE HOLDER HAS NOTIFIED THE BORROWER REGARDING  
20 POSSIBLE FORECLOSURE ALTERNATIVE OPTIONS AS SPECIFIED IN SECTION  
21 38-38-1003;

22 (c) THE HOLDER HAS PROVIDED A CERTIFICATION TO THE  
23 FORECLOSURE ATTORNEY, AS SPECIFIED IN SECTION 38-38-1006, BEFORE  
24 ISSUING A NOTICE OF ELECTION AND DEMAND;

25 (d) THE HOLDER HAS PROVIDED A PRESALE CERTIFICATE TO THE  
26 FORECLOSURE ATTORNEY IN ACCORDANCE WITH SECTION 38-38-1007;

27 AND

1 (e) THE HOLDER HAS WORKED IN GOOD FAITH WITH ALL PARTIES  
2 DESIGNATED BY THE BORROWER AS AUTHORIZED THIRD PARTIES ON THE  
3 LOAN. IF THE THIRD PARTY IS AN ATTORNEY REPRESENTING THE  
4 BORROWER IN THE MORTGAGE MATTER, THE HOLDER SHALL TREAT THE  
5 ATTORNEY AS A BORROWER AND SHALL INCLUDE THE ATTORNEY ON ALL  
6 COMMUNICATIONS WITH THE BORROWER. UPON A BORROWER'S REQUEST,  
7 A HOLDER SHALL COMMUNICATE ONLY WITH THE BORROWER'S ATTORNEY,  
8 UNLESS OTHERWISE REQUIRED BY LAW, IN WHICH CASE THE HOLDER SHALL  
9 COPY THE ATTORNEY ON ALL BORROWER COMMUNICATIONS.

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11 **38-38-1003. Communication requirements.** (1) IN CONNECTION  
12 WITHEVERY FORECLOSURE, A LOAN SERVICER SHALL SEND THE BORROWER  
13 NOTICES, WRITTEN IN PLAIN LANGUAGE, ABOUT ALL FORECLOSURE  
14 ALTERNATIVES ASSISTANCE AND THE PENDENCY OF FORECLOSURE  
15 PROCEEDINGS. THE NOTICES MUST BE SENT TO THE BORROWER WITH THE  
16 RIGHT TO CURE LETTER AND THE NOTICE OF ELECTION AND DEMAND, AND  
17 MUST INCLUDE AT LEAST THE FOLLOWING INFORMATION:

18 (a) THE LOAN SERVICER'S TOLL-FREE TELEPHONE NUMBER FOR  
19 LOSS MITIGATION;

20 (b) A LIST AND DESCRIPTION OF THE PROGRAMS THAT MAY BE  
21 AVAILABLE TO THE OWNER;

22 (c) THE IMPORTANCE OF RESPONDING TO THE FORECLOSURE  
23 ALTERNATIVES ASSISTANCE NOTICE AND THE BENEFITS OF EACH TYPE OF  
24 ASSISTANCE;

25 (d) THE PROCESS TO APPLY FOR THE PROGRAMS AND WHAT THE  
26 BORROWER SHOULD EXPECT THROUGHOUT THE PROCESS; AND

27 (e) INSTRUCTIONS ON HOW TO COMPLETE A FORECLOSURE

1 ALTERNATIVES APPLICATION, WHICH MUST BE INCLUDED WITH THE  
2 COMMUNICATION.

3 (2) A        NOTIFICATION AND FORECLOSURE ALTERNATIVES  
4 APPLICATION PACKET MUST BE INCLUDED WITH THE NOTICE OF SALE. THIS  
5 NOTIFICATION PACKET MUST CONTAIN THE SAME INFORMATION AS THE  
6 OTHER NOTIFICATIONS BUT WILL ALSO CONTAIN A STATEMENT INDICATING  
7 THAT IT IS THE BORROWER'S FINAL OPPORTUNITY TO CONTACT THE  
8 SERVICER FOR FORECLOSURE ALTERNATIVES ASSISTANCE. THIS  
9 NOTIFICATION PACKET MUST ALSO STATE THAT THE INCLUDED  
10 FORECLOSURE ALTERNATIVES APPLICATION MUST BE RECEIVED NO LATER  
11 THAN 12 MIDNIGHT ON THE SEVENTH BUSINESS DAY PRECEDING THE  
12 SCHEDULED FORECLOSURE SALE.

