

CHAPTER 97

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 16-1090

BY REPRESENTATIVE(S) McCann, Becker K., Court, Duran, Esgar, Fields, Garnett, Ginal, Kraft-Tharp, Lebsock, Lontine, Mitsch Bush, Moreno, Rosenthal, Williams, Ryden;
 also SENATOR(S) Jahn, Aguilar, Garcia, Grantham, Guzman, Heath, Johnston, Jones, Kefalas, Martinez Humenik, Merrifield, Newell, Scott, Tate, Todd, Ulibarri, Woods.

AN ACT

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

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

SECTION 1. Legislative declaration. The general assembly finds, determines, and declares that an agreement under which a person undertakes to recover or assist in recovering an amount due to the owner of property in foreclosure, as described in sections 4, 5, and 6 of this act, meets the current definition of a "foreclosure consulting contract" under section 6-1-1103 (5), C.R.S. This act is not intended to, and shall not be construed to, affect any pending prosecution or litigation that involves a foreclosure consultant or foreclosure consulting contract or in which the application of section 6-1-1103 (5), C.R.S., is an issue.

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

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

(iii) **KNOWINGLY ENTERS INTO, OR ATTEMPTS TO ENFORCE, AN AGREEMENT REGARDING THE RECOVERY OF AN OVERBID ON FORECLOSED PROPERTY IF THE AGREEMENT CONCERNS THE RECOVERY OF FUNDS IN THE POSSESSION OF:**

(I) **A PUBLIC TRUSTEE PRIOR TO TRANSFER OF THE FUNDS TO THE STATE TREASURER UNDER SECTION 38-38-111, C.R.S.; OR**

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(II) THE STATE TREASURER AND DOES NOT MEET THE REQUIREMENTS FOR SUCH AN AGREEMENT AS SPECIFIED IN SECTION 38-13-128.5, C.R.S.

SECTION 3. In Colorado Revised Statutes, 6-1-1103, **repeal** (4) (a) (IX) as follows:

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

(4)(a) "Foreclosure consultant" means a person who does not, directly or through an associate, take or acquire any interest in or title to a homeowner's property and who, in the course of such person's business, vocation, or occupation, makes a solicitation, representation, or offer to a home owner to perform, in exchange for compensation from the home owner or from the proceeds of any loan or advance of funds, a service that the person represents will do any of the following:

(IX) ~~Assist the home owner in obtaining from the beneficiary, mortgagee, or grantee of the lien in foreclosure, or from counsel for such beneficiary, mortgagee, or grantee, the remaining or excess proceeds from the foreclosure sale of the residence in foreclosure.~~

SECTION 4. In Colorado Revised Statutes, 38-38-111, **amend** (3) (a) and (3) (b); and **add** (2.5) (c) as follows:

38-38-111. Treatment of an overbid - definition - agreements to assist in recovery of overbid prohibited - penalty. (2.5) (c) AN AGREEMENT TO PAY COMPENSATION TO RECOVER OR ASSIST IN RECOVERING AN AMOUNT DUE TO THE OWNER FROM THE PUBLIC TRUSTEE UNDER SUBSECTION (2) OF THIS SECTION IS NOT ENFORCEABLE. A PERSON WHO INDUCES OR ATTEMPTS TO INDUCE ANOTHER PERSON TO ENTER INTO SUCH AN AGREEMENT COMMITS A MISDEMEANOR, AS DEFINED IN SECTION 18-1.3-504, C.R.S., AND IS SUBJECT TO IMPRISONMENT IN COUNTY JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO TEN THOUSAND DOLLARS, OR BOTH.

(3) (a) ~~Unless~~ WHEN the property is sold by the sheriff, ~~and~~ all OF the SALE proceeds of the sale ~~are~~ MUST BE deposited into the registry of the court. Any unclaimed remaining overbid from a foreclosure sale held prior to September 1, 2012, shall be transferred by the officer to the county treasurer within ninety calendar days after the expiration of all redemption periods as provided in section 38-38-302 and held in escrow, and any unclaimed remaining overbid from a foreclosure sale held on or after September 1, 2012, shall be held by the officer in escrow. In either case, the remaining overbid shall be held for ~~five years~~ SIX MONTHS from the date of the sale. The county treasurer or officer, whomever holds the remaining overbid in escrow, shall be answerable for the funds without interest at any time within the ~~five-year~~ SIX-MONTH period to ~~such persons as shall be~~ ANY PERSON legally entitled to the funds. Any interest earned on the escrowed funds shall be paid to the county at least annually. Unclaimed remaining overbids that are less than twenty-five dollars and that are not claimed within ~~five years~~ SIX MONTHS from the date of sale shall be paid to the general fund of the county, and such moneys paid to the general fund of the county ~~shall~~ become the property of the county. Unclaimed remaining overbids that are equal to or greater than twenty-five dollars and that are not claimed within ~~five years~~ SIX MONTHS from the date of the

