

AGENDA

COLORADO SUPREME COURT ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Thursday, October 30, 2014, 1:30p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver CO 80203
Fourth Floor, Supreme Court Conference Room

- I. Call to order
- II. Approval of September 26, 2014 meeting minutes [Page 2-4].
- III. Announcements from the Chair
 - a. 2015 meeting schedule
 - i. January 30, 2015
 - ii. February 27, 2015
 - iii. April 24, 2015
 - iv. June 26, 2015
 - v. September 25, 2015
 - vi. November 20, 2015
 - b. Public release of subcommittee reports.
- IV. Business
 - a. C.R.C.P. 120—Presentation by Representatives McCann and Williams and discussion (Fred Skillern, Subcommittee Chair)[Pages 5-40]
 - b. C.R.C.P. 103 and 403 (Ben Vinci, post-judgment subcommittee chair) [Page 41-42].
 - c. Colorado Rules of Probate Procedure (Fred Skillern) [Page 43-63].
 - d. Improving Access to Justice Subcommittee (fka CAPP Subcommittee) (Dick Holme, subcommittee chair)—in depth review of Subcommittee recommendations.
- V. Adjourn

Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure

Minutes of September 26, 2014 Meeting

A quorum being present, the Colorado Supreme Court Advisory Committee on Rules of Civil Procedure was called to order by Judge Michael Berger at 1:30 p.m., in the Colorado Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

Name	Present	Excused
Judge Michael Berger, Chair	X	
David R. DeMuro	X	
Judge Ann Frick		X
Peter Goldstein	X	
Lisa Hamilton-Fieldman		X
Richard P. Holme	X	
Judge Jerry N. Jones	X	
Charles Kall		X
Thomas K. Kane	X	
Debra Knapp	X	
Cheryl Layne	X	
Richard Laugesen	X	
Judge Cathy Lemon	X	
David C. Little	X	
Chief Judge Alan Loeb	X	
Professor Christopher B. Mueller	X	
Judge Ann Rotolo		X
Frederick B. Skillern	X	
Lee N. Sternal	X	
Ben Vinci	X	
Magistrate Marianne Tims	X	
Judge John R. Webb	X	
J. Gregory Whitehair	X	
Christopher Zenisek	X	
Non-voting Participants		
Justice Allison Eid, Liaison	X	
Teresa Tate	X	

I. Attachments & Handouts

- A. September 26, 2014 Agenda Packet
- B. Costs Report
- C. Improving Access to Justice Report

II. Announcements from the Chair

New members Judge Cathy Lemon and Magistrate Marianne Tims were introduced to the Committee.

The minutes of the May 30, 2014 Meeting were approved with no corrections.

C.R.C.P 26(b)(5), C.R.C.P. 121 §1-15, and C.R.C.P. 411 were approved by the supreme court on September 18, 2014. The supreme court did not act on C.R.C.P. 47(u) because certiorari was granted in *People v. Gallo*, 09 CA 1308 (Colo.App. 2014).

Judge Berger proposed creating an Editing Subcommittee that would vet all proposed rule changes for punctuation, grammar, and word choice. He stated that the CBA Ethics Committee had a similar subcommittee and the editing work produced better proposals. The subcommittee would not make substantive changes, but it would flag substantive issues if the subcommittee thought such issues were unaddressed. After brief discussion a proposal to appoint an Editing Subcommittee was seconded, and the motion passed unopposed with Judge Webb and Judge Jones as Co-Chairs.

III. Business

A. Costs

The Costs Subcommittee, chaired by Judge Webb, circulated a new proposal after the supreme court did not adopt C.R.C.P 54(d) and C.R.C.P. 121 §1-22. The Committee reacted with serious questions, and a revised proposal was circulated (Costs Report, page 2). After considering the work of the Improving Access to Justice Subcommittee (IAJS) (formerly, the Colorado Civil Access Pilot Project Subcommittee), Judge Webb recommended the costs proposal should be considered by the IAJS because the costs issue was related to the IAJS's work. Dick Holme agreed that considering all interrelated issues together would be best. Mr. Holme stated the IAJS would consider the costs proposal at the next subcommittee meeting.

B. Colorado Rules of Probate Procedure

The Civil Rules Committee was asked to consider the amendments to the Colorado Rules of Probate Procedure. Fred Skillern explained that the proposed changes updated rule language and made mechanical changes. Mr. Skillern stated that he had a few comments for the initiating committees, the CBA's Trust and Estate Section and the Probate Advisory Committee, and he would contact the committees with his comments and report back to the Civil Rules Committee.

C. C.R.C.P. 120

Representatives Beth McCann and Angela Williams sent a letter recommending a change making it clear that the issue of whether the party seeking foreclosure is the real-party-in-interest, or that the loan terms had been modified may be raised and considered at a Rule 120 hearing. Judge Berger appointed the C.R.C.P 120 Subcommittee chaired by Mr. Skillern, and informed the Committee that Representative McCann would be at the October 30 Meeting.

D. Form 35.1

Teresa Tate spoke on behalf of the Family Issues Standing Committee regarding the amendments to Form 35.1, Mandatory Disclosures. The Family Issues Standing Committee drafted changes to eliminate exchange of unnecessary financial disclosures that are not applicable to post-decree maters. Numerous questions were asked relating to word use and punctuation. Based on the questions Judge Berger asked the Editing Subcommittee to review Form 35.1 as the subcommittee's first order of business.

E. C.R.C.P. 26(b)(4)(D)

The proposed rule change would treat drafts of expert reports and communication between the expert and the attorney as protected work product. This proposal elicited much discussion, and the issue was tabled pending subcommittee research on whether federal case law discussed ambiguity in the the use of "considered" in F.R.C.P. 26 (b)(4)(C)(ii) versus "relied on" in F.R.C.P. 26(b)(4)(C)(iii).

F. Improving Access to Justice Report

Mr. Holme shared that the IAJS had had numerous productive meetings. The IAJS Report detailed rule proposals to C.R.C.P. 1, 12, 16, 26, 30, 31, 34, and 121 §1-15. Mr. Holme explained that issues related to discovery, depositions, and experts would be considered next, and he believes all IAJS proposals will be passed through the Civil Rules Committee and submitted to supreme court by the end of the year.

IV. Future Meetings

October 30, 2014

November 21, 2014

The Committee adjourned at 4:00 p.m.

Respectfully submitted,

Jenny A. Moore

Supreme Court of Colorado

2 EAST 14TH AVENUE
DENVER, CO 80203

ALLISON H. EID
JUSTICE

PHONE: (720) 625-5430
FAX: (720) 625-5435

Representative Beth McCann
Representative Angela Williams
Colorado House of Representatives
State Capitol
Denver, CO 80203

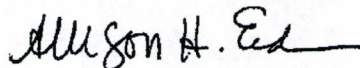
August 28, 2014

Dear Representative McCann and Williams,

Thank you so much for you August 18 letter regarding real parties in interest under CRCP 120. As the Supreme Court's liaison to the Civil Rules Committee, I am passing the letter along to the Committee Chair, Court of Appeals Judge Michael Berger. Judge Berger will be contacting you in the near future.

Thank you for bringing this issue to the Committee's attention.

Sincerely,



Allison H. Eid

Cc: Chief Justice Nancy Rice
Judge Michael Berger



COLORADO
HOUSE OF REPRESENTATIVES
STATE CAPITOL
DENVER
80203

August 18, 2014

Justice Allison Eid
Colorado Supreme Court
2 East 14th Ave.
Denver, Colorado 80206

Dear Justice Eid:

We are writing to you in your capacity as Chair of the Colorado Supreme Court Rules Committee. We met with Chief Justice Nancy Rice about the Colorado Rules of Civil Procedure (CRCP) Rule 120 procedure, and she suggested that we make a request that the Rules Committee consider amending CRCP 120 to make it clear that the issue of whether the party seeking to foreclose is the Real Party in Interest or that the terms of the loan have been modified may be raised and considered at a Rule 120 hearing.

Both of us represent many people who have faced foreclosures and have been very frustrated with the fact that many judges will not let them raise the issue of real party in interest despite the fact that case law is clear that this is an issue that should be allowed to be raised and determined at the Rule 120 hearing. Many judges conduct a very abbreviated hearing limited to the issue of default and whether the person qualifies under the Soldiers and Sailors Civil Relief Act of 1940.

In *Goodwin v. District Court*, 779 P.2d 837 (Colo.1989), Chief Justice Quinn considered this very issue. He framed the question presented in that case as: "whether a district court when ruling on a CRCP 120 motion for a court order authorizing the sale of encumbered real property in accordance with a power of sale contained in a deed of trust should consider whether the moving parties are the real parties in interest" *Id.* at 838. The district court had ruled in that case that

the real party in interest question could only be raised in a separate action. The Goodwins claimed that an assignment of a promissory note was invalid so the foreclosing party did not have a legitimate interest in the note or the Deed of Trust. The Court held that they should have been allowed to raise this defense at the CRCP 120 hearing. *Id* at 842. Under CRCP 17(a), every action must be prosecuted in the name of the Real Party in Interest. The Court in *Goodwin* concluded that implicit in Rule 120 is the requirement that a party seeking an order of sale in a foreclosure proceeding must have a valid interest in the property on which it is seeking to foreclose. Otherwise an order of sale might result in the sale of property in favor of a party who does not have any legitimate claim to the property. Once a debtor raises this issue, the burden shifts to the party seeking the order to prove he or she is the Real Party in Interest. The Court also noted that the availability of a collateral remedy should not deprive the debtor of the right to show parties seeking an order in a Rule 120 hearing were without authority. *Id.* at 843.

The Court concluded: "We thus conclude that the scope of inquiry in a Rule 120 proceeding encompasses an inquiry into whether the moving parties are the Real Parties in Interest by virtue of their right to enforce the power of sale contained in the instrument on which Rule 120 is based." *Id* at 843.

Justice Quinn noted that the original purpose of the Rule 120 proceeding was to protect military members from prejudice resulting from foreclosure while in the military, but he also noted that the scope of the rule had been expanded by case law to provide due process protections with respect to the taking and public sales of real property interests of a debtor under a deed of trust. *Id.* at 840. He cited the holding in *Princeville Corp. v. Brooks*, 533 P.2d 916 (Colo. 1975) that Rule 120 is broad enough in scope to permit consideration of factors other than military service. The Court in *Princeville* recognized that a "growing awareness of due process consideration militated in favor of extending the rule to permit a district court to retain supervisory power over a foreclosure in order to align and protect the rights of all parties to the proceeding." *Id.* at 840

Prior to the *Goodwin* case, CRCP 120 was amended in 1976 to broaden its reach. In *Moreland v. Marwich Ltd.* 665 P.2d 613 (Colo. 1983), the Supreme Court reversed the Court of Appeals and noted that the purpose of Rule 120 was expanded from its original form in order to provide a debtor with "due process protections against summary foreclosure actions consistent with those protections against deprivations of property without a prior judicial hearing that have received recognition in a line of modern decisions of the United States Supreme Court." *Id* at 617. In that case, the District Court denied the Morelands

the opportunity in a Rule 120 hearing to offer evidence that the bank breached its oral agreement to convert a promissory note to an amortized loan thus modifying the original agreement. The Court noted that the constitutional requirements of due process extend to the taking of real property and ruled that the Morelands should have been allowed to challenge whether the moving parties had a valid interest in the note or deed of trust. *Id* at 617. As stated by the Court in *Moreland*:

To ignore evidence that the written instruments have been modified and that the debtor is not in default under the current agreement between the parties would sacrifice the very protections against unwarranted summary foreclosures that CRCP 120 was expanded by construction and revisions to accord. *Id.* at 618.

Based on the ruling in the *Moreland* case, the issue of whether a loan agreement has been modified should be allowed to be raised in a Rule 120 hearing also. In *Goodwin*, the Court referenced *Moreland* and stated that its message is clear. "The due process protections contemplated by Rule 120 will be satisfied only when a court conducting a Rule 120 proceeding considers all relevant evidence in determining whether there is a reasonable probability of a default or other circumstances authorizing the exercise of the power of sale under the terms of the instrument described in the Rule 120 motion." *Goodwin* at 842.

The Court's resolution of the Rule 120 motion, therefore, should necessarily encompass a consideration not only of the evidence offered by the creditor seeking the order of sale but also of any evidence offered by the debtor to controvert the moving party's evidence or to support a legitimate defense to the motion. A court's refusal to consider such properly offered evidence in resolving the issue of default adversely to the debtor is tantamount to the taking of property in a summary fashion without any hearing at all - a deprivation clearly violative of due process of law." *Id.* at 842.

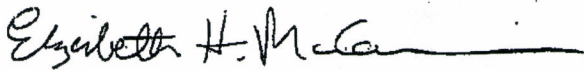
Despite this clear ruling by the Colorado Supreme Court, many Colorado judges are not allowing debtors to raise these issues in a Rule 120 proceeding and are not allowing evidence to be presented on critical and central issues to the proceeding. Many debtors appear *pro se* and are not aware of the *Goodwin* case and thus do not cite it to the court. Parties are denied due process in the critical determination of whether they will be allowed to remain in their homes. We have

heard from many borrowers who have found themselves denied due process in Rule 120 hearings.

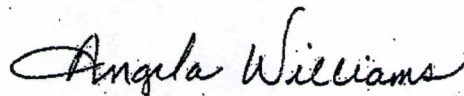
Given this state of affairs, we urge the Rules Committee to amend Rule 120 to make clear that a court must consider, when properly raised by the debtor, whether the moving party is the Real Party in Interest and whether a debtor is actually in default under a modification of the loan. This will incorporate the case law and clarify for judges the proper conduct of a Rule 120 hearing.

We would be happy to meet with the Rules Committee and bring examples of this situation if that would be helpful. Please let us know the next steps to move this forward.

Yours truly,



Representative Beth McCann
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Representative Angela Williams
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Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0186.01 Duane Gall x4335

HOUSE BILL 12-1156

HOUSE SPONSORSHIP

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A BILL FOR AN ACT

101 CONCERNING MEASURES TO IMPROVE THE RELIABILITY OF
102 INFORMATION PROVIDED IN CONNECTION WITH REAL ESTATE
103 FORECLOSURES.

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 allows a "holder of an evidence of debt" (holder), generally, a bank or other financial institution, to foreclose on real property under a deed of trust even if the holder's interest is based on an assignment from the original lender and the assignment or other

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.

intermediate documents are not produced, simply by providing a statement from the holder's attorney that the holder's interest in the property is valid. **Sections 1 and 3** of the bill remove this provision and otherwise tighten the rules for documentation of the holder's interest that must be filed with the public trustee before a foreclosure sale is authorized.