13 (3) A LOAN MAY NOT BE REFERRED TO FORECLOSURE UNTIL ONE  
14 OF THE FOLLOWING OCCURS:

15 (a) THE BORROWER CLEARLY INDICATES THAT HE OR SHE DOES  
16 NOT WISH TO PURSUE FORECLOSURE ALTERNATIVES, AND THE SERVICER  
17 THOROUGHLY DOCUMENTS THIS FACT IN ITS RECORDS;

18 (b) THE HOLDER SENDS THE BORROWER THE FORECLOSURE  
19 ALTERNATIVES APPLICATION PACKET AS REQUIRED UNDER THIS SECTION  
20 AND THE BORROWER DOES NOT SUBMIT THE REQUESTED DOCUMENTS BY  
21 THE DEADLINES STATED IN THE FORECLOSURE ALTERNATIVES APPLICATION  
22 PACKET;

23 (c) THE BORROWER SUBMITS AN INITIAL FORECLOSURE  
24 ALTERNATIVES APPLICATION PACKET, THE HOLDER REVIEWS IT FOR ALL  
25 FORECLOSURE ALTERNATIVES, AND BASED ON THAT REVIEW THE HOLDER  
26 DETERMINES THAT THE BORROWER IS INELIGIBLE FOR ASSISTANCE AND  
27 NOTIFIES THE BORROWER OF THE REASONS FOR THE DETERMINATION;

1 (d) THE BORROWER IS APPROVED FOR ONE OR MORE FORECLOSURE  
2 ALTERNATIVES BUT IS SUBSEQUENTLY REMOVED FROM THE PROGRAM FOR  
3 FAILING TO PERFORM THE NECESSARY ACTIONS TO REMAIN ELIGIBLE; OR

4 (e) THE HOLDER HAS UNDERTAKEN REASONABLE EFFORTS TO  
5 MAKE RIGHT-PARTY CONTACT BUT IS NOT ABLE TO DO SO AND HAS  
6 CLEARLY DOCUMENTED THE TIME AND METHODS OF EACH ATTEMPTED  
7 CONTACT.

8 **38-38-1004. Borrower solicitation.** (1) A HOLDER SHALL NOT  
9 REFER A LOAN TO FORECLOSURE UNTIL THE FOLLOWING REQUIREMENTS  
10 FOR BORROWER SOLICITATION AS OUTLINED IN THIS SECTION HAVE BEEN  
11 SATISFIED:

12 (a) A LOAN SERVICER SHALL BEGIN TO SOLICIT THE BORROWER FOR  
13 FORECLOSURE ALTERNATIVES ASSISTANCE EITHER UPON A BORROWER'S  
14 REQUEST OR WHEN TWO PAYMENTS ARE PAST DUE, AND BEFORE  
15 INITIATING FORECLOSURE PROCEEDINGS. THIS SOLICITATION MUST  
16 CONTINUE UNTIL A RIGHT-PARTY CONTACT IS MADE OR THE HOLDER HAS  
17 MADE A REASONABLE EFFORT, AS DEFINED IN PARAGRAPH (b) OF THIS  
18 SUBSECTION (1), TO SOLICIT A RIGHT-PARTY CONTACT.

