

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 16-0532.01 Duane Gall x4335

HOUSE BILL 16-1090

HOUSE SPONSORSHIP

McCann,

SENATE SPONSORSHIP

Jahn,

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CONDITIONS UNDER WHICH A PERSON MAY ASSIST**
102 **ANOTHER FOR COMPENSATION IN OBTAINING THE PROCEEDS OF**
103 **A FORECLOSURE SALE AFTER ALL LIENS HAVE BEEN SATISFIED.**

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>.)

The bill limits the premium, sometimes known as a "finder's fee", that a person may charge for offering assistance in recovering the balance of the purchase price of foreclosed property after all liens and claims against the property have been satisfied. Under current law, the public trustee must hold this balance, if any, for the benefit of the former owner

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.

HOUSE
Amended 2nd Reading
February 8, 2016

of the property for up to 5 years, and then transfer it to the state treasurer for administration under the "Unclaimed Property Act".

The bill reduces the period during which the public trustee must hold these funds from 5 years to 2 years. It also voids any contract for payment of a finder's fee during the first 6 months of the public trustee's custody of the funds and during the first 2 years of the state treasurer's custody of the funds, and caps the finder's fee at 20% of the amount recovered once these periods expire. For amounts that have been in the custody of the state treasurer for 3 years or more, the finder's fee may be up to 30%.

Additional requirements are imposed on the finder's contract, including the requirements that the contract:

- ! Is signed by the person to whom the amounts are due;
- ! Contains a description of the property and the date of the foreclosure sale;
- ! Discloses that the public trustee is obligated to disburse the funds whether or not a finder is used; and
- ! Describes the nature of the services that the finder will perform.

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

2 **SECTION 1.** In Colorado Revised Statutes, 6-1-105, **add** (1) (iii)
3 as follows:

4 **6-1-105. Deceptive trade practices.** (1) A person engages in a
5 deceptive trade practice when, in the course of the person's business,
6 vocation, or occupation, the person:

7 (iii) KNOWINGLY ENTERS INTO, OR ATTEMPTS TO ENFORCE, AN
8 AGREEMENT REGARDING THE RECOVERY OF AN OVERBID ON FORECLOSED
9 PROPERTY IF THE AGREEMENT:

10 (I) CONCERNS THE RECOVERY OF FUNDS IN THE POSSESSION OF A
11 PUBLIC TRUSTEE AND IS NOT ENFORCEABLE UNDER SECTION 38-38-111
12 (2.5), C.R.S.; OR

13 (II) CONCERNS THE RECOVERY OF FUNDS IN THE POSSESSION OF
14 THE STATE TREASURER AND IS NOT ENFORCEABLE UNDER SECTION

1 38-13-128.5, C.R.S.

2 **SECTION 2.** In Colorado Revised Statutes, 6-1-1103, **amend** (5)
3 as follows:

4 **6-1-1103. Definitions.** As used in this part 11, unless the context
5 otherwise requires:

6 (5) "Foreclosure consulting contract" means any agreement
7 between a foreclosure consultant and a home owner; EXCEPT THAT THE
8 TERM DOES NOT INCLUDE AN AGREEMENT DESCRIBED IN SECTION
9 38-13-128.5 OR 38-38-111 (2.5), C.R.S.

10 **SECTION 3.** In Colorado Revised Statutes, 38-38-111, **amend**
11 (3) (a) and (3) (b); and **add** (2.5) (c) as follows:

12 **38-38-111. Treatment of an overbid - definition - agreements**
13 **to assist in recovery of overbid - conditions.** (2.5) (c) (I) AN
14 AGREEMENT TO PAY COMPENSATION TO RECOVER OR ASSIST IN
15 RECOVERING AN AMOUNT DUE TO THE OWNER FROM THE PUBLIC TRUSTEE
16 UNDER SUBSECTION (2) OF THIS SECTION IS NOT ENFORCEABLE UNLESS IT
17 WAS ENTERED INTO AT LEAST SIX MONTHS, AND NOT MORE THAN
18 TWENTY-FOUR MONTHS, AFTER THE SALE DATE.

19 (II) AN AGREEMENT TO PAY COMPENSATION TO RECOVER OR
20 ASSIST IN RECOVERING AN AMOUNT DUE TO THE OWNER FROM THE PUBLIC
21 TRUSTEE UNDER SUBSECTION (2) OF THIS SECTION IS ENFORCEABLE IF IT
22 WAS ENTERED INTO AT LEAST SIX MONTHS, BUT LESS THAN TWENTY-FOUR
23 MONTHS, AFTER THE SALE DATE AND:

24 (A) THE AGREEMENT IS IN WRITING AND SIGNED BY THE OWNER;

25 (B) THE AGREEMENT DESCRIBES THE PROPERTY AND THE DATE OF
26 THE FORECLOSURE SALE FROM WHICH THE AMOUNT DUE WAS DERIVED;

27 (C) THE AGREEMENT SETS FORTH THE NATURE OF THE SERVICES

1 TO BE PROVIDED;

2 (D) THE AGREEMENT CONTAINS A STATEMENT THAT THE OWNER
3 MAY DIRECT ANY QUESTIONS ABOUT ITS LEGALITY TO THE COLORADO
4 FORECLOSURE HOTLINE. THE STATEMENT MUST INCLUDE A CURRENT,
5 VALID TELEPHONE NUMBER FOR THE COLORADO FORECLOSURE HOTLINE.

