

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0676.01 Yelana Love x2295

HOUSE BILL 26-1089

HOUSE SPONSORSHIP

Espenoza,

SENATE SPONSORSHIP

Snyder,

House Committees

Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MORTGAGE MODIFICATIONS, AND, IN CONNECTION**
102 **THEREWITH, ENACTING THE "UNIFORM MORTGAGE**
103 **MODIFICATION ACT".**

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://leg.colorado.gov>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Uniform Mortgage Modification Act", drafted by the Uniform Law Commission. The bill provides that, in the event that a mortgage is modified:

- The mortgage continues to secure the obligation as

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

- modified;
- The modification does not affect the priority of the mortgage;
- A mortgage retains its priority regardless of whether a modification agreement is recorded; and
- The modification is not a novation.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 40.5 to
3 title 38 as follows:

ARTICLE 40.5

Uniform Mortgage Modification Act

38-40.5-101. Short title.

7 THIS ARTICLE 40.5 MAY BE CITED AS THE "UNIFORM MORTGAGE
8 MODIFICATION ACT".

38-40.5-102. Definitions.

10 IN THIS ARTICLE 40.5:

11 (1) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING
12 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL,
13 ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

14 (2) "FINANCIAL COVENANT" MEANS AN UNDERTAKING TO
15 DEMONSTRATE AN OBLIGOR'S CREDITWORTHINESS OR THE ADEQUACY OF
16 SECURITY PROVIDED BY AN OBLIGOR.

17 (3) "MODIFICATION" INCLUDES CHANGE, AMENDMENT, REVISION,
18 CORRECTION, ADDITION, SUPPLEMENTATION, ELIMINATION, WAIVER, AND
19 RESTATEMENT.

20 (4) "MORTGAGE":

21 (A) MEANS AN AGREEMENT THAT CREATES A CONSENSUAL
22 INTEREST IN REAL PROPERTY TO SECURE PAYMENT OR PERFORMANCE OF

1 AN OBLIGATION, REGARDLESS OF:

2 (i) HOW THE AGREEMENT IS DENOMINATED, INCLUDING A
3 MORTGAGE, DEED OF TRUST, TRUST DEED, SECURITY DEED, INDENTURE,
4 AND DEED TO SECURE DEBT; AND

5 (ii) WHETHER THE AGREEMENT ALSO CREATES A SECURITY
6 INTEREST IN PERSONAL PROPERTY; AND

7 (B) DOES NOT INCLUDE AN AGREEMENT THAT CREATES A
8 CONSENSUAL INTEREST TO SECURE A LIABILITY OWED BY A UNIT OWNER
9 TO A CONDOMINIUM ASSOCIATION, OWNERS' ASSOCIATION, OR
10 COOPERATIVE HOUSING ASSOCIATION FOR ASSOCIATION DUES, FEES, OR
11 ASSESSMENTS.

12 (5) "MORTGAGE MODIFICATION" MEANS MODIFICATION OF:

13 (A) A MORTGAGE;

14 (B) AN AGREEMENT THAT CREATES AN OBLIGATION, INCLUDING A
15 PROMISSORY NOTE, LOAN AGREEMENT, OR CREDIT AGREEMENT; OR

16 (C) AN AGREEMENT THAT CREATES OTHER SECURITY OR CREDIT
17 ENHANCEMENT FOR AN OBLIGATION, INCLUDING AN ASSIGNMENT OF
18 LEASES OR RENTS OR A GUARANTY.

19 (6) "OBLIGATION" MEANS A DEBT, DUTY, OR OTHER LIABILITY
20 SECURED BY A MORTGAGE.

21 (7) "OBLIGOR" MEANS A PERSON THAT:

22 (A) OWES PAYMENT OR PERFORMANCE OF AN OBLIGATION;

23 (B) SIGNS A MORTGAGE; OR

24 (C) IS OTHERWISE ACCOUNTABLE, OR WHOSE PROPERTY SERVES AS
25 COLLATERAL, FOR PAYMENT OR PERFORMANCE OF AN OBLIGATION.

26 (8) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
27 NONPROFIT ENTITY, GOVERNMENT OR GOVERNMENTAL SUBDIVISION,

1 AGENCY, OR INSTRUMENTALITY OR OTHER LEGAL ENTITY.

2 (9) "RECOGNIZED INDEX" MEANS AN INDEX TO WHICH CHANGES IN
3 THE INTEREST RATE MAY BE LINKED THAT IS:

4 (A) READILY AVAILABLE TO, AND VERIFIABLE BY, THE OBLIGOR;
5 AND

6 (B) BEYOND THE CONTROL OF THE PERSON TO WHOM THE
7 OBLIGATION IS OWED.

8 (10) "RECORD", USED AS A NOUN, MEANS INFORMATION:

9 (A) INSCRIBED ON A TANGIBLE MEDIUM; OR

10 (B) STORED IN AN ELECTRONIC OR OTHER MEDIUM AND
11 RETRIEVABLE IN PERCEIVABLE FORM.

12 (11) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR
13 ADOPT A RECORD:

14 (A) EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

15 (B) ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN
16 ELECTRONIC SYMBOL, SOUND, OR PROCESS.

17 **38-40.5-103. Scope.**

18 (a) EXCEPT AS PROVIDED IN SUBSECTION (c) OF THIS SECTION, THIS
19 ARTICLE 40.5 APPLIES TO A MORTGAGE MODIFICATION.