19 (b) THE HOLDER SHALL MAKE A REASONABLE EFFORT TO SOLICIT  
20 A BORROWER APPEARING ON THE NOTE. THE HOLDER IS DEEMED TO HAVE  
21 MADE A REASONABLE EFFORT WHEN BOTH OF THE FOLLOWING HAVE  
22 OCCURRED WITHIN A PERIOD OF AT LEAST THIRTY DAYS:

23 (I) THE HOLDER, OR A LOAN SERVICER ACTING ON THE HOLDER'S  
24 BEHALF, MADE A MINIMUM OF FOUR TELEPHONE CALLS TO THE  
25 LAST-KNOWN PHONE NUMBERS OF RECORD, AT INTERVALS NO LESS THAN  
26 FIVE DAYS APART AND AT DIFFERENT TIMES OF THE DAY; AND

27 (II) THE HOLDER, OR A LOAN SERVICER ACTING ON THE HOLDER'S



1 BEHALF, SENT TWO WRITTEN NOTICES TO THE LAST-KNOWN ADDRESS OF  
2 RECORD BY SENDING ONE LETTER VIA CERTIFIED OR EXPRESS MAIL OR VIA  
3 OVERNIGHT DELIVERY SERVICE WITH A RETURN RECEIPT OR A DELIVERY  
4 CONFIRMATION AND ONE LETTER VIA REGULAR MAIL.

5 (2) ALL BORROWER SOLICITATION, WHETHER ORAL OR WRITTEN,  
6 MUST INCLUDE THE SAME INFORMATION AS CONTAINED IN BORROWER  
7 NOTICES AS DESCRIBED IN SECTION 38-38-1003 (1).

8 (3) A HOLDER SHALL SEND A FORECLOSURE ALTERNATIVES  
9 APPLICATION PACKET TO THE BORROWER WITHIN TEN DAYS AFTER THE  
10 FIRST RIGHT-PARTY CONTACT. THE PACKET MUST CLEARLY INDICATE THE  
11 DEADLINE BY WHICH THE REQUESTED DOCUMENTS MUST BE RETURNED.  
12 THAT DEADLINE MUST BE NO LESS THAN FIFTEEN DAYS AFTER THE FIRST  
13 RIGHT-PARTY CONTACT. IF THE BORROWER DOES NOT RETURN THE  
14 FORECLOSURE ALTERNATIVES APPLICATION BY THE DEADLINE, THE  
15 HOLDER SHALL RESEND THE PACKET ALONG WITH A LETTER THAT CLEARLY  
16 STATES THAT THE BORROWER WILL BE REMOVED FROM CONSIDERATION  
17 FOR FORECLOSURE ALTERNATIVES OPTIONS IF THE PACKET IS NOT  
18 RETURNED WITHIN FIFTEEN DAYS AFTER THE INITIAL DUE DATE.

19 **38-38-1005. Foreclosure prevention measures.** (1) IF A  
20 BORROWER SUBMITS A COMPLETE FORECLOSURE ALTERNATIVES  
21 APPLICATION PACKET BY 12 MIDNIGHT OF THE SEVENTH BUSINESS DAY  
22 BEFORE THE FORECLOSURE SALE, THE HOLDER SHALL REVIEW THE  
23 BORROWER FOR FORECLOSURE ALTERNATIVES.

24 (2) (a) (I) WITHIN TEN DAYS AFTER RECEIVING THE INITIAL  
25 FORECLOSURE ALTERNATIVES APPLICATION PACKET, THE HOLDER SHALL  
26 NOTIFY THE BORROWER OF ITS RECEIPT AND INDICATE WHETHER ANY  
27 ADDITIONAL DOCUMENTATION IS NEEDED. IF ADDITIONAL

1 DOCUMENTATION IS NEEDED, THE HOLDER SHALL NOTIFY THE BORROWER  
2 IN WRITING WHICH DOCUMENTS ARE NEEDED AND STATE A DATE BY WHICH  
3 THE DOCUMENTS MUST BE SUBMITTED. THAT DATE MUST BE NO LESS THAN  
4 FIFTEEN DAYS AFTER THE DATE OF THE LETTER.