Section 2 amends provisions governing the court order authorizing sale by a public trustee (rule 120 order, referring to C.R.C.P. 120) to place the burden of proof on the holder in all cases to demonstrate that the holder does in fact have a valid assignment or other basis for its assertion that it is entitled to foreclose on the property. Section 2 also explicitly states that the rule 120 order is not a final judgment adjudicating all claims of rights and interests in the property, as a judgment under rule 105 (a "quiet title judgment") would be.

Section 4 suspends any eviction proceeding if the rule 120 order has been challenged, until the challenge is resolved.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-38-101, **amend**
3 (1) introductory portion, (1) (b) introductory portion, (1) (b) (II), (1) (c)
4 introductory portion, (1) (c) (II), (1) (g), (2) (a), and (8); **repeal** (6) (b);
5 and **add** (1) (i) and (1) (j) as follows:

6 **38-38-101. Holder of evidence of debt may elect to foreclose.**

7 (1) **Documents required.** Whenever a holder of an evidence of debt
8 declares a violation of a covenant of a deed of trust and elects to publish
9 all or a portion of the property ~~therein~~ described IN THE DEED OF TRUST
10 for sale, the holder or the attorney for the holder shall file the following
11 with the public trustee of the county where the property is located:

12 (b) The original evidence of debt, including any modifications to
13 the original evidence of debt, ~~together with~~ AND the original indorsement
14 or assignment ~~thereof~~ OF THE EVIDENCE OF DEBT, if any, to the holder of
15 the evidence of debt or other proper indorsement or assignment in
16 accordance with subsection (6) of this section or, in lieu of the original

1 evidence of debt, one of the following:

2 (II) A copy of the evidence of debt and ~~a certification~~ AN
3 AFFIDAVIT signed and properly acknowledged by ~~a~~ THE holder of ~~an~~ THE
4 evidence of debt, acting for itself or as agent, nominee, or trustee under
5 subsection (2) of this section, ~~or a statement signed by the attorney for~~
6 ~~such holder~~ citing the paragraph of section 38-38-100.3 (20) under which
7 the holder claims to be a qualified holder and certifying ~~or stating~~ that the
8 copy of the evidence of debt is true and correct and that the use of the
9 copy is subject to the conditions described in paragraph (a) of subsection
10 (2) of this section; or

11 (c) The original recorded deed of trust securing the evidence of
12 debt and any original recorded modifications of the deed of trust or any
13 recorded partial releases of the deed of trust, or in lieu ~~thereof~~ OF THE
14 ORIGINAL RECORDED DEED OF TRUST, MODIFICATIONS, OR PARTIAL
15 RELEASES, one of the following:

16 (II) Copies of the recorded deed of trust and any recorded
17 modifications of the deed of trust or recorded partial releases of the deed
18 of trust and ~~a certification~~ AN AFFIDAVIT signed and properly
19 acknowledged by ~~a~~ THE holder of ~~an~~ THE evidence of debt, acting for
20 itself or as an agent, nominee, or trustee under subsection (2) of this
21 section, ~~or a signed statement by the attorney for such holder~~ citing the
22 paragraph of section 38-38-100.3 (20) under which the holder claims to
23 be a qualified holder and certifying ~~or stating~~ that the copies of the
24 recorded deed of trust and any recorded modifications of the deed of trust
25 or recorded partial releases of the deed of trust are true and correct and
26 that the use of the copies is subject to the conditions described in
27 paragraph (a) of subsection (2) of this section;

1 (g) A statement, executed by the holder of ~~an~~ THE evidence of
2 debt, ~~or the attorney for such holder~~, identifying, to the best knowledge
3 of the person executing ~~such~~ THE statement, the name and address of the
4 current owner of the property described in the notice of election and
5 demand; ~~and~~

6 (i) COPIES OF ALL DOCUMENTS NOT OTHERWISE LISTED IN
7 PARAGRAPHS (a) TO (h) OF THIS SUBSECTION (1) SHOWING AN UNBROKEN
8 SERIES OF INTERVENING INDORSEMENTS OR ASSIGNMENTS BETWEEN THE
9 ORIGINAL EVIDENCE OF DEBT SECURED BY THE DEED OF TRUST AND THE
10 HOLDER FILING THE NOTICE OF ELECTION AND DEMAND; AND

11 (j) IF THE PERSON COMMENCING THE FORECLOSURE IS ACTING AS
12 AN AGENT, NOMINEE, OR TRUSTEE FOR ANOTHER PERSON, DOCUMENTS
13 DEMONSTRATING THE PERSON'S AUTHORIZATION TO ENFORCE THE
14 EVIDENCE OF DEBT.

15 (2) **Foreclosure by qualified holder without original evidence**
16 **of debt, original or certified copy of deed of trust, or proper**
17 **indorsement.** (a) (I) A qualified holder, whether acting for itself or as
18 agent, nominee, or trustee under section 38-38-100.3 (20) (j), that elects
19 to foreclose without the original evidence of debt pursuant to
20 subparagraph (II) of paragraph (b) of subsection (1) of this section, or
21 without the original recorded deed of trust or a certified copy ~~thereof~~ OF
22 THE ORIGINAL RECORDED DEED OF TRUST pursuant to subparagraph (II) of
23 paragraph (c) of subsection (1) of this section, or without the proper
24 indorsement or assignment of an evidence of debt under paragraph (b) of
25 subsection (1) of this section, ~~shall~~, by operation of law, ~~be deemed to~~
26 ~~have agreed~~ AGREES to indemnify and defend:

27 (A) Any person liable for repayment of any portion of the original

1 evidence of debt in the event that the original evidence of debt is
2 presented for payment to the extent of any amount, other than the amount
3 of a deficiency remaining under the evidence of debt after deducting the
4 amount bid at sale; and

5 (B) Any person who sustains a loss due to any title defect that
6 results from reliance upon a sale at which the original evidence of debt
7 was not presented. ~~The indemnity granted by this subsection (2) shall be~~
8 ~~limited to actual economic loss suffered together with any court costs and~~
9 ~~reasonable attorney fees and costs incurred in defending a claim brought~~
10 ~~as a direct and proximate cause of the failure to produce the original~~
11 ~~evidence of debt, but such indemnity shall not include, and no claimant~~
12 ~~shall be entitled to, any special, incidental, consequential, reliance,~~
13 ~~expectation, or punitive damages of any kind.~~

14 (II) A qualified holder acting as agent, nominee, or trustee shall
15 be IS liable for the indemnity pursuant to this subsection (2).

16 (6) **Indorsement or assignment.** (b) ~~Notwithstanding the~~
17 ~~provisions of paragraph (a) of this subsection (6), the original evidence~~
18 ~~of debt or a copy thereof without proper indorsement or assignment shall~~
19 ~~be deemed to be properly indorsed or assigned if a qualified holder~~
20 ~~presents the original evidence of debt or a copy thereof to the officer~~
21 ~~together with a statement in the certification of the qualified holder or in~~
22 ~~the statement of the attorney for the qualified holder pursuant to~~
23 ~~subparagraph (H) of paragraph (b) of subsection (1) of this section that~~
24 ~~the party on whose behalf the foreclosure was commenced is the holder~~
25 ~~of the evidence of debt.~~

26 (8) **Assignment or transfer of debt during foreclosure.**

27 (a) (I) The holder of the evidence of debt may assign or transfer the

1 secured indebtedness at any time during the pendency of a foreclosure
2 action without affecting the validity of the secured indebtedness. Upon
3 receipt of written notice signed by the holder who commenced the
4 foreclosure action or the attorney for the holder stating that the evidence
5 of debt has been assigned and transferred and identifying the assignee or
6 transferee, the public trustee shall complete the foreclosure as directed by
7 the assignee or transferee or the attorney for the assignee or transferee.

8 (II) EACH ASSIGNEE OR TRANSFEREE DESCRIBED IN
9 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) SHALL COMPLY WITH THE
10 DOCUMENTATION REQUIREMENTS OF PARAGRAPHS (i) AND (j) OF
11 SUBSECTION (1) OF THIS SECTION AND SHALL SUPPLEMENT THE RECORD
12 ACCORDINGLY.

13 (III) ~~No~~ A holder of an evidence of debt, certificate of purchase,
14 or certificate of redemption ~~shall be~~ IS NOT liable to any third party for the
15 acts or omissions of any assignee or transferee that occur after the date of
16 the assignment or transfer.

17 (b) The assignment or transfer of the secured indebtedness during
18 the pendency of a foreclosure ~~shall be deemed~~ IS made without recourse
19 unless otherwise agreed in a written statement signed by the assignor or
20 transferor. The holder of the evidence of debt, certificate of purchase, or
21 certificate of redemption making the assignment or transfer and the
22 attorney for the holder ~~shall~~ have no duty, obligation, or liability to the
23 assignee or transferee or to any third party for any act or omission with
24 respect to the foreclosure or the loan servicing of the secured
25 indebtedness after the assignment or transfer. ~~If an assignment or transfer~~
26 ~~is made by a qualified holder that commenced the foreclosure pursuant to~~
27 ~~subsection (2) of this section, the qualified holder's indemnity under said~~

1 subsection (2) shall remain in effect with respect to all parties except to
2 the assignee or transferee, unless otherwise agreed in a writing signed by
3 the assignee or transferee if the assignee or transferee is a qualified
4 holder.

5 (c) If an assignment or transfer is made to a holder of an evidence
6 of debt other than a qualified holder, the holder ~~must~~ SHALL file with the
7 officer the original evidence of debt and the original recorded deed of
8 trust or, in lieu thereof OF THE ORIGINAL DOCUMENTS, the documents
9 required in paragraphs (b) and (c) of subsection (1) of this section. ~~An~~
10 ~~assignee or transferee shall be presumed to not be a qualified holder, and~~
11 ~~as such, shall be subject to the provisions of this paragraph (c), unless a~~
12 ~~signed statement by the attorney for such assignee or transferee that cites~~
13 ~~the paragraph of section 38-38-100.3 (20) under which the assignee or~~
14 ~~transferee claims to be a qualified holder is filed with the officer.~~

15 SECTION 2. In Colorado Revised Statutes, 38-38-105, **amend**
16 (2) (a) as follows:

17 **38-38-105. Court order authorizing sale mandatory - notice of**
18 **hearing for residential properties.** (2) (a) (I) ~~On and after January 1,~~
19 ~~2008,~~ Whenever a public trustee forecloses upon a deed of trust under this
20 article, the holder of the evidence of debt or the attorney for the holder
21 shall obtain an order authorizing sale from a court of competent
22 jurisdiction to issue the same pursuant to rule 120 or other rule of the
23 Colorado rules of civil procedure. The order ~~shall~~ MUST recite the date the
24 hearing was scheduled if no hearing was held, or the date the hearing was
25 completed if a hearing was held, which date in either case must be no
26 later than the day prior to the last day on which an effective notice of
27 intent to cure may be filed with the public trustee under section

1 38-38-104.

2 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND
3 REGARDLESS OF WHETHER A HEARING IS HELD, THE COURT SHALL REVIEW
4 THE APPLICATION AND SUPPORTING DOCUMENTS FILED BY THE APPLICANT
5 FOR THE ORDER AUTHORIZING SALE AND SHALL MAKE SPECIFIC FINDINGS
6 ON THE FOLLOWING ISSUES:

7 (A) WHETHER THE APPLICANT IS THE HOLDER OF THE EVIDENCE OF
8 DEBT;

9 (B) WHETHER THE APPLICANT IS THE REAL PARTY IN INTEREST TO
10 FORECLOSE THE DEBT;

11 (C) WHETHER THE APPLICANT HAS LEGAL STANDING TO
12 FORECLOSE THE DEBT; AND

13 (D) WHETHER THE DOCUMENTS PROVIDED BY THE APPLICANT ARE
14 AUTHENTIC AND SUFFICIENT TO RESOLVE THE ISSUES IDENTIFIED IN
15 SUB-SUBPARAGRAPHS (A) TO (C) OF THIS SUBPARAGRAPH (II).

16 (III) THE COURT SHALL SET FORTH ALL FINDINGS ON THE ISSUES
17 IDENTIFIED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a) IN THE COURT'S
18 ORDER THAT EITHER GRANTS OR DENIES THE APPLICATION FOR AN ORDER
19 AUTHORIZING SALE. THE BURDEN OF PROOF IS ON THE APPLICANT TO
20 DEMONSTRATE COMPLIANCE WITH ALL DOCUMENTATION REQUIREMENTS
21 SET FORTH IN THIS ARTICLE AS PART OF ITS APPLICATION FOR AN ORDER
22 AUTHORIZING SALE.

23 (IV) A sale held without an order authorizing sale issued in
24 compliance with this paragraph (a) ~~shall be~~ is invalid.

25 (V) AN ORDER AUTHORIZING SALE THAT IS ISSUED PURSUANT TO
26 THIS SECTION IS NOT A FINAL JUDGMENT AND IS ENTERED WITHOUT
27 PREJUDICE TO ANY PARTY SEEKING INJUNCTIVE OR OTHER RELIEF,

1 INCLUDING A COMPLETE ADJUDICATION OF ALL CLAIMS OF RIGHTS AND
2 INTERESTS IN THE SUBJECT PROPERTY UNDER C.R.C.P. 105 IN A COURT OF
3 COMPETENT JURISDICTION.

4 **SECTION 3.** In Colorado Revised Statutes, 38-38-100.3, **amend**
5 (10) (d) as follows:

6 **38-38-100.3. Definitions.** As used in articles 37 to 39 of this title,
7 unless the context otherwise requires:

8 (10) "Holder of an evidence of debt" means the person in actual
9 possession of or person entitled to enforce an evidence of debt; except
10 that "holder of an evidence of debt" does not include a person acting as
11 a nominee solely for the purpose of holding the evidence of debt or deed
12 of trust as an electronic registry without any authority to enforce the
13 evidence of debt or deed of trust. For the purposes of articles 37 to 40 of
14 this title, the following persons are presumed to be the holder of an
15 evidence of debt:

16 (d) The person in possession of an evidence of debt with
17 EVIDENCE THAT PROVES THE PERSON'S authority, which may be granted
18 by the original evidence of debt or deed of trust, to enforce the evidence
19 of debt as agent, nominee, or trustee or in a similar capacity for the
20 obligee of the evidence of debt.