6 (E) THE AGREEMENT DISCLOSES THAT THE COUNTY PUBLIC
7 TRUSTEE DOES NOT CHARGE A FEE TO DISBURSE OVERBID FUNDS, AND THE
8 OWNER MAY OBTAIN THE FUNDS WITHOUT THE ASSISTANCE OF A FINDER;
9 AND

10 (F) THE COMPENSATION TO BE PAID UNDER THE TERMS OF THE
11 AGREEMENT DOES NOT EXCEED TWENTY PERCENT OF THE AMOUNT DUE TO
12 THE OWNER.

13 (III) A PERSON WHO INDUCES OR ATTEMPTS TO INDUCE ANOTHER
14 PERSON TO ENTER INTO AN AGREEMENT DESCRIBED IN THIS PARAGRAPH (c)
15 THAT DOES NOT COMPLY WITH ALL REQUIREMENTS OF SUBPARAGRAPH (II)
16 OF THIS PARAGRAPH (c) COMMITS A MISDEMEANOR, AS DEFINED IN
17 SECTION 18-1.3-504, C.R.S., AND IS SUBJECT TO IMPRISONMENT IN
18 COUNTY JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO TEN THOUSAND
19 DOLLARS, OR BOTH.

20 (3) (a) ~~Unless~~ WHEN the property is sold by the sheriff, ~~and all OF~~
21 the SALE proceeds of the sale ~~are~~ MUST BE deposited into the registry of
22 the court. Any unclaimed remaining overbid from a foreclosure sale held
23 prior to September 1, 2012, shall be transferred by the officer to the
24 county treasurer within ninety calendar days after the expiration of all
25 redemption periods as provided in section 38-38-302 and held in escrow,
26 and any unclaimed remaining overbid from a foreclosure sale held on or
27 after September 1, 2012, shall be held by the officer in escrow. In either

1 case, the remaining overbid shall be held for ~~five~~ TWO years from the date
2 of the sale. The county treasurer or officer, whomever holds the
3 remaining overbid in escrow, shall be answerable for the funds without
4 interest at any time within the ~~five-year~~ TWO-YEAR period to ~~such persons~~
5 ~~as shall be~~ ANY PERSON legally entitled to the funds. Any interest earned
6 on the escrowed funds shall be paid to the county at least annually.
7 Unclaimed remaining overbids that are less than twenty-five dollars and
8 that are not claimed within ~~five~~ TWO years from the date of sale shall be
9 paid to the general fund of the county, and such moneys paid to the
10 general fund of the county ~~shall~~ become the property of the county.
11 Unclaimed remaining overbids that are equal to or greater than
12 twenty-five dollars and that are not claimed within ~~five~~ TWO years from
13 the date of the sale ~~shall be presumed to be~~ ARE unclaimed property for
14 purposes of the "Unclaimed Property Act", ARTICLE 13 OF THIS TITLE, and
15 SHALL BE transferred to the administrator in accordance with ~~such~~ THE
16 act. After the unclaimed remaining overbids are transferred to the
17 administrator or to the general fund of the county, the county treasurer
18 and officer ~~shall be~~ ARE discharged from any further liability or
19 responsibility for the moneys.

20 (b) If the unclaimed remaining overbids exceed five hundred
21 dollars and have not been claimed by any person entitled thereto within
22 sixty calendar days ~~from~~ AFTER the expiration of all redemption periods
23 as provided by section 38-38-302, the county treasurer or officer shall,
24 within ninety calendar days ~~from~~ AFTER the expiration of all redemption
25 periods, commence publication of a notice for four weeks, which means
26 publication once each week for five successive weeks, in ~~some~~ A
27 newspaper of general circulation in the county where the subject property

1 is located. The county treasurer is responsible for the notice of an overbid
2 from a foreclosure sale held prior to September 1, 2012, and the officer
3 is responsible for the notice of an overbid from a foreclosure sale held on
4 or after September 1, 2012. The notice ~~shall~~ MUST contain the name of the
5 owner, the owner's address as given in the recorded instrument
6 evidencing the owner's interest, and the legal description and street
7 address, if any, of the property sold at the sale and ~~shall~~ MUST state that
8 an overbid was realized from the sale and that, unless the funds are
9 claimed by the owner or other person entitled thereto within ~~five~~ TWO
10 years ~~from~~ AFTER the date of sale, the funds shall be transferred to the
11 state treasurer as part of the "Unclaimed Property Act". The county
12 treasurer or officer, whomever holds the remaining overbid in escrow,
13 shall also mail a copy of the notice to the owner at the best available
14 address.

15 **SECTION 4.** In Colorado Revised Statutes, 38-13-128, **add** (6)
16 as follows:

17 **38-13-128. Agreements to locate reported property - general**
18 **provisions.** (6) THIS SECTION DOES NOT APPLY TO AGREEMENTS TO
19 RECOVER OR ASSIST IN RECOVERING UNCLAIMED OVERBIDS TRANSFERRED
20 TO THE ADMINISTRATOR UNDER SECTION 38-38-111.