5 (II) IF THE BORROWER DOES NOT RESPOND BY THE DUE DATE  
6 SPECIFIED IN THE MISSING INFORMATION REQUEST, THE HOLDER SHALL  
7 RESEND THE LETTER VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED.  
8 THE LETTER MUST RESTATE WHICH DOCUMENTS ARE NEEDED AND  
9 PROVIDE A DUE DATE FOR RECEIPT OF THE DOCUMENTS, WHICH MUST BE  
10 NO LESS THAN FIFTEEN DAYS AFTER THE DATE OF THE LETTER. THE LETTER  
11 MUST ALSO INCLUDE A CLEAR AND CONSPICUOUS STATEMENT THAT IF THE  
12 BORROWER DOES NOT PROVIDE THE DOCUMENTATION BY THE STATED DUE  
13 DATE, HE OR SHE MAY BE DENIED FORECLOSURE ALTERNATIVES  
14 ASSISTANCE AND FORECLOSURE PROCEEDINGS WILL CONTINUE.

15 (b) WITHIN THIRTY DAYS AFTER RECEIVING A COMPLETE  
16 FORECLOSURE ALTERNATIVES APPLICATION PACKET, THE HOLDER SHALL  
17 NOTIFY THE BORROWER OF THE STATUS OF THE FORECLOSURE  
18 ALTERNATIVES REVIEW.

19 (3) A HOLDER SHALL CEASE ALL FORECLOSURE ACTIVITIES UNTIL  
20 THE BORROWER HAS BEEN REVIEWED UNDER ALL AVAILABLE PROGRAMS.  
21 IF THE BORROWER IS DETERMINED TO BE INELIGIBLE FOR ALL  
22 FORECLOSURE ALTERNATIVES, THE HOLDER SHALL SEND TO THE  
23 BORROWER, VIA CERTIFIED MAIL, A DETAILED DENIAL NOTIFICATION AS  
24 REQUIRED BY SECTION 38-38-1006 (2).

25 (4) (a) THE BORROWER MAY DISPUTE THE OUTCOME OF THE  
26 HOLDER'S FORECLOSURE ALTERNATIVES REVIEW IF INFORMATION  
27 PROVIDED BY THE HOLDER IS NOT ACCURATE OR IF THE HOLDER HAS

1 FAILED TO COMPLY WITH ANY REQUIREMENT OF THIS PART 10 OR ANY  
2 OTHER APPLICABLE LAW OR REGULATION PERTAINING TO FORECLOSURES.  
3 THE BORROWER SHALL NOTIFY THE HOLDER OF THE DISPUTE WITHIN  
4 THIRTY DAYS AFTER THE DENIAL.

5 (b) IF A BORROWER BELIEVES THAT AN UNFAVORABLE RESOLUTION  
6 OF THE DISPUTE WAS ISSUED BECAUSE THE HOLDER USED INACCURATE  
7 NUMERICAL CALCULATIONS OR THE BORROWER WAS DENIED DUE TO A  
8 HOLDER'S ASSERTION THAT IT WAS MISSING DOCUMENTATION OR THE  
9 BORROWER FAILED TO MEET A DOCUMENT SUBMISSION DEADLINE, THE  
10 BORROWER HAS THE RIGHT TO REQUEST A SUBSEQUENT MEETING WITH THE  
11 HOLDER, A MEDIATOR, OR BOTH TO ASSESS THE VALIDITY OF THE HOLDER'S  
12 DISPUTE RESOLUTION. THE MEETING MUST OCCUR WITHIN FIFTEEN DAYS  
13 AFTER THE BORROWER'S RECEIPT OF THE HOLDER'S NOTICE OF THE DISPUTE  
14 RESOLUTION AND MAY BE HELD TELEPHONICALLY IF ALL PARTIES ARE IN  
15 POSSESSION OF ALL RELEVANT DOCUMENTS. IF THE BORROWER REQUESTS  
16 THE INTERVENTION OF A MEDIATOR, EACH PARTY IS RESPONSIBLE FOR  
17 HALF OF THE MEDIATOR'S FEE.