21 **SECTION 4.** In Colorado Revised Statutes, 13-40-104, **amend**
22 (1) introductory portion and (1) (f) as follows:

23 **13-40-104. Unlawful detention defined.** (1) ~~Any~~ A person is
24 guilty of an unlawful detention of real property in the following cases:

25 (f) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
26 PARAGRAPH (f), when:

27 (A) The property has been duly sold under any power of sale,

1 contained in any mortgage or trust deed that was executed by ~~such~~ THE
2 person, or any person under whom ~~such~~ THE person claims by title
3 subsequent to THE date of the recording of ~~such~~ THE mortgage or trust
4 deed; and

5 (B) The title under ~~such~~ THE sale has been duly perfected; and

6 (C) The purchaser at ~~such~~ THE sale, or his or her assigns, has duly
7 demanded the possession ~~thereof~~ OF THE PROPERTY.

8 (II) IF AN ACTION FOR INJUNCTIVE OR OTHER RELIEF THAT
9 CHALLENGES THE SALE OF THE PROPERTY UNDER A POWER OF SALE UNDER
10 C.R.C.P. 120 (d) HAS BEEN FILED IN A COURT OF COMPETENT
11 JURISDICTION, THE COURT SHALL STAY OR DISMISS WITHOUT PREJUDICE AN
12 ACTION FOR POSSESSION UNDER THIS PARAGRAPH (f) UNTIL THE ACTION
13 FOR INJUNCTIVE OR OTHER RELIEF HAS BEEN DETERMINED BY JUDGMENT
14 ON THE MERITS IN THAT COURT;

15 **SECTION 5. Applicability.** The provisions of this act apply to
16 foreclosure proceedings in which the notice of election and demand is
17 filed on or after the effective date of this act.

18 **SECTION 6. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0056.01 Duane Gall x4335

HOUSE BILL 13-1249

HOUSE SPONSORSHIP

McCann, Duran, Lebsock, Salazar, Fields, Fischer, Melton, Peniston, Schafer, Young

SENATE SPONSORSHIP

Giron,

House Committees

Business, Labor, Economic, & Workforce Development

Senate Committees

A BILL FOR AN ACT

101 CONCERNING RESIDENTIAL FORECLOSURES, AND, IN CONNECTION
102 THEREWITH, REQUIRING THAT FORECLOSURES BE INITIATED
103 ONLY BY PERSONS WITH A SECURITY INTEREST IN THE PROPERTY
104 AND REQUIRING GOOD-FAITH DEALING IN LOAN MODIFICATION
105 NEGOTIATIONS.

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 allows a "holder of an evidence of debt" (holder),

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.

generally a bank or other financial institution, to foreclose on real property under a deed of trust even if the holder's interest is based on an assignment from the original lender and the assignment or other intermediate documents are not produced, simply by providing a statement from the holder's attorney that the holder's interest in the property is valid. **Section 2** of the bill removes this provision and otherwise tightens the rules for documentation of the holder's interest that must be filed with the public trustee and with a court before a foreclosure sale is authorized. Section 2 also removes an existing limitation on the liability of a holder that forecloses without having possession of the original documents, to all parties damaged by the foreclosure.

Section 1 adds and amends definitions used throughout the bill. **Section 3** requires the notice that a residential borrower receives when a holder seeks an order authorizing sale (OAS) under rule 120, C.R.C.P., to include new disclosures specifying that:

- ! A statement or opinion offered by the holder or its attorneys or agents is not advice to the borrower, and that those persons' sole loyalty is to the party that claims to be the holder;
- ! In response to the motion for an OAS, the borrower may challenge the sale on specified grounds, including whether the applicant has a right to enforce a recorded security interest in the real property affected by the foreclosure; and
- ! It is illegal for a foreclosure consultant to charge an up-front fee.

Section 4 addresses "dual tracking", in which a lender simultaneously negotiates with the borrower for a loan modification and pursues foreclosure through the public trustee. This section requires the servicer of the loan to establish a single point of contact by which the borrower may stay apprised of the status of his or her application for a loan modification. Section 4 also prohibits the lender from starting or continuing with the foreclosure process if the borrower is complying with the terms of a trial payment plan or other foreclosure prevention alternative.

Section 5 explicitly authorizes any party to an OAS proceeding to raise, and requires the court to consider, the issue of whether the moving party has an enforceable legal interest in the property. Section 5 also requires that the notice posted on the property in advance of the OAS proceeding contain a prominent disclosure that the borrower must respond in writing by a specific date or lose the right to object to a sale of the property.

1 **SECTION 1.** In Colorado Revised Statutes, 38-38-100.3, **amend**
2 (10) introductory portion and (10) (d); and **add** (2.5), (9.5), (21.3), (21.6),
3 and (23.5) as follows:

4 **38-38-100.3. Definitions.** As used in articles 37 to 39 of this title,
5 unless the context otherwise requires:

6 (2.5) "BORROWER" MEANS A PERSON LIABLE UNDER AN EVIDENCE
7 OF DEBT CONSTITUTING A RESIDENTIAL MORTGAGE LOAN.

8 (9.5) "FORECLOSURE PREVENTION ALTERNATIVE" MEANS A LOAN
9 MODIFICATION OR OTHER AVAILABLE LOSS MITIGATION OPTION,
10 INCLUDING A SHORT SALE, LOAN MODIFICATION, OR DEED IN LIEU OF
11 FORECLOSURE, WITH RESPECT TO A RESIDENTIAL MORTGAGE LOAN.

12 (10) "HOLDER" OR "holder of an evidence of debt" means the
13 person in actual possession of or person entitled to enforce an evidence
14 of debt; except that ~~"holder of an evidence of debt"~~ THE TERM does not
15 include a person acting as a nominee solely for the purpose of holding the
16 evidence of debt or deed of trust as an electronic registry without any
17 authority to enforce the evidence of debt or deed of trust. For the purposes
18 of articles 37 to 40 of this title, the following persons are presumed to be
19 the holder of an evidence of debt:

20 (d) The person in possession of an evidence of debt with
21 EVIDENCE THAT PROVES THE PERSON'S authority ~~which may be granted by~~
22 ~~the original evidence of debt or deed of trust,~~ to enforce the evidence of
23 debt as agent, nominee, or trustee or in a similar capacity for the obligee
24 of the evidence of debt.

25 (21.3) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN THAT IS
26 PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD USE AND THAT IS
27 SECURED BY A MORTGAGE, DEED OF TRUST, OR OTHER EQUIVALENT,

1 CONSENSUAL SECURITY INTEREST ON A DWELLING OR RESIDENTIAL REAL
2 ESTATE UPON WHICH IS CONSTRUCTED OR INTENDED TO BE CONSTRUCTED
3 A SINGLE-FAMILY DWELLING OR MULTIPLE-FAMILY DWELLING OF FOUR OR
4 FEWER UNITS THAT IS OR WILL BE USED BY THE BORROWER AS THE
5 BORROWER'S PRIMARY RESIDENCE.

6 (21.6) "RESIDENTIAL REAL ESTATE" MEANS ANY REAL PROPERTY
7 UPON WHICH A DWELLING IS OR WILL BE CONSTRUCTED.

8 (23.5) (a) "SERVICER" OR "MORTGAGE SERVICER" MEANS AN
9 ENTITY THAT DIRECTLY SERVICES A LOAN, OR THAT IS RESPONSIBLE FOR
10 INTERACTING WITH THE BORROWER, MANAGING THE LOAN ACCOUNT ON
11 A DAILY BASIS, INCLUDING COLLECTING AND CREDITING PERIODIC LOAN
12 PAYMENTS, MANAGING ANY ESCROW ACCOUNT, OR ENFORCING THE NOTE
13 AND SECURITY INSTRUMENT, EITHER AS THE CURRENT HOLDER OF THE
14 EVIDENCE OF DEBT OR AS THE CURRENT HOLDER'S AUTHORIZED AGENT.

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

18 (c) "SERVICER" DOES NOT INCLUDE A TRUSTEE OR A TRUSTEE'S
19 AUTHORIZED AGENT ACTING UNDER A POWER OF SALE PURSUANT TO A
20 DEED OF TRUST.

21 **SECTION 2.** In Colorado Revised Statutes, 38-38-101, **amend**
22 (1) introductory portion, (1) (b) introductory portion, (1) (b) (II), (1) (c)
23 introductory portion, (1) (c) (II), (1) (g), (2) (a), and (8); and **repeal** (6)
24 (b) as follows:

25 **38-38-101. Holder of evidence of debt may elect to foreclose.**
26 (1) **Documents required.** Whenever a holder of an evidence of debt
27 declares a violation of a covenant of a deed of trust and elects to publish

1 all or a portion of the property ~~therein~~ described IN THE DEED OF TRUST
2 for sale, the holder or the attorney for the holder shall file the following
3 with the public trustee of the county where the property is located:

4 (b) The original evidence of debt, including COPIES OF any
5 modifications to the original evidence of debt, ~~together with~~ AND the
6 original indorsement or assignment ~~thereof~~ OF THE EVIDENCE OF DEBT, if
7 any, to the holder of the evidence of debt or other proper indorsement or
8 assignment in accordance with subsection (6) of this section or, in lieu of
9 the original evidence of debt AND AN ORIGINAL INDORSEMENT OR
10 ASSIGNMENT, one of the following:

11 (II) A copy of the evidence of debt and ANY MODIFICATION OR
12 INDORSEMENT TOGETHER WITH a certification signed and properly
13 acknowledged by a THE holder of ~~an~~ THE evidence of debt, acting for
14 itself or as agent, nominee, or trustee under subsection (2) of this section,
15 or a statement signed by the attorney for such holder citing the paragraph
16 of section 38-38-100.3 (20) under which the holder claims to be a
17 qualified holder and certifying ~~or stating~~ UNDER PENALTY OF PERJURY that
18 the copy of the evidence of debt is true and correct and that the use of the
19 copy is subject to the conditions described in paragraph (a) of subsection
20 (2) of this section; or

21 (c) The original recorded deed of trust securing the evidence of
22 debt and any original recorded modifications of the deed of trust or any
23 recorded partial releases of the deed of trust, or in lieu ~~thereof~~ OF THE
24 ORIGINAL RECORDED DEED OF TRUST, MODIFICATIONS, OR PARTIAL
25 RELEASES, one of the following:

26 (II) Copies of the recorded deed of trust and any recorded
27 modifications of the deed of trust or recorded partial releases of the deed

1 of trust and a certification signed and properly acknowledged by a THE
2 holder of an THE evidence of debt, acting for itself or as an agent,
3 nominee, or trustee under subsection (2) of this section, or a signed
4 statement by the attorney for such holder citing the paragraph of section
5 38-38-100.3 (20) under which the holder claims to be a qualified holder
6 and certifying ~~or stating~~ UNDER PENALTY OF PERJURY that the copies of
7 the recorded deed of trust and any recorded modifications of the deed of
8 trust or recorded partial releases of the deed of trust are true and correct
9 and that the use of the copies is subject to the conditions described in
10 paragraph (a) of subsection (2) of this section;

11 (g) A statement, executed by the holder of an THE evidence of
12 debt, or the attorney for such holder, identifying, to the best knowledge
13 of the person executing such THE statement, the name and address of the
14 current owner of the property described in the notice of election and
15 demand; and

16 (2) **Foreclosure by qualified holder without original evidence**
17 **of debt, original or certified copy of deed of trust, or proper**
18 **indorsement.** (a) (I) A qualified holder, whether acting for itself or as
19 agent, nominee, or trustee under section 38-38-100.3 (20) (j), that elects
20 to foreclose without the original evidence of debt pursuant to
21 subparagraph (II) of paragraph (b) of subsection (1) of this section, or
22 without the original recorded deed of trust or a certified copy thereof OF
23 THE ORIGINAL RECORDED DEED OF TRUST pursuant to subparagraph (II) of
24 paragraph (c) of subsection (1) of this section, or without the proper
25 indorsement or assignment of an evidence of debt under paragraph (b) of
26 subsection (1) of this section, ~~shall~~, by operation of law, ~~be deemed to~~
27 ~~have agreed~~ AGREES to indemnify, and defend, AND PAY DAMAGES AND

1 REASONABLE ATTORNEY FEES TO:

2 (A) Any person liable for repayment of any portion of the original
3 evidence of debt in the event that the original evidence of debt is
4 presented for payment to the extent of any amount, other than the amount
5 of a deficiency remaining under the evidence of debt after deducting the
6 amount bid at sale; and

7 (B) Any person who sustains a loss due to any title defect that
8 results from reliance upon a sale at which the original evidence of debt
9 was not presented. The indemnity granted by this subsection (2) ~~shall be~~
10 IS limited to actual economic loss suffered ~~together with~~ PLUS any court
11 costs and reasonable attorney fees and costs incurred in defending a claim
12 brought as a direct and proximate cause of the failure to produce the
13 original evidence of debt. ~~but such~~ THE indemnity ~~shall~~ DOES not include,
14 and no claimant ~~shall be~~ IS entitled to, ~~any special, incidental,~~
15 ~~consequential, reliance, expectation,~~ NONECONOMIC or punitive damages
16 of any kind.

17 (II) A qualified holder acting as agent, nominee, or trustee ~~shall~~
18 ~~be~~ IS liable for the indemnity pursuant to this subsection (2).

19 (6) **Indorsement or assignment.** (b) ~~Notwithstanding the~~
20 ~~provisions of paragraph (a) of this subsection (6), the original evidence~~
21 ~~of debt or a copy thereof without proper indorsement or assignment shall~~
22 ~~be deemed to be properly indorsed or assigned if a qualified holder~~
23 ~~presents the original evidence of debt or a copy thereof to the officer~~
24 ~~together with a statement in the certification of the qualified holder or in~~
25 ~~the statement of the attorney for the qualified holder pursuant to~~
26 ~~subparagraph (II) of paragraph (b) of subsection (1) of this section that~~
27 ~~the party on whose behalf the foreclosure was commenced is the holder~~

1 of the evidence of debt.

2 (8) **Assignment or transfer of debt during foreclosure.** (a) The
3 holder of the evidence of debt may assign or transfer the secured
4 ~~indebtedness~~ EVIDENCE OF DEBT at any time during the pendency of a
5 foreclosure action. ~~without affecting the validity of the secured~~
6 ~~indebtedness.~~ Upon receipt of written notice signed by the holder who
7 commenced the foreclosure action or the attorney for the holder stating
8 that the evidence of debt has been assigned and transferred and
9 identifying the assignee or transferee, AND UPON RECEIPT OF THE
10 DOCUMENTS REQUIRED BY PARAGRAPHS (b) AND (c) OF SUBSECTION (1)
11 OF THIS SECTION, the public trustee shall complete the foreclosure as
12 directed by the assignee or transferee or the attorney for the assignee or
13 transferee. ~~No~~ A holder of an evidence of debt, certificate of purchase, or
14 certificate of redemption ~~shall be~~ IS NOT liable to any third party for the
15 acts or omissions of any assignee or transferee that occur after the date of
16 the assignment or transfer.

