

## Mortgage and Foreclosure Bills, 2010 Session (As of June 8, 2010)

### Signed into Law

Bill Number: **House Bill 10-1133**

Short Title: **Foreclosure Amend Equity Purchase Provisions**

Sponsors: *Representative Massey*  
*Senator Tochtrop*

Status: Signed into Law

The Colorado Foreclosure Protection Act requires equity purchasers to follow specific requirements when taking an equity interest in a residential home that is in default. House Bill 10-1133 amends the act in the following ways:

*Appropriations:*

The bill has been assessed as having no fiscal impact.

- exempts from the definition of "equity purchaser" a person who acquires title to a residence in foreclosure as a result of a short sale when an appropriate addendum to the contract is included and all statutorily required disclosures are made;
- defines a "residence in foreclosure," for purposes of equity purchase, as a residence that is the homeowner's principal residence, is encumbered by a mortgage loan, and the equity purchaser knows or should know that the loan is at least 30 days in default;
- defines "short sale" as a transaction in which a residence in foreclosure is sold for less than the amount due under the recorded lien and the lien is released;
- removes the requirement that a sales contract be in bold-faced type and instead requires that the contract be legible;
- specifies that, if the equity purchaser knows or should know that the homeowner's principal language is not English, a separate disclosure form in the homeowner's principal language be provided along with the contract;
- states that, in a short sale transaction in which the equity purchaser intends to sell the property to another purchaser within 14 days, the equity purchaser must disclose to the seller and the seller's lender and to any subsequent purchasers and their lenders the terms of the intended resale, including the amount to be paid.

## Mortgage and Foreclosure Bills, 2010 Session (As of June 8, 2010) (Cont.)

Signed into Law (Cont.)	
<p>Bill Number:     <b>House Bill 10-1141</b></p> <p>Sponsors:        <i>Representative T. Carroll</i>                       <i>Senator Tochtrop</i></p> <p>The act creates a five-member Board of Mortgage Loan Originators (board) in the Division of Real Estate (division) in the Department of Regulatory Agencies (DORA). The board is appointed by the Governor with the consent of the Senate. The board is tasked with exercising the rule-making, enforcement, and administrative functions over mortgage companies, loan originators, and brokers currently performed by the director of the division. The bill allows the board to delegate specific functions back to the director.</p> <p>Currently, the Division of Real Estate operates as a Type 1 transfer. Under the act, the division and the director of the division are established in the DORA as a Type 2 transfer. As a Type 2 transfer, the powers, duties, and functions of the division belong to the executive director of the DORA. The newly established board is established as a Type 1 transfer. As a Type 1 transfer, the board will exercise its powers, duties, and functions independently of the executive director of the DORA.</p> <p>Beginning January 1, 2011, the act requires mortgage companies and mortgage loan originators to have a state license and be registered with the Nationwide Mortgage Licensing System and Registry (NMLS&amp;R), a national tracking system established by federal law. Nationally registered mortgage companies and mortgage loan originators must obtain a unique identifying number that must appear on all residential loan application forms.</p>	<p>Short Title:       <b>Mortgage Company Registration</b></p> <p>Status:            Signed into Law</p> <p><i>Appropriations:</i></p> <p style="padding-left: 40px;">The bill requires an appropriation of \$15,782 from the Mortgage Company Loan Originator Licensing Fund to the Department of Regulatory Agencies for travel and meeting expenses and legal services for the new board.</p>
<p>Bill Number:     <b>House Bill 10-1240</b></p> <p>Sponsors:        <i>Representative Ferrandino</i>                       <i>Senator M. Carroll</i></p> <p>The act clarifies House Bill 09-1276, passed in the 2009 legislative session, which established a 90-day foreclosure deferment period for eligible borrowers. The act makes several modifications to general provisions of the foreclosure deferment process and requires the Division of Housing in the Department of Local Affairs to establish and update uniform standards related to the deferment process.</p>	<p>Short Title:       <b>Residential Foreclosure Deferments</b></p> <p>Status:            Signed into Law</p> <p><i>Appropriations:</i></p> <p style="padding-left: 40px;">The bill requires the Division of Housing in the Department of Local Affairs to promulgate rules related to the foreclosure deferment process for residential properties. Development of the rules will require a minimal amount of staff resources that can be handled through existing staff of the Department of Local Affairs. Therefore, no additional appropriation is necessary.</p>