18 (c) THE HOLDER SHALL ACKNOWLEDGE RECEIPT OF THE  
19 BORROWER'S NOTICE OF THE DISPUTE WITHIN FIVE BUSINESS DAYS AND  
20 SHALL COMPLETE ITS REVIEW OF THE MATTERS IN DISPUTE WITHIN THIRTY  
21 DAYS. WHEN THE REVIEW IS COMPLETE, THE HOLDER SHALL NOTIFY THE  
22 BORROWER OF THE OUTCOME OF THE REVIEW AND PROVIDE A DETAILED  
23 LETTER EXPLAINING HOW THE DISPUTE WAS REVIEWED AND HOW THE  
24 DECISION WAS MADE.

25 (5) THE HOLDER MAY RESUME FORECLOSURE PROCEEDINGS THE  
26 DAY AFTER IT IS NOTIFIED THAT THE BORROWER RECEIVED THE DENIAL  
27 LETTER UNLESS SUCH ACTIONS VIOLATE SUBSECTION (6) OF THIS SECTION.

1 (6) (a) A FORECLOSURE SALE MAY NOT BE HELD SOONER THAN  
2 THIRTY DAYS AFTER THE DATE OF THE DENIAL NOTICE. IF, DURING THAT  
3 THIRTY-DAY PERIOD, THE BORROWER DISPUTES THE DENIAL, THE SALE  
4 MUST BE POSTPONED UNTIL THIRTY DAYS AFTER THE HOLDER NOTIFIES THE  
5 BORROWER OF THE RESULTS OF THE REVIEW OF THE DENIAL AND THE  
6 HOLDER PROVIDES TO THE FORECLOSURE ATTORNEY AND THE PUBLIC  
7 TRUSTEE THE PRESALE CERTIFICATION AS REQUIRED BY SECTION  
8 38-38-1007.

9 (b) THE HOLDER SHALL NOT PLACE A BID UNTIL THE PRESALE  
10 CERTIFICATION HAS BEEN PROVIDED TO THE PUBLIC TRUSTEE. IF THE  
11 PUBLIC TRUSTEE DOES NOT RECEIVE THE PRESALE CERTIFICATION BEFORE  
12 12 NOON ON THE SECOND BUSINESS DAY BEFORE THE SCHEDULED SALE  
13 DATE, THEN THE TRUSTEE SHALL POSTPONE THE SALE, ONE WEEK AT A  
14 TIME, UNTIL THE CERTIFICATION IS RECEIVED AND ALL OTHER BID  
15 REQUIREMENTS, AS SET FORTH IN SECTION 38-38-106, ARE MET.

16 **38-38-1006. Content of holder certification.** (1) HAMP WILL BE  
17 DISCONTINUED ON DECEMBER 31, 2012, AND THE CONTENT FOR DENIAL  
18 NOTICES WILL BE LIMITED.

19 (2) BEFORE FILING THE NOTICE OF ELECTION AND DEMAND, THE  
20 HOLDER SHALL CERTIFY THE ACTIONS IT HAS TAKEN TO ENGAGE THE  
21 OWNER IN FORECLOSURE ALTERNATIVES ACTIVITIES, THE DETAILS OF ALL  
22 REVIEWS PERFORMED UNDER EACH FORECLOSURE ALTERNATIVES  
23 PROGRAM, AND A DETAILED EXPLANATION OF THE RESULT OF EACH  
24 REVIEW. THE CERTIFICATION MUST CONTAIN AT LEAST THE FOLLOWING  
25 INFORMATION:

26 (a) THE RESULTS OF THE HOLDER'S ATTEMPTS TO MAKE  
27 RIGHT-PARTY CONTACT, INCLUDING:

1 (I) A DECLARATION SPECIFYING THE DATES, TIMES, AND METHODS  
2 BY WHICH THE HOLDER ATTEMPTED TO CONTACT THE BORROWER;

3 (II) THE OUTCOME OF THOSE ATTEMPTS; AND

4 (III) THE DATE ON WHICH THE FILE WAS CLOSED AND  
5 NOTIFICATION WAS SENT TO THE BORROWER;

6 ==

7 (b) IF THE HOLDER HAS DETERMINED THAT THE BORROWER IS  
8 INELIGIBLE FOR ALL FORECLOSURE ALTERNATIVES PROGRAMS, THE  
9 HOLDER SHALL PROVIDE A DETAILED DENIAL NOTICE CONTAINING A LIST  
10 OF ALL PROGRAMS UNDER WHICH THE BORROWER WAS REVIEWED AND  
11 PROVIDING SPECIFIC DETAILS REGARDING THE REASONS FOR DENIAL. THE  
12 ALLOWABLE REASONS FOR DENIAL AND THE DETAILS REQUIRED UNDER  
13 EACH ARE:

14 ==

15 (I) IF THE PROPERTY OR LOAN IS INELIGIBLE UNDER SECTION  
16 38-38-1002 (2), THE REASON FOR THE INELIGIBILITY;

17 (II) IF THE CURRENT PAYMENT IS ALREADY BELOW THE  
18 ALLOWABLE RATIO OF MORTGAGE PAYMENT TO GROSS INCOME:

19 (A) DATA USED IN CALCULATING GROSS INCOME; AND

20 (B) DATA USED TO DETERMINE THE CURRENT MONTHLY PAYMENT;

21 (III) WHETHER THE OFFER WAS NOT ACCEPTED OR THE REQUEST  
22 WAS WITHDRAWN BY THE BORROWER;

23 ==

24 (IV) WHETHER THE LOAN WAS PREVIOUSLY MODIFIED;

25 ==

26 (V) IF THE BORROWER DID NOT SUBMIT ALL NECESSARY  
27 DOCUMENTS BY APPLICABLE DEADLINES:

1 (A) THE DOCUMENTS THAT ARE ALLEGED TO BE MISSING;

2 (B) ALL DATES ON WHICH THE HOLDER RECEIVED DOCUMENTS  
3 SUBMITTED BY THE BORROWER AND THE CONTENT OF THOSE SUBMISSIONS;

4 (C) THE DATES ON WHICH THE HOLDER SENT LETTERS ADVISING  
5 THE BORROWER OF THE MISSING DOCUMENTS AND THE DEADLINES LISTED  
6 IN THE LETTER BY WHICH THE BORROWER WAS REQUIRED TO RETURN THE  
7 MISSING DOCUMENTS; AND

8 (D) THE DATES AND CONTENTS OF ALL COMMUNICATIONS  
9 INITIATED BY THE BORROWER BEFORE AND AFTER THE DENIAL;

10 (VI) IF AN AFFORDABLE PAYMENT CANNOT BE REACHED UNDER  
11 APPLICABLE GUIDELINES:

12 (A) DATA USED TO DETERMINE GROSS INCOME;

13 (B) DATA USED TO CALCULATE THE MODIFIED PRINCIPAL AND  
14 INTEREST PAYMENT;

15 (C) DATA USED TO CALCULATE THE TAXES AND INSURANCE;

16 (D) THE STEPS TAKEN AND THE DATA USED WHILE ATTEMPTING TO  
17 MEET ANY APPLICABLE LOAN-TO-INCOME THRESHOLD FOR LOAN  
18 MODIFICATION; AND