17 (b) ~~The assignment or transfer of the secured indebtedness during~~
18 ~~the pendency of a foreclosure shall be deemed made without recourse~~
19 ~~unless otherwise agreed in a written statement signed by the assignor or~~
20 ~~transferor. The holder of the evidence of debt, certificate of purchase, or~~
21 ~~certificate of redemption making the assignment or transfer and the~~
22 ~~attorney for the holder shall have no duty, obligation, or liability to the~~
23 ~~assignee or transferee or to any third party for any act or omission with~~
24 ~~respect to the foreclosure or the loan servicing of the secured~~
25 ~~indebtedness after the assignment or transfer. If an assignment or transfer~~
26 ~~is made by a qualified holder that commenced the foreclosure pursuant to~~
27 ~~subsection (2) of this section, the qualified holder's indemnity under said~~

1 ~~subsection (2) shall remain in effect with respect to all parties except to~~
2 ~~the assignee or transferee, unless otherwise agreed in a writing signed by~~
3 ~~the assignee or transferee if the assignee or transferee is a qualified~~
4 ~~holder.~~

5 (c) If an assignment or transfer is made to a NEW holder ~~of an~~
6 ~~evidence of debt other than~~ THAT IS NOT a qualified holder, the NEW
7 holder ~~must~~ SHALL file with the officer the original evidence of debt and
8 the original recorded deed of trust or, in lieu ~~thereof~~ OF THE ORIGINAL
9 DOCUMENTS, the documents required in paragraphs (b) and (c) of
10 subsection (1) of this section. ~~An assignee or transferee shall be presumed~~
11 ~~to not be a qualified holder, and as such, shall be subject to the provisions~~
12 ~~of this paragraph (c), unless a signed statement by the attorney for such~~
13 ~~assignee or transferee that cites the paragraph of section 38-38-100.3 (20)~~
14 ~~under which the assignee or transferee claims to be a qualified holder is~~
15 ~~filed with the officer.~~

16 **SECTION 3.** In Colorado Revised Statutes, 38-38-102.5, **amend**
17 (2) as follows:

18 **38-38-102.5. Notice prior to residential foreclosure - hotline.**

19 (2) At least thirty days before filing a notice of election and demand and
20 at least thirty days after default, the holder shall mail a notice addressed
21 to the original grantor of the deed of trust at the address in the recorded
22 deed of trust or other lien being foreclosed and, if different, at the last
23 address shown in the holder's records, containing:

24 (a) The telephone number of the Colorado foreclosure hotline and
25 the direct telephone number of the holder's loss mitigation representative
26 or department;

27 (b) A DISCLOSURE THAT, IN ANY DISCUSSION WITH THE HOLDER OR

1 ANY AGENT OR REPRESENTATIVE OF THE HOLDER, INCLUDING THE
2 HOLDER'S ATTORNEY, A STATEMENT OR OPINION OF THE AGENT,
3 REPRESENTATIVE, OR ATTORNEY IS NOT ADVICE TO OR FOR THE
4 BORROWER, AND THAT THE AGENT, REPRESENTATIVE, OR ATTORNEY OWES
5 LOYALTY ONLY TO THE PARTY THAT CLAIMS TO BE THE HOLDER;

6 (c) A STATEMENT THAT, IN RESPONSE TO A MOTION FOR AN ORDER
7 AUTHORIZING SALE UNDER SECTION 38-38-105, A BORROWER OR ANY
8 INTERESTED PARTY MAY OBJECT TO THE SALE AND REQUEST A HEARING
9 CONCERNING WHETHER THE PERSON SEEKING THE ORDER HAS THE LEGAL
10 RIGHT TO FORECLOSE, WHETHER A DEFAULT HAS OCCURRED, WHETHER
11 THE BORROWER IS IN MILITARY SERVICE, AND WHETHER THERE ARE
12 ONGOING NEGOTIATIONS FOR A RESIDENTIAL MORTGAGE LOAN
13 MODIFICATION OR OTHER FORECLOSURE PREVENTION ALTERNATIVE; AND

14 (d) A STATEMENT THAT, UNDER SECTION 6-1-1107, C.R.S., IT IS
15 ILLEGAL FOR ANY PERSON ACTING AS A FORECLOSURE CONSULTANT TO
16 CHARGE AN UP-FRONT FEE OR DEPOSIT TO THE BORROWER FOR SERVICES
17 RELATED TO THE FORECLOSURE.

18 **SECTION 4.** In Colorado Revised Statutes, **add** 38-38-103.4 and
19 38-38-103.6 as follows:

20 **38-38-103.4. Single point of contact.** (1) IF A BORROWER
21 REQUESTS A FORECLOSURE PREVENTION ALTERNATIVE, A SERVICER SHALL
22 PROMPTLY ESTABLISH A SINGLE POINT OF CONTACT AND PROVIDE TO THE
23 BORROWER ONE OR MORE DIRECT MEANS OF COMMUNICATION WITH THE
24 SINGLE POINT OF CONTACT.

25 (2) A SINGLE POINT OF CONTACT IS RESPONSIBLE FOR:

26 (a) COMMUNICATING THE PROCESS BY WHICH A BORROWER MAY
27 APPLY FOR AN AVAILABLE FORECLOSURE PREVENTION ALTERNATIVE AND

1 THE DEADLINE FOR ANY REQUIRED SUBMISSIONS TO BE CONSIDERED FOR
2 THESE OPTIONS;

3 (b) COORDINATING RECEIPT OF ALL DOCUMENTS ASSOCIATED WITH
4 AVAILABLE FORECLOSURE PREVENTION ALTERNATIVES AND NOTIFYING
5 THE BORROWER OF ANY MISSING DOCUMENTS NECESSARY TO COMPLETE
6 THE APPLICATION;

7 (c) HAVING ACCESS TO CURRENT INFORMATION AND PERSONNEL
8 SUFFICIENT TO TIMELY, ACCURATELY, AND ADEQUATELY INFORM THE
9 BORROWER OF THE CURRENT STATUS OF THE FORECLOSURE PREVENTION
10 ALTERNATIVE;

11 (d) ENSURING THAT A BORROWER IS CONSIDERED FOR ALL
12 FORECLOSURE PREVENTION ALTERNATIVES OFFERED BY OR THROUGH THE
13 MORTGAGE SERVICER AND FOR WHICH THE BORROWER IS OR MAY BE
14 ELIGIBLE; AND

15 (e) HAVING ACCESS TO INDIVIDUALS WITH THE ABILITY AND
16 AUTHORITY TO STOP FORECLOSURE PROCEEDINGS WHEN NECESSARY.

17 (3) A SINGLE POINT OF CONTACT SHALL REMAIN ASSIGNED TO THE
18 BORROWER'S ACCOUNT UNTIL THE SERVICER DETERMINES THAT ALL
19 FORECLOSURE PREVENTION ALTERNATIVES OFFERED BY OR THROUGH THE
20 SERVICER AND FOR WHICH THE BORROWER IS OR MAY BE ELIGIBLE HAVE
21 BEEN EXHAUSTED OR THE BORROWER'S ACCOUNT BECOMES CURRENT.

22 (4) THE SERVICER SHALL ENSURE THAT A SINGLE POINT OF
23 CONTACT REFERS AND TRANSFERS A BORROWER TO AN APPROPRIATE
24 SUPERVISOR UPON REQUEST OF THE BORROWER, IF THE SINGLE POINT OF
25 CONTACT HAS A SUPERVISOR.

26 (5) AS USED IN THIS SECTION, "SINGLE POINT OF CONTACT" MEANS
27 AN INDIVIDUAL OR TEAM OF PERSONNEL, EACH OF WHOM HAS THE ABILITY

1 AND AUTHORITY TO PERFORM THE RESPONSIBILITIES DESCRIBED IN THIS
2 SECTION. THE SERVICER SHALL ENSURE THAT EACH MEMBER OF THE TEAM
3 IS KNOWLEDGEABLE ABOUT THE BORROWER'S SITUATION AND CURRENT
4 STATUS.

5 (6) THIS SECTION DOES NOT APPLY TO A SERVICER OR HOLDER
6 THAT HAS FILED FEWER THAN ONE HUNDRED NOTICES OF ELECTION AND
7 DEMAND PERTAINING TO RESIDENTIAL MORTGAGE LOANS DURING THE
8 IMMEDIATELY PRECEDING CALENDAR YEAR.

9 **38-38-103.6. Dual tracking prohibited - penalties.** (1) IF A
10 BORROWER SUBMITS A COMPLETE APPLICATION FOR A FIRST LIEN LOAN
11 MODIFICATION OR OTHER FORECLOSURE PREVENTION ALTERNATIVE
12 OFFERED BY OR THROUGH THE BORROWER'S MORTGAGE SERVICER OR BY
13 OR THROUGH THE HOLDER OF THE DEBT, THEN, WHILE THE APPLICATION IS
14 PENDING, A MORTGAGE SERVICER, MORTGAGEE, TRUSTEE, BENEFICIARY,
15 HOLDER, OR AUTHORIZED AGENT SHALL:

16 (a) NOT FILE A NOTICE OF ELECTION AND DEMAND UNDER SECTION
17 38-38-101; OR

18 (b) RECALL THE NOTICE OF ELECTION AND DEMAND FROM THE
19 PUBLIC TRUSTEE, IF A NOTICE OF ELECTION AND DEMAND HAS ALREADY
20 BEEN FILED BUT IS NOT YET RECORDED; OR

21 (c) NOT TAKE ANY FURTHER ACTION UNDER SECTION 38-38-105 OR
22 38-38-106, IF A NOTICE OF ELECTION AND DEMAND HAS BEEN FILED AND
23 RECORDED, UNTIL ONE OF THE FOLLOWING OCCURS:

24 (I) THE SERVICER OR HOLDER OF THE EVIDENCE OF DEBT MAKES A
25 WRITTEN DETERMINATION THAT THE BORROWER IS NOT ELIGIBLE FOR A
26 FIRST LIEN LOAN MODIFICATION OR OTHER FORECLOSURE PREVENTION
27 ALTERNATIVE, AND ANY APPEAL PERIOD HAS EXPIRED;

1 (II) THE BORROWER DOES NOT ACCEPT AN OFFERED FIRST LIEN
2 LOAN MODIFICATION OR OTHER FORECLOSURE PREVENTION ALTERNATIVE
3 WITHIN FOURTEEN DAYS AFTER THE DATE OF THE OFFER; OR

4 (III) THE BORROWER ACCEPTS A WRITTEN MODIFICATION OR
5 OTHER FORECLOSURE ALTERNATIVE BUT DEFAULTS ON, OR OTHERWISE
6 BREACHES THE BORROWER'S OBLIGATIONS UNDER, THE MODIFICATION.

7 (2) (a) WHEN A BORROWER ACCEPTS AN OFFERED FORECLOSURE
8 PREVENTION ALTERNATIVE, THE HOLDER OR SERVICER SHALL PROVIDE THE
9 BORROWER WITH A COPY OF THE COMPLETE AGREEMENT EVIDENCING THE
10 FORECLOSURE PREVENTION ALTERNATIVE, SIGNED BY THE HOLDER OR AN
11 AUTHORIZED REPRESENTATIVE OF THE HOLDER.

12 (b) THE HOLDER OR SERVICER SHALL FILE A NOTICE OF
13 WITHDRAWAL OF A NOTICE OF ELECTION AND DEMAND AND CANCEL ANY
14 PENDING FORECLOSURE SALE IF THE BORROWER ACCEPTS A PERMANENT
15 FORECLOSURE PREVENTION ALTERNATIVE.

16 (c) IF THE HOLDER OR SERVICER DENIES THE BORROWER'S
17 APPLICATION FOR A FORECLOSURE PREVENTION ALTERNATIVE, THE
18 HOLDER OR SERVICER SHALL PROVIDE THE BORROWER WITH A WRITTEN
19 STATEMENT OF:

20 (I) THE REASONS FOR THE DENIAL;

21 (II) THE AMOUNT OF TIME THE BORROWER HAS TO REQUEST AN
22 APPEAL OF THE DENIAL, WHICH MUST BE NO LESS THAN THIRTY DAYS; AND

23 (III) INSTRUCTIONS REGARDING HOW TO APPEAL, INCLUDING HOW
24 TO PROVIDE EVIDENCE THAT THE HOLDER'S OR MORTGAGE SERVICER'S
25 DETERMINATION WAS ERRONEOUS.

26 (3) IF THE BORROWER APPLIES FOR A FIRST LIEN LOAN
27 MODIFICATION OR OTHER FORECLOSURE PREVENTION ALTERNATIVE AND

1 THE APPLICATION IS DENIED, THE HOLDER OF THE EVIDENCE OF DEBT AND
2 ANY SERVICER, MORTGAGEE, TRUSTEE, BENEFICIARY, OR AUTHORIZED
3 AGENT SHALL NOT FILE OR RECORD A NOTICE OF ELECTION AND DEMAND
4 OR TAKE FURTHER ACTION ON A PREVIOUSLY RECORDED NOTICE OF
5 ELECTION AND DEMAND UNTIL THE LAST TO OCCUR OF ANY OF THE
6 FOLLOWING:

7 (a) THIRTY-ONE DAYS AFTER THE DATE OF THE WRITTEN
8 STATEMENT OF REASONS FOR THE DENIAL, AS REQUIRED BY PARAGRAPH
9 (c) OF SUBSECTION (2) OF THIS SECTION;

10 (b) IF THE BORROWER APPEALS THE DENIAL:

11 (I) FIFTEEN DAYS AFTER THE DENIAL OF THE APPEAL; OR

12 (II) IF THE APPEAL IS SUCCESSFUL, FOURTEEN DAYS AFTER A
13 FORECLOSURE PREVENTION ALTERNATIVE IS OFFERED BUT DECLINED BY
14 THE BORROWER; OR

15 (III) IF THE APPEAL IS SUCCESSFUL AND A FORECLOSURE
16 PREVENTION ALTERNATIVE IS OFFERED AND ACCEPTED, THE DATE ON
17 WHICH THE BORROWER FAILS TO TIMELY SUBMIT THE FIRST PAYMENT OR
18 OTHERWISE BREACHES THE TERMS OF THE OFFER.