## Mortgage and Foreclosure Bills, 2010 Session (As of June 8, 2010) (Cont.)

Signed into Law (Cont.)	
<p>Bill Number:     <b>House Bill 10-1249</b></p> <p>Sponsors:       <i>Representatives Labuda and Primavera</i>                        <i>Senator Johnston</i></p> <p>The act creates a process for expedited sales of foreclosed properties that reduces the number of calendar days to sale from between 110–125 days to between 45–65 days. Days to sale are counted following the beginning of foreclosure proceedings. To initiate an expedited sale, the seller must file either a court order or a separate document that notifies the public trustee of the expedited sale.</p> <p>The act provides details about the following:</p> <ul style="list-style-type: none"> <li>• procedures and criteria for obtaining a court order;</li> <li>• notification and filing requirements; and</li> <li>• circumstances under which the expedited proceedings are withdrawn.</li> </ul> <p>The expedited sales process is available for properties for which a foreclosure proceeding begins between August 1, 2010, and August 1, 2013. The act is repealed July 1, 2014.</p>	<p>Short Title:       <b>Expedited Residential Foreclosure Sales</b></p> <p>Status:            Signed into Law</p> <p><i>Appropriations:</i></p> <p style="padding-left: 40px;">An eligible debt holder can file a motion with the court to issue an order for expedited sale. While this is an additional function for the court, application of the law is fairly limited and well-defined and can be accomplished within existing appropriations.</p>

## Mortgage and Foreclosure Bills, 2010 Session (As of June 8, 2010) (Cont.)

Postponed Indefinitely	
<p>Bill Number:     <b>House Bill 10-1084</b></p> <p>Sponsors:        <i>Representative Acree</i>                       <i>Senator Williams</i></p> <p>Under current law, a person who goes into the yard of a foreclosed home or other unoccupied property to clean up trash, remove weeds, or water the lawn may be considered a trespasser. Further, if the person is injured while doing so, he or she may have a claim against the landowner for negligence.</p> <p>The bill would have specified that persons who go onto unoccupied property on an unpaid basis to clean up trash, remove weeds, or water the lawn shall be presumed to have the landowner's implied consent. The bill also would have amended the civil and criminal trespassing laws to exempt persons who engage in such activity, but only to the extent of that activity and so long as they do no actual damage to the property.</p>	<p>Short Title:       <b>Foreclosed Property Volunteer Cleanup Liability</b></p> <p>Status:            Postponed Indefinitely</p> <p><i>Appropriations:</i></p> <p style="padding-left: 40px;">The bill was assessed as having no fiscal impact. It was not anticipated that the bill would substantially affect the caseload of the courts.</p>
<p>Bill Number:     <b>Senate Bill 10-093</b></p> <p>Sponsors:        <i>Senator Lundberg</i>                       <i>Representative DelGrosso</i></p> <p>Under current law, the successful bidder at a foreclosure sale receives a certificate of purchase (COP) entitling the successful bidder to a confirmation deed upon the expiration of all redemption periods unless the property is redeemed by a junior lienor. However, in some situations, a junior lien is purchased by someone who refuses to accept payment from the COP holder and then exercises the statutory right to redemption afforded to lienors who have not been paid. If potential bidders know of the lien purchase, they may be discouraged from bidding. This may depress sale prices of foreclosed homes, leaving defaulting homeowners with little or no cash proceeds from the sale or a greater deficiency, for which they typically remain personally liable, than would otherwise be the case.</p> <p>The reengrossed bill clarified that the holder of a COP of property at a public trustee's sale or sheriff's sale is entitled to pay off junior lienors during the redemption period for the amount of the lien plus allowable fees and costs and requires a junior lienor to accept the payment if it is in cash or certified funds. The bill also would have awarded attorney fees and costs to a person who is required to sue to protect his or her rights under the foreclosure and redemption statutes due to a violation of the provisions of the bill by another person, including a junior lienor who refuses to accept a tendered payment of the debt secured by the lien.</p>	<p>Short Title:       <b>Lien Rights During Foreclosure</b></p> <p>Status:            Postponed Indefinitely</p> <p><i>Appropriations:</i></p> <p style="padding-left: 40px;">The bill was assessed as having no fiscal impact. It would have affected transactions between private parties and was not expected to impact the workload of the courts since the courts' involvement ends upon issuance of the order authorizing sale of the property. The bill was not expected to alter the way in which these types of cases proceed or are handled by the court prior to issuance of the order.</p>

**Mortgage and Foreclosure Bills, 2010 Session (As of June 8, 2010) (Cont.)**

<b>Postponed Indefinitely (Cont.)</b>	
<p>Bill Number:     <b>Senate Bill 10-127</b></p> <p>Sponsors:        <i>Senator Cadman</i>                       <i>Representative Frangas</i></p> <p>The bill would have required that a creditor first attempt to collect on collateral when a secured loan is in default. If the proceeds from the collateral are insufficient to fully repay the loan balance and allowable costs, it would have allowed the loan holder to attempt to collect from the debtor's other assets.</p>	<p>Short Title:       <b>Collect Loans from Collateral First</b></p> <p>Status:            Postponed Indefinitely</p> <p><i>Appropriations:</i></p> <p>The bill was assessed as having no fiscal impact. Current law has certain limitations on collateral and collection practices for small loans, and adding limitations for secured loans would not have required additional resources for either state banking and financial regulators or for the courts.</p>