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BEFORE THE COLORADO STATE TITLE SETTING BOARD

In re Ballot Title and Submission Clause for 2011-2012 Initiative No. 84 ("Foreclosure Process")

BARBARA M. A. WALKER, Objector.

MOTION FOR REHEARING

Pursuant to C.R.S. § 1-40-107, Objector, Barbara M. A. Walker, a registered elector of the State of Colorado, by and through her legal counsel, Rothgerber Johnson & Lyons, LLP, hereby submits this Motion for Rehearing of the Title Board's April 18, 2012 decision to set the title of 2011-2012 Initiative No. 84 ("Initiative"), and states:

I. The Initiative does not fall within a single subject because it repeals multiple, loosely related, provisions of law.

The Initiative violates the single subject requirement. *See* Colo. Const., art. V § 1(5.5).

1. The Initiative is intended to require "qualified holders" to file evidence of debt, including a clear chain of recorded title and assignments, thus repealing provisions of current law allowing "qualified holders" to foreclose so long as they certify that they are entitled to enforce a debt. C.R.S. § 38-38-101(1), (6).

2. In so doing, however, the Initiative simultaneously strips all holders of the opportunity to foreclose on a debt by filing a corporate surety bond in lieu of evidence of debt. C.R.S. § 38-38-101(1)(b)(I).

Thus, although certain practices of "qualified holders," such as banks, are the target of the Initiative, its provisions necessarily affect all foreclosing parties in violation of the single subject requirement.

II. The Initiative's title is misleading because it does not reflect the plain language of the Initiative that the proponents ask the voters to enact.

At the Legislative Council Review and Comment hearing, the Initiative's proponents first stated that they intended for the Initiative to require a foreclosing party both to record with the county clerk and recorder and to file in foreclosure proceedings "competent evidence of its right to enforce a valid security interest." Then, at the Title Board Hearing, the proponents stated that the Initiative is intended merely to require a foreclosing party to file competent evidence *with its foreclosure papers*. At the April 18, 2012 Title Board hearing, the Board adopted proponents' amended position regarding the Initiative's intent and set the Initiative's title as, "An amendment

to the Colorado constitution requiring competent evidence be filed to establish a party's right to enforce a valid recorded security interest prior to deprivation of any real property in foreclosure."

However, as written, this is not what the Initiative requires. Consistent with the proponents' original position regarding intent, the plain language of proposed § 25a requires that the competent evidence *itself* be recorded with the recorder of deeds. Because courts will apply the plain language of the Initiative (if enacted), *see, e.g., CLPF-Parkridge One, LP v. Harwell Invs., Inc.*, 105 P.3d 658, 660 (Colo. 2005), the title does not accurately reflect the Initiative's effect.

A ballot title must fairly express the true intent and meaning of an initiative to avoid public confusion. C.R.S. 1-40-106(3)(b); *In re Ballot Initiative 1999-00 Nos. 245(b), 245(c), 245(d), & 245(e)*, 1 P.3d 720, 723 (Colo. 2000). Here, as noted above, the title adopts proponents' newly articulated position regarding the Initiative's requirements, which position is not supported by its plain language. Proponents were correct at the review and comment hearing: the Initiative unambiguously requires recording of competent evidence prior to foreclosure. Because the title currently states that competent evidence must be filed (presumably in foreclosure proceedings), the title must be changed to reflect that the Initiative requires recording.

WHEREFORE, Objector respectfully requests that the Title Board set Initiative 84 for rehearing pursuant to C.R.S. 1-40-107(1).

DATED: April 25, 2012.




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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2012, a true and correct copy of this **MOTION FOR REHEARING** was served on proponents via email as follows:

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