19 (4) THE HOLDER OR SERVICER SHALL NOT CHARGE OR COLLECT
20 ANY:

21 (a) APPLICATION, PROCESSING, OR OTHER FEE FOR A FORECLOSURE
22 PREVENTION ALTERNATIVE; OR

23 (b) LATE FEES FOR PERIODS DURING WHICH A FORECLOSURE
24 PREVENTION ALTERNATIVE IS UNDER CONSIDERATION OR A DENIAL IS
25 BEING APPEALED; THE BORROWER IS MAKING TIMELY MODIFICATION
26 PAYMENTS; OR A FORECLOSURE PREVENTION ALTERNATIVE IS BEING
27 EVALUATED OR EXERCISED.

1 (5) IN ORDER TO MINIMIZE THE RISK OF BORROWERS SUBMITTING
2 MULTIPLE APPLICATIONS FOR FORECLOSURE PREVENTION ALTERNATIVES,
3 THE HOLDER OR SERVICER IS NOT OBLIGATED TO EVALUATE AN
4 APPLICATION FROM A BORROWER WHO HAS PREVIOUSLY BEEN EVALUATED
5 OR AFFORDED A FAIR OPPORTUNITY TO BE EVALUATED UNLESS:

6 (a) THERE HAS BEEN A MATERIAL CHANGE IN THE BORROWER'S
7 FINANCIAL CIRCUMSTANCES SINCE THE DATE OF THE BORROWER'S
8 PREVIOUS APPLICATION; AND

9 (b) THAT CHANGE IS DOCUMENTED AND SUPPLIED TO THE HOLDER
10 OR SERVICER.

11 (6) A HOLDER OR SERVICER THAT VIOLATES THIS SECTION TWO OR
12 MORE TIMES IN ANY THREE-MONTH PERIOD IS LIABLE FOR A CIVIL PENALTY
13 OF UP TO SEVEN THOUSAND FIVE HUNDRED DOLLARS PER MORTGAGE OR
14 DEED OF TRUST IN AN ACTION BROUGHT BY THE ATTORNEY GENERAL AND,
15 IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL PENALTY, DISCIPLINARY
16 ACTION, OR OTHER REMEDY AVAILABLE UNDER THE LAW, THE SERVICER
17 IS PRESUMED TO HAVE ENGAGED IN A DECEPTIVE TRADE PRACTICE AND TO
18 HAVE HAD A PUBLIC IMPACT FOR PURPOSES OF APPLICATION OF THE
19 "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6, C.R.S.

20 (7) THIS SECTION DOES NOT APPLY TO A HOLDER OR SERVICER
21 THAT HAS FILED FEWER THAN ONE HUNDRED NOTICES OF ELECTION AND
22 DEMAND PERTAINING TO RESIDENTIAL MORTGAGE LOANS DURING THE
23 IMMEDIATELY PRECEDING CALENDAR YEAR.

24 **SECTION 5.** In Colorado Revised Statutes, 38-38-105, **amend**
25 (2) (a) and (3) as follows:

26 **38-38-105. Court order authorizing sale mandatory - notice of**
27 **hearing for residential properties.** (2) (a) (I) ~~On and after January 1,~~

1 ~~2008~~, Whenever a public trustee forecloses upon a deed of trust under this
2 article, the holder of the evidence of debt or the attorney for the holder
3 shall ~~obtain~~ MOVE FOR THE ISSUANCE OF an order authorizing sale from
4 a court of competent jurisdiction ~~to issue the same~~ pursuant to rule 120
5 or other rule of the Colorado rules of civil procedure. THE COURT MAY
6 GRANT OR DENY THE MOTION. The order ~~shall~~ AUTHORIZING SALE, IF
7 ISSUED, MUST recite the date the hearing was scheduled if no hearing was
8 held, or the date the hearing was completed if a hearing was held, which
9 date in either case must be NO SOONER THAN THE SIXTY-FIFTH DAY AFTER
10 THE FILING OF THE NOTICE OF ELECTION AND DEMAND AND no later than
11 the day prior to the last day on which an effective notice of intent to cure
12 may be filed with the public trustee under section 38-38-104.

13 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A
14 BORROWER OR OTHER INTERESTED PARTY THAT FILES A WRITTEN
15 RESPONSE TO THE MOTION SEEKING AN ORDER AUTHORIZING SALE MAY,
16 EITHER IN THE RESPONSE OR AT THE HEARING, CHALLENGE THE STANDING
17 OR LEGAL INTEREST OF THE MOVING PARTY, IN WHICH CASE THE COURT
18 SHALL SET AND HOLD A HEARING PURSUANT TO RULE 120 TO REVIEW THE
19 APPLICATION AND SUPPORTING DOCUMENTS FILED BY THE APPLICANT,
20 PROVIDE THE BORROWER A MEANINGFUL OPPORTUNITY TO BE HEARD, AND
21 MAKE SPECIFIC FINDINGS ON WHETHER:

22 (A) THE MOVING PARTY IS THE HOLDER OF THE EVIDENCE OF DEBT;

23 (B) THE MOVING PARTY IS THE REAL PARTY IN INTEREST TO
24 FORECLOSE THE DEBT;

25 (C) THE MOVING PARTY HAS LEGAL STANDING TO FORECLOSE THE
26 DEBT;

27 (D) THE FORECLOSURE SHOULD BE DEFERRED PENDING THE

1 OUTCOME OF ANY ONGOING NEGOTIATIONS REGARDING LOAN
2 MODIFICATION EFFORTS OR OTHER FORECLOSURE PREVENTION
3 ALTERNATIVES IN WHICH THE BORROWER IS PARTICIPATING IN GOOD
4 FAITH; AND

5 (E) THE DOCUMENTS PROVIDED BY THE MOVING PARTY ARE
6 AUTHENTIC AND SUFFICIENT TO RESOLVE THE ISSUES IDENTIFIED IN
7 SUB-SUBPARAGRAPHS (A) TO (C) OF THIS SUBPARAGRAPH (II). IF THE
8 DOCUMENTS PROVIDED BY THE MOVING PARTY INCLUDE A COPY OF THE
9 EVIDENCE OF DEBT WITH A CERTIFICATION AS SPECIFIED IN SECTION
10 38-38-101 (1) (b) (II) OR A COPY OF THE RECORDED DEED OF TRUST,
11 MODIFICATION, OR PARTIAL RELEASE WITH A CERTIFICATION AS SPECIFIED
12 IN SECTION 38-38-101 (1) (c) (II), THE CERTIFICATION ALONE IS NOT
13 SUFFICIENT TO AUTHENTICATE THE COPY.

14 (III) THE COURT SHALL SET FORTH ALL FINDINGS ON THE ISSUES
15 IDENTIFIED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a) IN THE COURT'S
16 ORDER, WHICH MUST EITHER GRANT OR DENY THE MOTION FOR AN ORDER
17 AUTHORIZING SALE. IF THE STANDING OR LEGAL INTEREST OF THE MOVING
18 PARTY IS CHALLENGED BY ANY PARTY'S RESPONSE, THE BURDEN OF PROOF
19 IS ON THE MOVING PARTY TO DEMONSTRATE COMPLIANCE WITH ALL
20 DOCUMENTATION REQUIREMENTS SET FORTH IN THIS ARTICLE AS PART OF
21 ITS MOTION FOR AN ORDER AUTHORIZING SALE.

22 (IV) A sale held without an order authorizing sale issued in
23 compliance with this paragraph (a) ~~shall be~~ IS invalid.

24 (V) (A) AN ORDER AUTHORIZING SALE THAT IS ISSUED PURSUANT
25 TO THIS SECTION DOES NOT CONSTITUTE A FINAL, APPEALABLE ORDER OR
26 JUDGMENT AND IS ENTERED WITHOUT PREJUDICE TO ANY PARTY SEEKING
27 INJUNCTIVE OR OTHER RELIEF, INCLUDING A COMPLETE ADJUDICATION OF

1 ALL CLAIMS OF RIGHTS AND INTERESTS IN THE SUBJECT PROPERTY UNDER
2 C.R.C.P. 105 IN A COURT OF COMPETENT JURISDICTION. AN ADJUDICATION
3 UNDER C.R.C.P. 105 AS CONTEMPLATED BY THIS SUB-SUBPARAGRAPH (A)
4 IS NOT A COLLATERAL ATTACK ON A FINAL JUDGMENT, WHETHER FILED
5 BEFORE OR AFTER A SALE OCCURS.

6 (B) IF THE COURT DENIES A MOTION FOR AN ORDER AUTHORIZING
7 SALE FOR REASONS SPECIFIED IN SUB-SUBPARAGRAPH (A), (B), (C), OR (E)
8 OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), AND IF THE APPLICANT
9 FILES AN ACTION FOR JUDICIAL FORECLOSURE UNDER C.R.C.P. 105, THEN,
10 NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THE DEED OF
11 TRUST, THE EVIDENCE OF DEBT, OR ANY OTHER LAW, THE APPLICANT
12 SHALL PAY THE ATTORNEY FEES AND COSTS INCURRED BY THE APPLICANT
13 IN THAT ACTION AND SHALL NOT BE CHARGED TO THE BORROWER.

14 (C) IF THE COURT GRANTS A MOTION FOR ORDER AUTHORIZING
15 SALE, AND IF THE BORROWER OR OTHER INTERESTED PARTY FILES AN
16 ACTION FOR INJUNCTIVE OR OTHER RELIEF PURSUANT TO C.R.C.P. 105,
17 THE COURT SHALL AWARD ATTORNEY FEES AND COSTS INCURRED IN THAT
18 ACTION TO THE PREVAILING PARTY.

19 (D) A BORROWER MAY BRING AN ACTION PURSUANT TO C.R.C.P.
20 105 FOR INJUNCTIVE RELIEF TO ENJOIN A VIOLATION OF SECTION
21 38-38-103.4 OR 38-38-103.6 AND TO ENJOIN THE MOVING PARTY FROM
22 PROCEEDING WITH FORECLOSURE. ANY INJUNCTION THUS OBTAINED
23 REMAINS IN PLACE, AND ANY FORECLOSURE SALE SHALL BE ENJOINED,
24 UNTIL THE COURT DETERMINES THAT THE MOVING PARTY HAS CORRECTED
25 AND REMEDIED THE VIOLATION OR VIOLATIONS GIVING RISE TO THE
26 ACTION FOR INJUNCTIVE RELIEF. AN ENJOINED ENTITY MAY MOVE TO
27 DISSOLVE AN INJUNCTION BASED ON A SHOWING THAT THE VIOLATION HAS

1 BEEN CORRECTED AND REMEDIED.

2 (VI) A PARTY THAT SEEKS AN ORDER AUTHORIZING SALE AND IS
3 DENIED RELIEF, AND ANY SUCCESSOR IN INTEREST OF THAT PARTY, IS
4 PRECLUDED FROM FILING A NEW MOTION FOR AN ORDER AUTHORIZING
5 SALE OF THE SAME PROPERTY UNLESS THE MOVING PARTY ADDUCES
6 SIGNIFICANT NEW OR DIFFERENT EVIDENCE IN SUPPORT OF THE NEW
7 MOTION AND AT LEAST SIX MONTHS HAVE PASSED SINCE THE FILING OF THE
8 PRIOR MOTION.

9 (3) (a) Not less than fourteen days before the date set for the
10 hearing pursuant to rule 120 or other rule of the Colorado rules of civil
11 procedure, AND NOT LESS THAN FOURTEEN DAYS BEFORE ANY
12 SUBSEQUENT DATE IF THE HEARING IS POSTPONED OR CONTINUED FOR ANY
13 REASON, the holder or the attorney for the holder seeking an order
14 authorizing sale under this section for a residential property shall cause
15 a notice of hearing as described in rule 120 (b) of the Colorado rules of
16 civil procedure to be posted in a conspicuous place on the property that
17 is the subject of the sale. If possible, the notice ~~shall~~ MUST be posted on
18 the front door of the residence, but if access to the door is not possible or
19 is restricted, the notice ~~shall~~ MUST be posted at an alternative conspicuous
20 location, such as a gate or similar impediment. If a person at the residence
21 is impeding posting at the residence at the time of the attempted posting,
22 the notice may be handed to that person to satisfy this posting
23 requirement.

24 (b) THE FOLLOWING STATEMENT MUST APPEAR ON THE FIRST PAGE
25 OF THE NOTICE, IN AT LEAST FOURTEEN-POINT, BOLD-FACED TYPE:

26 **YOU MUST RESPOND TO THIS NOTICE IN**
27 **WRITING BY ____ [A SPECIFIED DATE, SEVEN DAYS**

1 **BEFORE THE HEARING] OR YOU MAY LOSE YOUR**
2 **RIGHT TO OBJECT TO THE SALE OF THIS**
3 **PROPERTY.**

4 (c) IN ADDITION TO THE NOTICE REQUIRED BY PARAGRAPH (b) OF
5 THIS SUBSECTION (3), THE FOLLOWING NOTICE MUST APPEAR IN AT LEAST
6 TEN-POINT TYPE:

7 **THE ISSUES THAT MAY BE RAISED IN OBJECTION TO**
8 **THE SALE INCLUDE: WHETHER A DEFAULT IN PAYMENT**
9 **HAS OCCURRED; WHETHER THE PERSON RESPONSIBLE**
10 **FOR MAKING PAYMENTS IS IN MILITARY SERVICE;**
11 **WHETHER THE PARTY SEEKING FORECLOSURE HAS THE**
12 **RIGHT TO ENFORCE A RECORDED SECURITY INTEREST IN**
13 **THE PROPERTY ENTITLING THAT PARTY TO FORECLOSE;**
14 **AND WHETHER FORECLOSURE SHOULD BE DEFERRED**
15 **PENDING THE OUTCOME OF ANY ONGOING NEGOTIATION**
16 **OF A MODIFIED LOAN OR OTHER FORECLOSURE**
17 **PREVENTION ALTERNATIVE.**

18 **IF YOU OBJECT, YOUR PROPERTY CANNOT BE SOLD**
19 **UNTIL A HEARING IS HELD.**

20 **IF THE HEARING DATE IS POSTPONED, YOU MAY**
21 **FILE AN OBJECTION SEVEN DAYS BEFORE THE NEXT**
22 **HEARING DATE, AND THE PROPERTY CANNOT BE SOLD**
23 **UNTIL A SCHEDULED HEARING IS HELD.**

24 (d) The notice required by this subsection (3) is sufficient if it
25 complies with the requirements of this section without regard to any
26 requirements for service of process in a civil action required by court rule.