20 (b) THIS ARTICLE 40.5 DOES NOT AFFECT:

21 (1) LAW GOVERNING THE REQUIRED CONTENT OF A MORTGAGE;
22 (2) A STATUTE OF LIMITATIONS OR OTHER LAW GOVERNING THE

23 EXPIRATION OR TERMINATION OF A RIGHT TO ENFORCE AN OBLIGATION OR
24 A MORTGAGE;

25 (3) A RECORDING STATUTE;

26 (4) A STATUTE GOVERNING THE PRIORITY OF A TAX LIEN OR OTHER
27 GOVERNMENTAL LIEN;

(5) A STATUTE OF FRAUDS OR ARTICLE 71 OF TITLE 24; OR

(6) EXCEPT AS PROVIDED IN SECTION 38-40.5-104 (b)(8), LAW

GOVERNING THE PRIORITY OF A FUTURE ADVANCE.

(c) THIS ARTICLE 40.5 DOES NOT APPLY TO ANY OF THE FOLLOWING

MODIFICATIONS:

(1) A RELEASE OF, OR ADDITION TO, PROPERTY ENCUMBERED BY

A MORTGAGE;

(2) A RELEASE OF, ADDITION OF, OR OTHER CHANGE IN AN

OBLIGOR; OR

(3) AN ASSIGNMENT OR OTHER TRANSFER OF A MORTGAGE OR AN

OBLIGATION.

38-40.5-104. Effect of Mortgage Modification.

(a) FOR A MORTGAGE MODIFICATION DESCRIBED IN SUBSECTION

(b) OF THIS SECTION:

(1) THE MORTGAGE CONTINUES TO SECURE THE OBLIGATION AS

MODIFIED;

(2) THE PRIORITY OF THE MORTGAGE IS NOT AFFECTED BY THE

MODIFICATION;

(3) THE MORTGAGE RETAINS ITS PRIORITY REGARDLESS OF

WHETHER A RECORD OF THE MORTGAGE MODIFICATION IS RECORDED IN

THE OFFICE OF THE COUNTY CLERK

PROPERTY IS LOCATED; AND

(4) THE MODIFICATION IS NOT A NOVATION.

(b) SUBSECTION (a) OF THIS SECTION A

FOLLOWING MORTGAGE MODIFICATIONS:

(1) AN EXTENSION OF THE MATURITY DATE OF AN OBLIGATION

4 (A) A CHANGE TO A DIFFERENT INDEX THAT IS A RECOGNIZED
5 INDEX IF THE PREVIOUS INDEX TO WHICH CHANGES IN THE INTEREST RATE
6 WERE LINKED IS NO LONGER AVAILABLE;

7 (B) A CHANGE IN THE DIFFERENTIAL BETWEEN THE INDEX AND THE
8 INTEREST RATE;

9 (C) A CHANGE FROM A FLOATING OR ADJUSTABLE RATE TO A FIXED
10 RATE; OR

11 (D) A CHANGE FROM A FIXED RATE TO A FLOATING OR ADJUSTABLE
12 RATE BASED ON A RECOGNIZED INDEX;

13 (4) A CAPITALIZATION OF UNPAID INTEREST OR OTHER UNPAID
14 MONETARY OBLIGATION:

15 (5) A FORGIVENESS, FORBEARANCE, OR OTHER REDUCTION OF
16 PRINCIPAL, ACCRUED INTEREST, OR OTHER MONETARY OBLIGATION;

17 (6) A MODIFICATION OF A REQUIREMENT FOR MAINTAINING AN
18 ESCROW OR RESERVE ACCOUNT FOR PAYMENT OF AN OBLIGATION,
19 INCLUDING TAXES AND INSURANCE PREMIUMS:

20 (7) A MODIFICATION OF A REQUIREMENT FOR ACQUIRING OR
21 MAINTAINING INSURANCE:

22 (8) A MODIFICATION OF AN EXISTING CONDITION TO ADVANCE
23 FUNDS:

24 (9) A MODIFICATION OF A FINANCIAL COVENANT; AND

25 (10) A MODIFICATION OF THE PAYMENT AMOUNT OR SCHEDULE
26 RESULTING FROM ANOTHER MODIFICATION DESCRIBED IN THIS SUBSECTION

27 (b).

(c) THE EFFECT OF A MORTGAGE MODIFICATION NOT DESCRIBED IN SUBSECTION (b) OF THIS SECTION IS GOVERNED BY OTHER LAW.

38-40.5-105. Uniformity of Application and Construction.

IN APPLYING AND CONSTRUING THIS UNIFORM ACT, A COURT SHALL
CONSIDER THE PROMOTION OF UNIFORMITY OF THE LAW AMONG
JURISDICTIONS THAT ENACT IT.

38-40.5-106. Relation to Electronic Signatures in Global and National Commerce Act.

9 THIS ACT MODIFIES, LIMITS, OR SUPERSEDES THE ELECTRONIC
10 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 U.S.C. SEC.
11 7001 ET SEQ., AS AMENDED, BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE
12 15 U.S.C. SEC. 7001 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF
13 THE NOTICES DESCRIBED IN 15 U.S.C. SEC. 7003 (b).

38-40.5-107. Transitional Provision.

15 THIS ARTICLE 40.5 APPLIES TO A MORTGAGE MODIFICATION MADE
16 ON OR AFTER THE EFFECTIVE DATE OF THIS ACT REGARDLESS OF WHEN THE
17 MORTGAGE OR THE OBLIGATION WAS CREATED.