sale ~~shall be presumed to be~~ ARE unclaimed property for purposes of the "Unclaimed Property Act", ARTICLE 13 OF THIS TITLE, and SHALL BE transferred to the administrator in accordance with ~~such act~~ THAT ARTICLE. After the unclaimed remaining overbids are transferred to the administrator or to the general fund of the county, the county treasurer and officer ~~shall be~~ ARE discharged from any further liability or responsibility for the moneys.

(b) If the unclaimed remaining overbids exceed five hundred dollars and have not been claimed by any person entitled thereto within sixty calendar days ~~from~~ AFTER the expiration of all redemption periods as provided by section 38-38-302, the county treasurer or officer shall, within ninety calendar days ~~from~~ AFTER the expiration of all redemption periods, commence publication of a notice for four weeks, which means publication once each week for five successive weeks, in ~~some~~ A newspaper of general circulation in the county where the subject property is located. The county treasurer is responsible for the notice of an overbid from a foreclosure sale held prior to September 1, 2012, and the officer is responsible for the notice of an overbid from a foreclosure sale held on or after September 1, 2012. The notice ~~shall~~ MUST contain the name of the owner, the owner's address as given in the recorded instrument evidencing the owner's interest, and the legal description and street address, if any, of the property sold at the sale and ~~shall~~ MUST state that an overbid was realized from the sale and that, unless the funds are claimed by the owner or other person entitled thereto within ~~five years from~~ SIX MONTHS AFTER the date of sale, the funds shall be transferred to the state treasurer as part of the "Unclaimed Property Act". The county treasurer or officer, whomever holds the remaining overbid in escrow, shall also mail a copy of the notice to the owner at the best available address.

SECTION 5. In Colorado Revised Statutes, 38-13-128, **add** (6) as follows:

38-13-128. Agreements to locate reported property - general provisions.

(6) THIS SECTION DOES NOT APPLY TO AGREEMENTS TO RECOVER OR ASSIST IN RECOVERING UNCLAIMED OVERBIDS TRANSFERRED TO THE ADMINISTRATOR UNDER SECTION 38-38-111.

SECTION 6. In Colorado Revised Statutes, **add** 38-13-128.5 as follows:

38-13-128.5. Agreements to locate reported property - overbids from foreclosure sales. (1) AN AGREEMENT TO PAY COMPENSATION TO RECOVER OR ASSIST IN RECOVERING AN UNCLAIMED OVERBID TRANSFERRED TO THE ADMINISTRATOR UNDER SECTION 38-38-111 IS:

(a) NOT ENFORCEABLE UNLESS ENTERED INTO AT LEAST TWO YEARS AFTER THE DATE OF THE TRANSFER;

(b) ENFORCEABLE IF:

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

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

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

(IV) THE COMPENSATION TO BE PAID UNDER THE TERMS OF THE AGREEMENT DOES NOT EXCEED:

(A) TWENTY PERCENT OF THE AMOUNT OF THE OVERBID IF ENTERED INTO AT LEAST TWO YEARS, BUT NOT MORE THAN THREE YEARS, AFTER THE DATE OF THE TRANSFER; OR

(B) THIRTY PERCENT OF THE AMOUNT OF THE OVERBID IF ENTERED INTO MORE THAN THREE YEARS AFTER THE DATE OF THE TRANSFER.

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

(3) NOTHING IN SUBSECTION (1) OF THIS SECTION PROHIBITS AN OWNER FROM ASSERTING, AT ANY TIME, THAT A WRITTEN, SIGNED AGREEMENT TO RECOVER OR ASSIST IN RECOVERING AN OVERBID IS BASED ON EXCESSIVE OR UNJUST CONSIDERATION.

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

SECTION 7. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) (a) Sections 5 and 6 of this act apply to the proceeds of foreclosure sales conducted on or after the applicable effective date of this act.

(b) Section 4 of this act applies to the proceeds of foreclosure sales conducted on, after, or up to five years before the applicable effective date of this act.

Approved: April 15, 2016