27 (e) IF AN OBJECTION IS FILED, THE PARTIES ARE REQUIRED TO

1 EXCHANGE COPIES OF ANY DOCUMENTARY EVIDENCE THEY INTEND TO
2 RELY ON AT THE HEARING AT LEAST FIVE DAYS BEFORE THE HEARING.

3 **SECTION 6. Effective date - applicability.** This act takes effect
4 July 1, 2013, and applies to foreclosure proceedings in which the notice
5 of election and demand is filed on or after said date.

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

SECTION 4 WRIT OF GARNISHMENT – JUDGMENT DEBTOR OTHER THAN
NATURAL PERSON

Court Order on Garnishment Answer. When the judgment debtor is other than a natural person:

(1) If the answer to a writ of garnishment shows the garnishee is indebted to such judgment debtor, the clerk shall enter judgment in favor of such judgment debtor and against the garnishee for the use of the judgment creditor for the amount of the indebtedness shown in such answer and **if the judgment creditor is pro se, request such indebtedness paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to 12-14-101, et. seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency.** ~~order such amount paid into the registry of the court.~~ In no event shall any judgment against the garnishee be more than the total amount due and owing on the judgment.

(2) If the answer to a writ of garnishment shows the garnishee to possess or control personal property of any description, owned by, or owed to, such judgment debtor, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor.

The above change is copied from 103 Section 2 WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY (g) Court Order on Garnishment Answer (1) [amended and effective June 7, 2013].

SECTION 4 WRIT OF GARNISHMENT – JUDGMENT DEBTOR OTHER THAN
NATURAL PERSON

(f)

Court Order on Garnishment Answer. When the judgment debtor is other than a natural person:

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The above change is copied from 403 Section 2 WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY (g) Court Order on Garnishment Answer (1) [amended and effective June 7, 2013].

Rule 1. [NO CHANGE]

Rule 2. Definitions

(a) As used in these rules, unless the context otherwise requires:

(1): "Documents" means any petition, or application, inventory, claim, accounting, notice or demand for notice, motion, and any other writing which is filed with the cCourt.

~~2. "Fiduciary" means any personal representative, guardian, conservator, trustee, and special administrator.~~

~~3~~(2). "Accounting" means any written statement that substantially conforms to JDF 942 for decedents' estates, JDF 885 for conservatorships and to the 1984 version of the Uniform Fiduciary Accounting Standards as recommended by the Committee on National Fiduciary Accounting Standards.

~~4~~(3). "Colorado Probate Code" means the "~~Colorado Probate Code~~" sections §§15-10-101 et seq., C.R.S., as amended.

(b) Except as otherwise provided in this rule, terms used in these rules shall be as defined in the applicable sections of Title 15, C.R.S., as amended.

Rule 3. Order of Business

~~For matters to be heard by the court, the order of business for the day shall be as follows:~~

~~1. Petitions and motions in probate matters, defaults, and other like ex parte matters, motions to show cause, and requests for other like rulings and orders.~~

~~2. Motions and other matters requiring supporting testimony, if they do not conflict with scheduled hearings or trials;~~

~~3. Hearings/trials requiring appearances of parties according to the calendar;~~

~~4. Non-appearance hearings according to the calendar;~~

~~5. The court shall establish a system for monitoring guardianships and conservatorships, including the filing and review of annual reports and plans and shall schedule such activities as resources permit.~~

Rule 4. Minute Orders

~~This Rule is intended to facilitate the work of the court and to provide the bar and the general public with prompt response to petitions and motions which require court orders. Any order, not required by the circumstances to contain recitals, findings of fact, or conclusions of law, may be evidenced by a concise memorandum or minute containing the caption of the proceeding, the date of the order, and a statement of the ultimate direction or conclusion of the court. Such order shall be signed by the judge forthwith and promptly delivered or mailed to the clerk of the court in the county in which the matter is pending. The judge may make the order and sign the memorandum or minute thereof at any place within the state and at any time.~~

Rule 5. Judicial Department Forms Preparations of Proceedings

~~In proceedings under the Code, t~~The Judicial Department Forms (JDF) forms approved by the Colorado Supreme Court should be used where applicable. Any approved form produced by a ~~word processor~~ should, insofar as possible, substantially follow the format and content of the approved form, not include language which otherwise would be stricken, ~~highlight in bold or capital letters or with an appropriate check mark~~emphasize all alternative clauses or choices which have been selected, ~~underline~~emphasize all filled-in blanks, and contain a statement ~~in a conspicuous place~~ that the pleading conforms in substance to the current version of the approved form, citing the form's JDF form number and effective date. ~~In all other proceedings, pleadings which are acceptable to the court may be used. Except as otherwise provided herein and in the Code, the form and presentation of pleadings, motions, and instructions shall be governed by the Colorado Rules of Civil Procedure. All other pleadings and papers to be filed in any matter shall be prepared and fastened as may be designated by rules adopted from time to time by the court.~~ Unless the context otherwise requires, terms used in JDFs shall be as defined as provided in Rule 2.

Rule 6. Forms of Claim

~~Any claim filed with the court shall be in the JDF form approved by the Supreme Court.~~

Rule 7. [NO CHANGE]

Rule 8. Process and Notice

The issuance, service, and proof of service of any process, notice, or order of court under the Colorado Probate Ceode shall be governed by the provisions of the Colorado Probate Ceode and these rules. When no provision of the Colorado Probate Ceode or these rules is applicable, the Colorado Rules of Civil Procedure shall govern. Except when otherwise ordered by the court in any specific case or when service is by publication, if notice of a hearing on any petition or other pleading is required, the petition or other pleading, unless previously served, shall be served with the notice. When served by publication, the notice shall briefly state the nature of the relief

requested. The petition or other pleading need not be attached to or filed with the proof of service, waiver of notice, or waiver of service.

Rule 8.1. [NO CHANGE]

Rule 8.2. [NO CHANGE]

Rule 8.3. Notice of Formal Proceedings Terminating Estates

The notice of hearing on a petition under ~~§Section~~ 15-12-1001 or ~~§Section~~ 15-12-1002, C.R.S., shall include statements: (1) that interested persons have the responsibility to protect their own rights and interests within the time and in the manner provided by the Colorado Probate Code, including the appropriateness of claims paid, the compensation of personal representatives, attorneys, and others, and the distribution of estate assets, since the court will not review or adjudicate these or other matters unless specifically requested to do so by an interested person; and (2) that if any interested person desires to object to any matter such person he shall file his specific written objections at or before the hearing and shall furnish the personal representative with a copy thereof.

~~Rule 8.4. Information Concerning Appointment—Contents and Filing~~

~~The information concerning appointment required by Section 15-12-705, C.R.S., shall state:~~

- ~~1. The date of death of the decedent.~~
- ~~2. Whether the decedent died intestate or testate.~~
- ~~3. If the decedent died testate, the dates of the will and any codicils thereto, the date of admission to probate, and whether probate was formal or informal.~~
- ~~4. The name, address, and date of appointment of the personal representative.~~
- ~~5. Whether bond has been filed.~~
- ~~6. Whether the administration is supervised, and, if administration is unsupervised, that the court will consider ordering supervised administration if requested by an interested person.~~
- ~~7. That the information is being sent to persons who have or may have some interest in the estate being administered.~~
- ~~8. That papers relating to the estate, including the inventory of estate assets, are on file in the described court or, if not, may be obtained from the personal representative.~~

~~9. That interested persons are entitled to receive an accounting.~~

~~10. The surviving spouse, children under twenty-one years of age, and dependent children may be entitled to exempt property and a family allowance if a request for payment is made in the manner and within the time limits prescribed by Statutes (Section 15-11-401 et seq., C.R.S.).~~

~~11. The surviving spouse may have a right of election to take a portion of the augmented estate if a petition is filed within the time limits prescribed by Statute (Section 15-11-201 et seq., C.R.S.).~~

~~12. That interested persons have the responsibility to protect their own rights and interests within the time and in the manner provided by the Colorado Probate Code, including the appropriateness of claims paid, the compensation of personal representatives, attorneys, and others, and the distribution of estate assets, since the court will not review or adjudicate these or other matters unless specifically requested to do so by an interested person.~~

~~The personal representative shall promptly file with the court a copy of the information provided and a statement of when it was provided, to whom, and at what addresses.~~

Rule 8.5. Information Concerning Informal Probate—Contents and Filing

~~The information concerning informal probate required by Section 15-12-306, C.R.S., shall state the name and address of the moving party, the date of the death of the decedent, the date or dates of the will admitted to informal probate, the date of informal probate, that no personal representative has been appointed, and that interested persons wishing to object to the informal probate must act within the time and in the manner provided by the Colorado Probate Code.~~

~~The moving party shall promptly file with the court a copy of the information provided and a statement of when it was provided, to whom, and at what addresses, if mailed.~~

Rule 8.6. Trust Registration – Amendment, Release, ~~Amendment~~ and Transfer

A trustee shall file with the court of current registration an amended trust registration statement to advise the court of any change in the trusteeship, of any change in the principal place of administration, or of termination of the trust.

If the principal place of administration of a trust has been removed from this state, the court may release a trust from registration in this state upon request~~petition~~ and after notice to interested parties.

If the principal place of administration of a trust has changed within this state, the trustee may transfer the registration from one court to another within this state by filing in the court to which the registration is transferred an amended trust registration statement with attached thereto a copy~~court certified copies~~ of the original trust registration statement and of any amended trust

registration statement prior to the current amendment, and by filing in the court from which the registration is being transferred a copy of the amended trust registration statement. The amended statement shall indicate that the trust was registered previously in another court of this state and that the registration is being transferred.

~~A trustee shall file with the court of registration an amended trust registration statement to advise the court of any change in the trusteeship, of any change in the principal place of administration, or of termination of the trust.~~

Rule 8.7. Demands for Notice

~~(a) **Mailing by the Clerk.** Upon receipt of a demand for notice with respect to a decedent's estate, the clerk shall mail a copy of the demand to the personal representative, if one has been appointed. The clerk shall not be required to mail a copy of the demand to the personal representative if a certificate of service is filed with the demand stating that a copy of the demand has been mailed or delivered to the personal representative.~~

~~(b) **Certificate of Service Requirement After Initial Filing.** After a demand for notice is filed with respect to a decedent's estate, all filings and orders to which the demand relates shall be accompanied by a certificate of service stating that a copy of the filing or order has been mailed or delivered to the person making the demand and to the personal representative. The clerk or registrar may thereafter take any authorized action, including accepting and acting upon an application for informal appointment of personal representative. Advance notice shall be required only for actions or hearings for which advance notice would otherwise be required.~~

Rule 8.8. Non-Appearance Hearings

(a) Unless otherwise required by statute, these rules or order of court, matters that are routine and are expected to be unopposed may be set for a Non-Appearance Hearing. Such Non-Appearance Hearings shall be conducted as follows:

(1) Attendance at the hearing is not required or expected.

(2) Any interested person wishing to object to the requested action set forth in the motion or petition attached to the notice must file a specific written objection with the ~~C~~ourt at or before the hearing, and shall furnish a copy of the objection to the person requesting the court order. ~~Form JDF 722 in the Appendix to these Colorado Rules of Probate Procedure Rules~~ may be used and shall be sufficient notice of objection.

(3) If no objection is filed, the ~~C~~ourt may rule take action on the motion or petition without further notice or hearing.

(4)

A. If any objection is filed, the objecting party shall, within 14 days after filing the objection, set the objection for an Appearance Hearing.

B. Upon receipt of a timely request to set a hearing from the objecting party, the court clerk shall note such request in the register of actions. The court, in its discretion, may allow the scheduling of a hearing or refer the matter for alternative dispute resolution prior to a hearing. Nothing in these rules shall prohibit a court from referring any matter, in its discretion, to alternative dispute resolution pursuant to 13-22-301, *et seq.*, C.R.S.

(5) Failure to timely set the objection for an Appearance Hearing as required by section (4) of this rule shall result in the dismissal of the objection with prejudice without further hearing.

(b) The notice of a Non-Appearance Hearing, together with copies of the motion or petition and proposed order must be served on all interested persons no less than 14 days prior to the setting of the hearing and shall include a clear statement of the rules governing such hearings. Form JDF 712 or JDF 963 in the Appendix to these Colorado Rules of Probate Procedure Rules may be used and shall be sufficient. The authorization of this Form shall not prevent use of another Form consistent with this rule.

Rule 9. Verification of Documents

~~Except as otherwise specifically provided in the Code, rule or as identified in the applicable JDF form each document filed with the court under the Code, including applications, petitions, and demands for notice, need not be verified.~~

Rule 10. Petitions Must Indicate Persons Under Legal Disability

If any person who has any interest in the subject matter of a petition is under the age of eighteen years, or otherwise under legal disability, or incapable of adequately representing his or her own interests, each petition, the hearing of which requires the issuance of notice, shall state such fact and the name, age, and residence of such minor or other person when known and the name of the guardian, conservator, or personal representative, if any has been appointed.

Rule 11. Correction of Clerical Errors

(a) Minor eClerical errors in documents filed with the court may be made the subject of a written requests for correction only by filing JDF 740 together with corrected documents as necessary. “Clerical errors” include, but are not limited to, the following:

(1) Errors in captions (i.e. AKA names, etc.);

(2) Misspellings;

(3) Errors in dates, other than dates for settings, hearings, and limitations periods;

(4) Transposition errors.

(b) If the court is not satisfied that a written request for correction is a “clerical error”, the request may be denied. A clerical error does not include the addition of an argument, allegation, or fact that has legal significance, in which case the judge or registrar may make such correction on the documents specified. Significant errors in documents filed with the court shall be corrected by presentation of an amended or supplemental document, or as otherwise directed by the judge or registrar.

Rule 12. Fiduciaries—Change of Contact InformationAddress

Every fiduciary shall promptly notify the court of any change in the fiduciary’s name, his address, e-mail address or telephone number by filing JDF 725.