19 (E) WHETHER THERE WAS AN EXCESSIVE FORBEARANCE AND IF SO,  
20 THE DOLLAR AMOUNT ALLOWED TO BE FORBORNE AND THE FORBEARANCE  
21 AMOUNT ON THE LOAN THAT WOULD BE NECESSARY TO ACHIEVE AN  
22 AFFORDABLE PAYMENT;

23 (VII) IF THE INVESTOR OR GUARANTOR IS NOT PARTICIPATING IN  
24 FORECLOSURE ALTERNATIVES PROGRAMS:

25 (A) THE NAME OF THE INVESTOR OR GUARANTOR;

26 (B) THE APPROXIMATE DATE ON WHICH THE HOLDER APPROACHED  
27 THE INVESTOR OR GUARANTOR IN A GOOD-FAITH EFFORT TO PERSUADE THE

1 INVESTOR OR GUARANTOR TO CONSIDER FORECLOSURE ALTERNATIVES;  
2 (C) WHETHER THE LOAN HAS PRIVATE MORTGAGE INSURANCE  
3 THAT PROHIBITED THE MODIFICATION; AND  
4 (D) WHETHER THE LOAN IS GUARANTEED BY AN ENTITY AND, IF  
5 SO, WHETHER THAT ENTITY DENIED THE MODIFICATION;  
6 (VIII) IF AN NPV EVALUATION RESULTED IN A NEGATIVE NPV  
7 UNDER THE APPLICABLE INVESTOR GUIDELINES, THE INVESTOR'S  
8 FORECASTED LOSS OR GAIN BASED ON THE NPV ANALYSIS;  
9 (IX) IF THE BORROWER WAS DENIED CONVERSION FROM A TRIAL  
10 PERIOD PLAN (TPP) TO A PERMANENT MODIFICATION BECAUSE TPP WAS  
11 NOT FULFILLED:  
12 (A) HOW THE BORROWER VIOLATED THE PROVISIONS OF THE TPP;  
13 (B) IF THE ALLEGED VIOLATION IS DUE TO MISSED PAYMENTS,  
14 THEN THE PAYMENT DUE DATES AND AMOUNTS; AND  
15 (C) THE DATES AND AMOUNTS OF PAYMENTS RECEIVED BY THE  
16 HOLDER;  
17 (X) IF INVESTOR GUIDELINES PREVENT ELIGIBILITY FOR  
18 MODIFICATION:  
19 (A) THE REASON THE BORROWER WAS DEEMED INELIGIBLE FOR  
20 THE MODIFICATION;  
21 (B) A DESCRIPTION OF THE INVESTOR GUIDELINES OR  
22 RESTRICTIONS ON WHICH THE DETERMINATION WAS BASED;  
23 (C) DATE OF THE DENIAL; AND  
24 (D) DATA USED IN DETERMINING THAT THE BORROWER WAS  
25 INELIGIBLE FOR A MODIFICATION, INCLUDING INCOME AND EXPENSE DATA.  
26 == =====  
27 (3) (a) DOCUMENTATION SUPPORTING THE DECLARATIONS IN THE

1 HOLDER'S CERTIFICATION MUST BE PROVIDED TO THE HOLDER'S ATTORNEY  
2 BEFORE RECORDATION OF THE NOTICE OF ELECTION AND DEMAND. THE  
3 DOCUMENTATION MUST INCLUDE A SCREEN SHOT OR PRINTOUT OF THE  
4 HOLDER'S ELECTRONIC RECORDS SHOWING FULL DETAILS OF ALL ATTEMPTS  
5 TO CONTACT THE BORROWER AND THE CONTENT OF THOSE  
6 COMMUNICATIONS, THE DATES AND CONTENT OF ALL WRITTEN  
7 COMMUNICATIONS SENT TO OR RECEIVED FROM THE BORROWER, AND ANY  
8 INFORMATION USED IN EVALUATING THE BORROWER FOR FORECLOSURE  
9 ALTERNATIVES.