21 **SECTION 5.** In Colorado Revised Statutes, **add** 38-13-128.5 as
22 follows:

23 **38-13-128.5. Agreements to locate reported property -**
24 **overbids from foreclosure sales.** (1) AN AGREEMENT TO PAY
25 COMPENSATION TO RECOVER OR ASSIST IN RECOVERING AN UNCLAIMED
26 OVERBID TRANSFERRED TO THE ADMINISTRATOR UNDER SECTION
27 38-38-111 IS NOT ENFORCEABLE UNLESS ENTERED INTO AT LEAST TWO

1 YEARS AFTER THE DATE OF THE TRANSFER.

2 (2) AN AGREEMENT TO PAY COMPENSATION TO RECOVER OR ASSIST
3 IN RECOVERING AN UNCLAIMED OVERBID TRANSFERRED TO THE
4 ADMINISTRATOR UNDER SECTION 38-38-111 IS ENFORCEABLE IF:

5 (a) ENTERED INTO AT LEAST TWO YEARS, BUT NOT MORE THAN
6 THREE YEARS, AFTER THE DATE OF THE TRANSFER AND:

7 (I) THE AGREEMENT IS IN WRITING AND SIGNED BY THE OWNER, AS
8 DEFINED IN SECTION 38-38-111 (5);

9 (II) THE AGREEMENT DESCRIBES THE PROPERTY AND THE DATE OF
10 THE FORECLOSURE SALE FROM WHICH THE OVERBID WAS DERIVED;

11 (III) THE AGREEMENT SETS FORTH THE NATURE OF THE SERVICES
12 TO BE PROVIDED; AND

13 (IV) THE COMPENSATION TO BE PAID UNDER THE TERMS OF THE
14 AGREEMENT DOES NOT EXCEED TWENTY PERCENT OF THE AMOUNT OF THE
15 OVERBID; OR

16 (b) ENTERED INTO AT LEAST THREE YEARS AFTER THE DATE OF THE
17 TRANSFER AND:

18 (I) THE AGREEMENT IS IN WRITING AND SIGNED BY THE OWNER, AS
19 DEFINED IN SECTION 38-38-111 (5);

20 (II) THE AGREEMENT DESCRIBES THE PROPERTY AND THE DATE OF
21 THE FORECLOSURE SALE FROM WHICH THE OVERBID WAS DERIVED;

22 (III) THE AGREEMENT SETS FORTH THE NATURE OF THE SERVICES
23 TO BE PROVIDED; AND

24 (IV) THE COMPENSATION TO BE PAID UNDER THE TERMS OF THE
25 AGREEMENT DOES NOT EXCEED THIRTY PERCENT OF THE AMOUNT OF THE
26 OVERBID.

27 (3) A PERSON WHO INDUCES OR ATTEMPTS TO INDUCE ANOTHER

1 PERSON TO ENTER INTO AN AGREEMENT DESCRIBED IN THIS SECTION THAT
2 DOES NOT COMPLY WITH ALL REQUIREMENTS OF SUBSECTION (2) OF THIS
3 SECTION COMMITS A MISDEMEANOR, AS DEFINED IN SECTION 18-1.3-504,
4 C.R.S., AND IS SUBJECT TO IMPRISONMENT IN COUNTY JAIL FOR UP TO SIX
5 MONTHS, A FINE OF UP TO TEN THOUSAND DOLLARS, OR BOTH.

6 (4) NOTHING IN SUBSECTION (2) OF THIS SECTION PROHIBITS AN
7 OWNER FROM ASSERTING, AT ANY TIME, THAT A WRITTEN, SIGNED
8 AGREEMENT TO RECOVER OR ASSIST IN RECOVERING AN OVERBID IS BASED
9 ON EXCESSIVE OR UNJUST CONSIDERATION.

10 (5) THE RESTRICTIONS SET FORTH IN THIS SECTION DO NOT APPLY
11 TO AN AGREEMENT TO PAY COMPENSATION TO RECOVER OR ASSIST IN
12 RECOVERING AN OVERBID OF LESS THAN ONE THOUSAND DOLLARS.

13 **SECTION 6. Act subject to petition - effective date -**
14 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
15 the expiration of the ninety-day period after final adjournment of the
16 general assembly (August 10, 2016, if adjournment sine die is on May 11,
17 2016); except that, if a referendum petition is filed pursuant to section 1
18 (3) of article V of the state constitution against this act or an item, section,
19 or part of this act within such period, then the act, item, section, or part
20 will not take effect unless approved by the people at the general election
21 to be held in November 2016 and, in such case, will take effect on the
22 date of the official declaration of the vote thereon by the governor.

23 (2) (a) Sections 4 and 5 of this act apply to the proceeds of
24 foreclosure sales conducted on or after the applicable effective date of
25 this act.

26 (b) Section 3 of this act applies to the proceeds of foreclosure
27 sales conducted on, after, or up to five years before the applicable

1 effective date of this act.