Rule 13 Attorney’s Entry of Appearance

~~An attorney desiring to enter his appearance in any proceeding, other than the attorney appearing on behalf of a party in the first instance, shall file a written entry of appearance or on oral request obtain an order recognizing his appearance. The attorney's name, address, registration number, and telephone number shall be in the written entry of appearance.~~

~~RULE 14. ATTORNEY'S WITHDRAWAL~~

~~(a) **Before the court.** An attorney desiring to withdraw from a matter before the court shall obtain an order authorizing his withdrawal after due notice to his client or the filing of the client's written consent. Notice of the order authorizing withdrawal shall be sent by the withdrawing attorney to all other counsel of record, persons demanding such notice by document of record, and such other persons as the court may direct.~~

~~(b) **Before the registrar.** An attorney desiring to withdraw from a matter before the registrar shall file his withdrawal after due notice to his client or the filing of the client's written consent. Notice of the withdrawal shall be sent by the withdrawing attorney to all other counsel of record and any person demanding such notice by document of record.~~

~~RULE 15. GUARDIANS AD LITEM~~

~~The court may appoint a guardian ad litem only in conformity with section 15-10-403(5), 15-14-115 or 15-18-108(2)(a), C.R.S. For appointments pursuant to 15-10-403(5) and 15-14-115, C.R.S., the court must state on the record its reasons for the appointment. In cases of uncontested probate of wills, no guardian ad litem shall be appointed for a minor, incapacitated or protected person who takes as much or more under the will than by intestacy.~~

~~Rule 16. Guardians or Conservators — Settlement of Personal Injury Claims~~

~~Entire rule repealed effective November 16, 1995.~~

Rule 16. Court Approval of Settlement of Claims of Persons Under Disability

~~(a) This rule sets forth procedures by which a court considers requests for~~ Where a guardian, conservator, or next friend seeks court approval of the proposed settlement of a ward's claims on behalf, such approval shall be sought by way of a minor or an adult in need of protection pursuant to §15-14-401, et seq., C.R.S. (“respondent”) ~~petition for approval of proposed settlement. For purposes of this~~ In connection with a proceeding brought under this rRule, the court shall term “ward” includes a protected person, an incapacitated person, or a person under disability.

(1) Consider the reasonableness of the proposed settlement and enter appropriate orders as the court finds will serve the best interests of the respondent;

(2) Ensure that the petitioner and respondent and/or his/her legal guardian/fiduciary understands the finality of the proposed settlement;

(3) Adjudicate the allowance or disallowance, in whole or in part, of any outstanding liens and claims against settlement funds, including attorney fees; and

(4) Make protective arrangements for the conservation and use of the net settlement funds, in the best interests of the respondent, taking into account the nature and scope of the proposed settlement, the anticipated duration and nature of the respondent's disability, the cost of any future medical treatment and care required to treat respondent's disability, and any other relevant factors, all pursuant to §15-14-101, et seq., C.R.S.

~~(b) Venue for a~~ The petition brought under this rule shall request the approval of the proposed settlement as being in accordance with §15-14-108(3), C.R.S. the ward's best interests and shall include the following information or an explanation of why the information is not applicable:

(c) An interested person seeking a court order approving the proposed settlement of a claim on behalf of a respondent shall petition for approval of any proposed settlement in accordance with the procedures set forth in this rule.

(d) The petition for approval of settlement shall include the following information:

(1) Facts.

A. The respondent's ward's name and address;

B. The respondent's ward's date of birth;

C. If the respondent is a minor, tThe name(s) and contact information address(es) of the ward's

~~parent(s) each legal guardian. If the identity or contact information of any legal guardian ward is unknown, or if any parental rights have been terminated, the petition shall so state a minor;~~

D. ~~The name(s), and contact information of the respondent's spouse, partner in a civil union, or if the respondent has none, an adult with whom address(es) and description(s) of type of the respondent has resided for more than six months within one year before the filing of the petition; ward's custodian or court appointed fiduciary, if any; and~~

E. ~~The name and contact information of any guardian, conservator, custodian, trustee, agent under a power of attorney, or any other court appointed fiduciary for the respondent. A description of the purpose of any court appointed fiduciary shall be included; and~~

~~FE.~~ The date and a brief description of ~~the nature of the event or transaction giving rise to the claim.~~

(2) Claims and Liabilities.

A. ~~The contact information name and address of each party against whom the respondent is or may be liable for the ward's~~ have a claim;

B. ~~The basis for each of for the ward's~~ respondent's claims of liability;

C. ~~The defenses, and/or counterclaims if any, to the respondent's~~ ward's claims; and

D. ~~The name and contact information address of each insurance company involved in the claim, the type of policy, the policy limits, and the identity of the who was insured under the policy, and its limits.~~

(3) Damages.

A. A description of the respondent's injuries ~~The nature of the ward's claim;~~

B. The amount nature of time missed by the respondent from school or employment and a summary of lost income resulting from the respondent's injuries, if any, sustained by the ward;

C. A summary ~~The amount of time, if any damage to respondent's property, missed by the ward from school or employment;~~

D. A summary of any ~~the expenses, if any, incurred for medical or other care provider services as a result of the respondent's~~ ward's injuries; and

E. The identification A summary of any person, organization, institution, or state or federal agency that paid income from work lost by the ward, if any, of the respondent's expenses and as a summary result of expenses that have been or will be paid by each particular source. the ward's injuries;

F. ~~The nature of the damage, if any, to the ward's property;~~

G. ~~A summary of the expenses, if any, incurred as a result of any property damage to the ward's property; and~~

H. ~~The identification of the source of funds for payment of any of the ward's expenses and a summary of what expenses have been paid and will be paid by each particular source.~~

(4) Medical Status.

A. A description of respondent's current condition including but not limited to ~~The nature and extent of any disability, disfigurement, or physical or psychological impairments~~ the ward's injuries and any current treatments and/or therapies ~~the ward's present condition; and~~

B. An explanation of respondent's prognosis and any anticipated treatments and/or therapies. ~~The nature, extent, and duration of the treatment required or anticipated as a result of the ward's injuries;~~

C. ~~The prognosis of the ward's condition, including, when applicable, the nature and extent of any disability, disfigurement, or impairment; and~~

D. ~~A written statement by the ward's physician or other health care provider shall be attached setting forth the information requested by A, B, and C above.~~

(5) Status of Claims.

A. ~~For this claim and any other related claim that is relevant to the event or transaction giving rise to the claim, the status of the claim and, if any civil action(s) has~~ ve ~~been filed, the court, case number, and parties; and~~

B. ~~For this claim and any other related claim, that is relevant to the event or transaction giving rise to~~ identify the amount of the claim, and contact information ~~the name and address of any party having a subrogation right including and any governmental state or federal agency paying or planning to pay benefits to or for the ward respondent. A list of all subrogation claims and/or liens against the settlement proceeds shall be included as well as a summary of efforts to negotiate them.~~

(6) Proposed Settlement and Proposed Disposition of Settlement Proceeds.

A. ~~The name and address~~ contact information ~~of any party/entity~~ the person(s) ~~making and receiving payment under the proposed settlement;~~

B. ~~The proposed settlement amount, of the settlement, terms of payment terms, and proposed disposition, including any restrictions on the accessibility of the funds and whether any proceeds will be deposited into a restricted account;~~

C. ~~The details of~~ If any structured settlement, in whole or in part, the type of arrangement (e.g., annuity or insurance policy), the name of the annuity, or insurance policy company, or trust instrument, including the terms, present value, discount rate, payment structure and the identity rating of the trustee annuity or entity administering such arrangements insurance company, and the present cash value and cost of the annuity or insurance;

D. ~~The amount of court costs, legal expenses, and attorneys' fees~~ and costs being requested to be paid from (attach a copy of attorney fee agreement and billings) incurred as a result of the settlement proceeds transaction or event giving rise to the ward's claim; and

E. Whether there is a need for continuing court supervision, the appointment of a fiduciary; or the continuation of an existing fiduciary appointment. The court may appoint a conservator, trustee, or other fiduciary to manage the settlement proceeds or make other protective arrangements in the best interests of the respondent.

(7) ~~Exhibits~~ Attachments.

A. The petition shall list each of the attachments to exhibit filed with the petition; ~~and~~

B. ~~A copy of the proposed settlement agreement and proposed release~~ The following exhibits shall be attached to the petition:-

(i) A written statement by the respondent's physician or other health care provider. The statement shall set forth the information required by subparagraph 4, A and B of this rule and comply with C.R.P.P. 27.1 unless otherwise ordered by the court;

(ii) Relevant legal fee agreements, statement of costs and billing records and/or billing summary; and

(iii) Any proposed settlement agreements and proposed releases.

C. The court may continue, vacate, or place conditions on approval of the proposed settlement in response to petitioner's failure to include such exhibits.

~~(e) Notice.~~ Notice of the hearing and a copy of the on a petition (except as otherwise ordered by the court in any specific case), to settle a claim on behalf of persons under disability shall be given in accordance with C.R.S. § 15-14-404(1) and (2), C.R.S. See also C.R.S. § 15-14-406 and C.R.P.P. 8.1.

(f) An appearance hearing is required for petitions brought under this rule.

(g) The petitioner, respondent, and any proposed fiduciary shall attend the hearing, unless excused by the court prior to the hearing for good cause.

(h) The court may appoint a guardian ad litem, attorney, or other professional to investigate, report to the court, or represent the respondent.

Rule 17. Heirs and Devisees – Unknown, Missing, or Nonexistent – Notice to Attorney General

In a decedent's estate, whenever it appears that there is an unknown heir or devisee, or that the address of any heir or devisee is unknown, or that there is no person qualified to receive a devise or distributive share from the estate, the personal representative shall promptly notify the attorney general. Thereafter, the attorney general shall be given the same information and notice required to be given to persons qualified to receive a devise or distributive share. When making any payment to the state treasurer of any devise or distributive share, the personal representative shall include a ~~certified~~ copy of the court order obtained under ~~section~~ §15-12-914, C.R.S.

RULE 18. Foreign Personal Representatives ~~and Conservators and Conservators~~

~~(a) Estates of Decedents~~

~~(a)~~ After the death of a nonresident decedent, copies of the documents evidencing appointment of a domiciliary foreign personal representative may be filed as provided in ~~Section~~ §15-13-204, C.R.S. Such documents must have been certified, exemplified or authenticated by the appointing foreign court not more than sixty days prior to filing with a Colorado court, and shall include copies of all of the following that may have been issued by the foreign court:

~~(1)~~A. The order appointing the domiciliary foreign personal representative, and

~~(2)~~B. The letters or other documents evidencing or affecting the domiciliary foreign personal representative's authority to act.

~~(b)~~ Upon filing such documents and a sworn statement by the domiciliary foreign personal representative stating that no administration, or application or petition for administration, is pending in Colorado, the court shall issue its Certificate of Ancillary Filing, ~~substantially conforming in form and content to~~ JDF 930.

Rule 18.1. Foreign Conservators

~~(b) Conservatorships~~

~~(a)~~ After the appointment of a conservator for a person who is not a resident of this state, copies of documents evidencing the appointment of such foreign conservator may be filed as provided in ~~Section~~ §15-14-433 C.R.S. Such documents must have been certified, exemplified or

authenticated by the appointing foreign court not more than sixty days prior to filing with a Colorado court, and shall include copies of all of the following:

(1)A. The order appointing the foreign conservator,

(2)B. The letters or other documents evidencing or affecting the foreign conservator's authority to act, and

(3)C. Any bond of foreign conservator.

(b2) Upon filing such documents and a sworn statement by the foreign conservator stating that a conservator has not been appointed in this state and that no petition in a protective proceeding is pending in this state concerning the person for whom the foreign conservator was appointed, the court shall issue its Certificate of Ancillary Filing, substantially conforming in form and content to JDF 892.

Rule 19. [NO CHANGE]

Rule 20. ~~Security of Files~~ Under Seal

For good cause shown, the court may order all or any part of a file to be placed under seal security, in which event the clerk of the court shall maintain it in an appropriate security file. Files kept under seal security may be examined only when approved and by counsel of record unless otherwise ordered by the court.

Rule 21. ~~Withdrawal of Documents and Exhibits~~

~~Except as provided in Rule 22 of these rules for deposited wills, the documents and exhibits filed with the court shall not be withdrawn without order of the court. As a condition of withdrawal, the court may require a true copy of the withdrawn document to be retained in the court file.~~

Rule 22. Wills – Deposit for Safekeeping and Withdrawals

A will of a living person tendered to the court for safekeeping in accordance with Section §15-11-515, C.R.S.; shall be placed in a “Deposited Will File”; and a certificate of deposit issued. In the testator's lifetime, the deposited will may be withdrawn only in strict accordance with the statute. After the testator's death, a deposited will shall be transferred to the “Lodged Will File”.

Rule 23. ~~Wills—Venue—Transfer~~ of Lodged Wills to Other Jurisdiction

Upon a showing by petition that proper venue is in a county other than that of the court in which a will of a decedent is lodged, the court may order the will transferred to the proper district or probate court within this state, or to the proper court of probate without this state. If a petition under §15-11-516, C.R.S. to transfer a will is filed and if the requested transfer is to a court within this state, no notice need be given; if the requested transfer is to a court without this state, notice shall be given to the person nominated as personal representative and such other persons as the court may direct. No filing fee shall be charged for this petition action, but the petitioner shall pay ~~advance the cost~~ any other costs of photocopying the will for the court file, and the cost of sending transferring the original will by certified mail, or its equivalent, to the proper court.

Rule 24. Oral Agreements

~~No oral agreements of counsel of parties concerning the progress, management, or disposition of any matter pending in the court shall be enforced unless made in open court and approved by the court.~~

Rule 25. Jury Trial — Demand and Waiver

If a jury trial is permitted authorized by law, any jury demand therefor shall be filed with the court, and the appropriate fee paid, before the matter is first set for trial. Failure to make such a demand and/or pay fee shall constitutes a waiver of trial by jury.

Rule 25.1. Informal Probate Separate — Writings

The existence of one or more separate written statements disposing of tangible personal property under the provisions of ~~Section~~ §15-11-513, C.R.S.; shall not cause informal probate to be declined under the provisions of ~~Section~~ §15-12-304, C.R.S.

Rule 25.2. Proof of Will in Formal Testacy—Uncontested Case

~~If a petition in a formal testacy proceeding is unopposed and the conditions of Section 15-12-409, C.R.S., have been met, the court may order probate or intestacy on the basis of the pleadings. If the court requires additional proof of the matters necessary to support the order sought, it shall state on the record its reasons therefor.~~

Rule 26. Fiduciaries—Appointment of Nonresident — Power of Attorney

The court or registrar may appoint as fiduciary ~~A~~ any person, resident or nonresident of this state, who is qualified to act under the Colorado Probate Ceode may be appointed as a fiduciary. When appointment is made of a nonresident, the person appointed shall file an irrevocable power of attorney designating the clerk of the court, and the clerk's his successors in office, as the person upon whom all notices and process issued by a court or tribunal in the state of Colorado may be served, with like effect as personal service on such fiduciary, in relation to any suit, matter, cause, hearing, or thing, affecting or pertaining to the ~~estate, trust, or guardianship~~ proceeding, in regard to which the fiduciary was appointed. The power of attorney required by the provisions of this rule shall set forth the address of the nonresident fiduciary, ~~and such fiduciary shall promptly notify the court in writing of any change of such address. It shall be the duty of the clerk to~~ shall promptly forward forthwith, by registered or certified mail, any method that provides delivery confirmation, any notice or process served upon him or her ~~by reason thereof,~~ to the fiduciary named therein at the address mentioned in such power of attorney or subsequently furnished ~~last provided in writing~~ to the clerk in writing. The clerk shall make and file a certificate of service that he has performed the acts required by this Rule and he shall include the dates of his compliance. Such s Service on a nonresident fiduciary, under this Rule, shall be deemed complete fourteen ~~ten~~ days after the mailing thereof. The clerk may require the person issuing or serving such notice or process to furnish sufficient copies, ~~thereof to have available one copy for the fiduciary and one to be retained by the clerk;~~ and the person desiring service shall advance the costs and mailing expenses of the clerk.