10 (b) THE FORECLOSING ATTORNEY SHALL RECORD THE DOCUMENTS  
11 SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (3) WITH THE NOTICE OF  
12 ELECTION AND DEMAND AND INCLUDE THEM IN ANY NOTIFICATION SENT  
13 TO THE BORROWER OR ANY PARTY REPRESENTING THE BORROWER.

14 (4) ANY PARTY MAY CONTEST THE TRUTH AND SUFFICIENCY OF  
15 THE HOLDER'S CERTIFICATION REQUIRED UNDER THIS SECTION, FILED WITH  
16 THE NOTICE OF ELECTION AND DEMAND UNDER SECTION 38-38-101 (1).

17 (5) IF THE HOLDER PARTICIPATES IN THE FEDERAL MHA PROGRAM  
18 AND THE LOAN UNDER REVIEW MEETS THE REQUIREMENTS TO BE ELIGIBLE  
19 FOR REVIEW AS SPECIFIED IN THE MHA GUIDELINES, THE HOLDER MUST  
20 ABIDE BY ALL THE REQUIREMENTS FOUND IN THE APPLICABLE MHA  
21 GUIDELINES. FAILURE TO DO SO CONSTITUTES A VIOLATION OF THIS PART  
22 10, PRECLUDES THE HOLDER FROM OBTAINING THE CERTIFICATIONS  
23 REQUIRED BY THIS SECTION AND SECTION 38-38-1007, AND VOIDS ANY  
24 SUCH CERTIFICATION THAT WAS ALREADY PROVIDED.

25 **38-38-1007. Content of presale certification.** (1) NO SOONER  
26 THAN SEVEN BUSINESS DAYS BEFORE THE SCHEDULED FORECLOSURE SALE,  
27 THE HOLDER SHALL PROVIDE TO THE FORECLOSURE ATTORNEY A WRITTEN



1 CERTIFICATION THAT CONTAINS A STATEMENT CERTIFYING THAT ONE OF  
2 THE CIRCUMSTANCES IN SECTION 38-38-1002 (3) (a) HAS OCCURRED, ALL  
3 OTHER AVAILABLE FORECLOSURE ALTERNATIVES HAVE BEEN EXHAUSTED,  
4 AND A NON-FORECLOSURE OUTCOME COULD NOT BE REACHED.

5 (2) THE TRUTH AND SUFFICIENCY OF THE PRESALE CERTIFICATION  
6 REQUIRED UNDER THIS SECTION MAY BE CHALLENGED AND ENFORCED IN  
7 ACCORDANCE WITH SECTION 38-38-1005 (4) (a).

8 **38-38-1008. Execution of foreclosure alternatives modification**  
9 **documents.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF  
10 THIS SECTION, A MODIFICATION DOCUMENT THAT HAS BEEN RECEIVED BY  
11 THE BORROWER CONSTITUTES AN OFFER TO CONTRACT AND IS CONSIDERED  
12 A BINDING CONTRACT IMMEDIATELY UPON THE BORROWER'S ACCEPTANCE,  
13 WHICH HAS OCCURRED ONCE THE BORROWER SIGNS THE MODIFICATION  
14 DOCUMENT AND TAKES ACTION TO RETURN THE SIGNED DOCUMENT TO THE  
15 HOLDER.

16 (2) THE MODIFICATION IS NOT BINDING IF THE HOLDER WITHDRAWS  
17 THE OFFER BEFORE THE BORROWER EXECUTES THE DOCUMENTS AND  
18 RETURNS THEM BY THE METHOD REQUESTED BY THE HOLDER.

19 **SECTION 2. Effective date - applicability.** This act takes effect  
20 upon passage and applies to foreclosures in which the notice of election  
21 and demand is filed on or after said date.

22 **SECTION 3. Safety clause.** The general assembly hereby finds,  
23 determines, and declares that this act is necessary for the immediate  
24 preservation of the public peace, health, and safety.