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**HB-1133**  
(Rep. Massey / Sen. Tochtrop)

***Please Support Amendments to the Colorado Foreclosure Protection Act***

In 2006, Colorado was considered a playground for mortgage fraud and predatory activities. Since then, Colorado is no longer the same environment. Colorado has enacted numerous laws to combat mortgage fraud, and regulate mortgages and foreclosures activities. Furthermore, the landscape has changed regarding what type of situation a homeowner may find themselves in.

**The Act hurts the sellers that it was designed to protect.**

The Act was intended to protect Sellers who are not in a position to protect themselves. However, it has actually had the opposite effect. Buyers subject to the Act may not consider buying a property subject to the Act, due to the additional cost and risk involved. Rather, buyers will wait until the lender forecloses on the property and buy it from them directly – leaving the Seller with the harm caused by the Act.

**The definition of Equity Purchaser is vague and ambiguous, confusing buyers and rendering the protections of the Act ineffective.**

Various provisions in the Act are unclear and create uncertainty of when the Act applies. The Act is essentially unenforceable against Equity Purchasers because of the Act's ambiguity. However, because of the risk to a buyer for not complying with the statute, the Act has a chilling effect on buyers interested in purchasing distressed properties.

**Short Sales should be exempt from the Act.**

The primary protection given to the Seller under the Act, a 3-day right to rescind the contract, is insignificant in short sales since the Colorado Real Estate Commission's New Short Sale Addendum (not available when the Act was passed) allows Seller to terminate the contract any time before lender acceptance.

**The Act's unintended consequences discriminate against sellers who do not speak English as their principal language.**

The unintended consequence is the exact opposite effect as the legislature intended. If an Equity Purchaser wants to buy the property of a non-English speaking person, an attorney must draft the contract and translate it into the principal language of the seller. Most buyers are not willing to spend the money or are unable to find an attorney to draft the contract, thereby shrinking the buyer-pool and making it harder for non-English speaking persons to sell their homes.

**Please support this legislation to give Sellers of real estate the protections they need.**

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## **Summary of Amendments Offered by Rep. Massey**

Instead of repealing Subpart 3 of the Colorado Foreclosure Protection Act (Act), the amendments would make modifications to existing language within the Act. These amendments are a result of collaboration between the Colorado Association of REALTORS®, the Attorney General's office, Division of Real Estate, Public Trustees, and various lenders represented by Castle, Meinhold & Stawiarski.

### **SECTION 1:**

#### **Clarify definition of "Equity Purchaser"**

Clarifies the definition of "equity purchaser" to mean any person purchasing a residence in foreclosure that will not be their primary residence.

Strikes sub-paragraph (2) (a) of the Act since the language is now used in the new definition of "equity purchaser"

#### **Exempts Short Sales from the Act**

Adds sub-paragraph (2) (h). The Short Sale Addendum is designed to offer warnings to sellers of a residence in foreclosure encouraging them to seek legal counsel in an effort to protect them from fraud.

### **SECTION 2:**

#### **Modifies definition of a "Residence in Foreclosure"**

Changes definition of residence in foreclosure for equity purchasers.

**Defines a short sale transaction.**

### **SECTION 3:**

Conforming language changes for Foreclosure consulting contract.

### **SECTION 4:**

Just requires that a contract be in 12-point font and be legible, instead of 12-point bold-faced type.

### **SECTION 5:**

#### **Non-english speaking disclosure**

An equity purchaser is required to provide the disclosure in a home owner's principal language. The disclosure will read:

THIS TRANSACTION INVOLVES IMPORTANT AND COMPLEX LEGAL CONSEQUENCES, INCLUDING YOUR RIGHT TO CANCEL THIS TRANSACTION WITHIN THREE BUSINESS DAYS FOLLOWING THE DATE YOU SIGNED THIS CONTRACT. YOU SHOULD CONSULT WITH AN ATTORNEY OR SEEK ASSISTANCE FROM A HOUSING COUNSELOR BY CALLING THE COLORADO FORECLOSURE HOTLINE.

### **SECTION 6:**

#### **Requires full disclosure by an Equity Purchaser if the property will be sold subsequent to a short sale**

Adds Section 6-1-1121 to Subpart 3 of the Act. The purpose of this amendment is to fully disclose to the seller and the lender any subsequent buyer that has been lined up to buy the property after a Short Sale has been transacted. 38-35-125, C.R.S. deals with Good Funds.