Rule 27. [RESERVED] Appointment of Special Administrator or Special or Temporary Conservator

~~Repealed effective November 16, 1995.~~

Rule 27.1. Physicians' Letters or Professional Evaluation

Any physician's letter or professional evaluation utilized as the evidentiary basis to support a petition for the appointment of a guardian, conservator or other protective order under ~~Section~~ Title 15, Article 14, 15-14-401 et seq., C.R.S., unless otherwise directed by the court, should contain: (1) a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations, if any; (2) an evaluation of the respondent's mental and ~~physeal~~ physical condition and, if appropriate, educational potential, adaptive behavior, and social skills; (3) a prognosis for improvement and recommendation as to the appropriate treatment or habilitation plan; and (4) the date of any assessment or examination upon which the report is based.

Rule 28. Inventory with Financial Plan – Conservatorships -- Date Due – Contents -- Oath or Affirmation

~~Unless the deadline for filing is extended in a written order for good cause shown, within 60 days after the Order Appointing Conservator is entered by the Court, each Conservator shall file with the Court and serve on every interested person an Inventory with Financial Plan. Each Inventory~~

with Financial Plan shall include a list and value of all assets in which the protected person has an interest and shall identify all projected income and expenses of the protected person. Inventories with Financial Plans prepared by Conservators shall include their oath or affirmation that it is complete and accurate so far as they are informed on the date of filing. In the event that the assets, their value, the income or the expenses change in any material way, an Amended An iInventory with Financial Plan shall must be promptly filed with the cCourt and served on all interested persons. Any Inventory with Financial Plan and any or Amended Inventory with Financial Plan (the "Plan") filed with the cCourt shall be deemed to include a motion or pPetition for aApproval of the plan. The request for approval of the plan may be set on the nonappearance docket, the appearance docket or not set for hearing and treated as a motion under C.R.C.P. 121 thereof and may be acted on by the Court with or without the filing of a separate Petition requesting that the Court review and accept or approve the Inventory with Financial Plan.

Rule 29. Bond and Surety

~~(a) No bond shall be required of a fiduciary unless the statute or the court requires the filing of a secured bond. If a secured bond is required by statute, but the court waives surety or the registrar excuses bond, no bond shall be required.~~

~~(b) A fiduciary shall file aAny required bond shall be filed, or complete other arrangements for security under the statute completed, before letters are issued. Thereafter, the fiduciary shall increase the amount of bond or other security when the fiduciary receives personal property not previously covered by any bond or other security.~~

Rule 30. Decedents' Estates—Supervised Administration -- Scope of Supervision – Inventory and Accounting

In directing the activities of a supervised personal representative of a decedent's estate, the court shall order only as much supervision as in its judgment is necessary, after considering the reasons for the request for supervised administration, or circumstances thereafter arising. If supervised administration is ordered, the personal representative shall file with the court an inventory, annual interim accountings, and a final accounting, unless otherwise ordered by the court.

Rule 30.1. Conservatorship — Closing

~~Unless otherwise ordered by the Court, a Petition to Terminate Conservatorship and Schedule of Distribution (JDF 888) shall be accompanied by a final Conservator's Report (JDF 885). Notice of the hearing on a petition for termination of conservatorship shall be given to The protected person ~~or minor~~, if then living, and all other interested persons, as defined by law or by the cCourt pursuant to § 15-10-201(27), C.R.S. if any, ~~shall be given notice of the hearing on the petition, which such hearing may be held pursuant to Rule 8.8.~~~~

Rule 31. Accountings and Reports

~~An fiduciary accounting or report prepared by a personal representative, conservator, trustee or other fiduciary shall contain sufficient information to put interested persons on notice as to all significant transactions affecting administration during the accounting period.~~

~~(a) All required accountings shall show with reasonable detail the receipts and disbursements for the period covered by the accounting or report, shall list the assets remaining at the end of the period, and shall describe all other significant transactions affecting administration during the accounting or report period. Accountings shall be typed or prepared by automated data processing. In any specific case, for good cause shown, the cCourt may require the fiduciary to produce such vouchers or other supporting evidence of payment as the court may deem sufficient for any and all transactions.~~

~~(b) Accountings and reports that substantially conform to JDF 942 for decedents' estates, JDF 885 for conservatorships and to the 1984 version of the Uniform Fiduciary Accounting Standards as recommended by the Committee on National Fiduciary Accounting Standards shall be considered acceptable as to both content and format for purposes of this rule.~~

Rule 31.1. Conservator's Report (Minors and Adults)

~~A Conservator's Report shall contain sufficient information to put the interested persons on notice as to all significant transactions affecting administration during the accounting/reporting period. Conservator's Reports that substantially conform to JDF 885 shall be considered acceptable as to both content and format for purposes of this Rule.~~

~~(a) A Conservator's Report filed shall show with reasonable detail the receipts and disbursements for the period covered in the report, shall list the assets remaining at the end of the period, and shall describe all other significant transactions affecting administration during the reporting period. In any specific case, for good cause shown, the court may require the fiduciary to produce such invoices, billing statements, or other supporting evidence as the Court requires.~~

~~(b) A Conservator shall keep records of the administration of the estate and make them available for examination on reasonable request of an interested person.~~

~~(c) If the Court appoints a suitable person pursuant to § 15-14-420(3), C.R.S. to investigate, review, and audit such accountings/reports, such costs may be the responsibility of the estate, or as ordered by the Court.~~

~~(d) Interested persons may file a pleading objecting to the appropriateness of disbursements, the compensation of fiduciaries, attorneys, and others and the distribution of estate assets.~~

Rule 31.2. Guardian's Report (Minors and Adults)

A Guardian's Report (JDF 834 or JDF 850) shall contain sufficient information to put the interested persons on notice as to all significant information regarding the welfare and care of the protected person during the reporting period.

Rule 32. Reports — Multiple Minors or Beneficiaries

When the same person is conservator or guardian of two or more related minors he/she shall file a separate report for each minor or, with court approval, he/she may file a combined report which shows the interest of each minor in the receipts, disbursements, and other transactions reported therein and the amount of money or other property held for each. This Rule shall also apply to a trustee of a court supervised trust for two or more beneficiaries unless the trust provides otherwise.

Rule 33. Objections to Accounting, Final Settlement, Distribution or Discharge -- Scope of Court Review in Absence of Objection

If any interested person desires to object to any accounting, to the final settlement or distribution of an estate, or to the discharge of a fiduciary, or to any other related matter, the interested person he shall file his specific written objections at or before the hearing thereon, and shall furnish all interested persons the fiduciary with a copy of the objections.

(a) If the matter is uncontested and set for a non-appearance hearing, any interested person wishing to object must file specific written objections with the court at or before the hearing, and shall provide copies of the specific written objections to all interested persons. An objector must set an appearance hearing in accordance with Rule 8.8.

(b) If the matter is set for an appearance hearing, the objector must file specific written objections ten (10) or more days before the scheduled hearing. If the objector fails to provide copies of the specific written objections within the required time frame, the petitioner is entitled to a continuance of the hearing.

In formal proceedings to terminate decedents' estates, the court shall not inquire into the appropriateness of payments of claims against the estate or expenses of administration, provided notice has been given in accordance with Rule 8.3 and absent timely objection filed by an interested person. The court may review such matters as it determines necessary, on a case-by-case basis and for good cause shown.

Rule 33.1. Compensation of Personal Representatives and Attorneys

~~Personal representatives and attorneys representing an estate are entitled to reasonable compensation. In setting attorneys' fees, the time expended by personnel performing paralegal functions under the direction and supervision of the attorney may be considered as an item separate from and in addition to the time spent by the attorney. In setting other fees, the time expended by personnel performing paraprofessional functions may be considered as a separate item.~~

~~In the absence of unusual circumstances, the court may review such fees in decedents' estates only (1) upon petition or motion of an interested person or (2), in the case of formal proceedings terminating estates, if notice has not been given in accordance with Rule 8.3. If the court on its own motion in a decedent's estate orders a review of personal representatives' fees or attorneys' fees, such order shall state the unusual circumstances which make such a review advisable.~~

Rule 33.2. Informal Closings

~~In unsupervised administration proceedings, a personal representative may close an estate by verified statement. In any specific case, the court may prohibit such a closing only for good cause shown.~~

Rule 33.3. Court Order Supporting Deed of Distribution

When a court order is requested to vest title in a distributee free from the rights of other persons interested in the estate, such order shall not be granted ex parte, but shall require either the stipulation of all interested persons or notice and hearing.

Note on Use: Note that Colorado Bar Association Real Estate Title Standard 11.1.7 requires a court order only in the narrow case of vesting title in a distributee free from the rights of all other persons interested in the estate to recover the property in case of any improper distribution. Such a court order is not required to vest merchantable title in a purchaser for value from or a lender to such a distributee nor is the order required to vest merchantable title in a purchaser for value from or a lender to a transferee from such distributee.

Rule 34. Delegation of Powers to Clerk and Deputy Clerk

(a) In addition to duties and powers exercised as registrar in informal proceedings, the court by written order may delegate to the clerk or deputy clerk any one or more of the following duties, powers and authorities to be exercised under the supervision of the court:

- (1) To appoint fiduciaries and to issue letters, if there is no written objection to the appointment or issuance on file;
- (2) To set a date for hearing on any matter and to vacate any such setting;
- (3) To issue dedimus to take testimony of a witness to a will;

(4) To approve the bond of a fiduciary;

(5) To appoint a guardian ad litem, subject to the provisions of law and Rule 15 herein;

(6) To certify copies of documents filed in the court;

(7) To order a deposited will lodged in the records and to notify the named personal representative;

(8) To enter an order for service by mailing or by publication where such order is authorized by law or by the Colorado Rules of Civil Procedure;

(9) To correct any clerical error in documents filed in the court;

(10) To appoint a special administrator in connection with the claim of a fiduciary;

(11) To order a will transferred to another jurisdiction pursuant to Rule 23 herein;

(12) To admit wills to formal probate and to determine heirship, if there is no objection to such admission or determination by any interested person;

(13) To enter estate closing orders in formal proceedings, if there is no objection to entry of such order by any interested person;

(14) To issue a citation to appear to be examined regarding assets alleged to be concealed, etc., pursuant to Section §15-12-723, C.R.S.;

(15) To order an estate reopened for subsequent administration pursuant to Section §15-12-1008, C.R.S.;

(16) To enter similar orders upon the stipulation of all interested persons.

(b) All orders made and proceedings had by the clerk or deputy clerk under this rule shall be made of permanent record as provided for acts of the court done by the judge.

(c) Any person in interest affected by an order entered or action taken under the authority of this rule may have the matter heard by the judge by filing a motion for such hearing within fourteen ~~fifteen~~ days after the entering of the order or the taking of the action. Upon the filing of such a motion, the order or action in question shall be vacated and the motion placed on the calendar of the court for as early a hearing as possible, and the matter shall then be heard by the judge. The judge may, within the same fourteen ~~fifteen~~ -day period referred to above, vacate the order or action on the court's own motion. If a motion for hearing by the judge is not filed within the fourteen ~~fifteen~~ -day period, or the order or action is not vacated by the judge on the court's own motion within such period, the order or action of the clerk or deputy clerk shall be final as of its date subject to normal rights of appeal. The acts, records, orders, and judgments of the clerk or

deputy clerk not vacated pursuant to the foregoing provision shall have the same force, validity, and effect as if made by the judge.

Rule 35. Rules of Court

(a) **Local rules.** Courts may make rules for the conduct of probate proceedings not inconsistent with these rules. Copies of all such rules shall be submitted to the [Colorado](#) Supreme Court for its approval before adoption, and, upon their promulgation, a copy shall be furnished to the office of the state court administrator to the end that all rules made as provided herein may be published promptly and that copies may be available to the public.

(b) **Procedure not otherwise specified.** If no procedure is specifically prescribed by rule or statute, the court may proceed in any lawful manner not inconsistent with these rules of probate procedure and the Colorado Probate Code and shall look to the Colorado Rules of Civil Procedure and to the applicable law if no rule of probate procedure exists.

Rule 36. ~~Reserved~~ Title and Citation

~~Repealed December 5, 1996, effective January 1, 1997.~~

Rule 37. Discovery

(a) This rule establishes the provisions and structure for discovery in all proceedings seeking relief under Title 15, C.R.S. Nothing in this rule shall alter the court's authority and ability to direct proportional limitations on discovery or to impose a case management structure or enter other discovery orders. Upon appropriate ~~m~~Motion or *sua sponte*, the court may apply the [Colorado](#) Rules of Civil Procedure in whole or in part, may fashion discovery rules applicable to specific proceedings and may apply different discovery rules to different parts of the proceeding.

(b) Unless otherwise ordered by the court, the parties may engage in the discovery provided by C.R.C.P. 27 through 37. Any discovery conducted ~~under~~in Title 15 proceedings prior to the issuance of a case management or other discovery order shall be subject to C.R.C.P. 26(a)(2)(A); 26(a)(2)(B); 26(a)(4) and (5); and 26(b) through (g). However, due to the unique, expedited and often exigent circumstances in which probate proceedings take place, C.R.C.P. 16, 16.1, 16.2 and 26(a)(1); do not apply to probate proceedings unless ordered by the court or stipulated to by the parties.

(c) C.R.C.P. 45 and 121, ~~Section~~§1-12; are applicable to proceedings under Title 15.

(d) Notwithstanding subsections (a) through (c) of this ~~r~~Rule 37, subpoenas and discovery directed to a respondent in proceedings under Part 3 of Article 14 of Title 15, shall not be permitted without leave of court, or until a petition for appointment of a guardian has been granted under ~~Section~~§15-14-311, C.R.S.