

**First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 21-0820.01 Sarah Lozano x3858

**HOUSE BILL 21-1224**

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**HOUSE SPONSORSHIP**

**Bird,**

**SENATE SPONSORSHIP**

**Winter,**

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**House Committees**  
Business Affairs & Labor

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING MODIFICATIONS TO THE PROVISIONS GOVERNING**  
102      **FORECLOSURE SALES OF REAL PROPERTY.**

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**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>.)*

Under current law, when real property is sold in a foreclosure sale for an amount above the value of the lien on the property, any excess amount (overbid), after paying all junior lienors, is paid to the owner of the property as of the recording of the election to foreclose. The bill requires that any overbid is instead paid to the person liable under the related evidence of debt.

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

The bill also adds to the definition of "qualified holder" a private company that originates, insures, guaranties, or purchases loans on behalf of an entity that holds time-share evidence of debt and deeds of trust with a minimum of \$5 million in assets or not less than 1,000 loans.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-38-100.3, **amend**  
3 (20)(k); and **add** (20)(k.5) as follows:

4 **38-38-100.3. Definitions.** As used in articles 37 to 39 of this title  
5 38, unless the context otherwise requires:

6 (20) "Qualified holder" means a holder of an evidence of debt,  
7 certificate of purchase, certificate of redemption, or confirmation deed  
8 that is also one of the following:

9 (k) Any entity with active certification under the fund that  
10 originates, insures, guarantees, or purchases loans or a person acting on  
11 behalf of such an entity to enforce an evidence of debt or the deed of trust  
12 securing an evidence of debt; ~~or~~

13 (k.5) A PRIVATE COMPANY THAT ORIGINATES, INSURES,  
14 GUARANTIES, OR PURCHASES LOANS ON BEHALF OF AN ENTITY THAT  
15 HOLDS TIME-SHARE EVIDENCE OF DEBT AND DEEDS OF TRUST, WITH A  
16 MINIMUM OF FIVE MILLION DOLLARS IN ASSETS OR NOT LESS THAN ONE  
17 THOUSAND ACTIVE LOANS; OR

18 **SECTION 2.** In Colorado Revised Statutes, 38-38-111, **amend**  
19 (2), (2.5), and (3)(b); and **repeal** (5) as follows:

20 **38-38-111. Treatment of an overbid - agreements to assist in**  
21 **recovery of overbid prohibited - penalty.** (2) Upon the expiration of all  
22 redemption periods provided in section 38-38-302, any remaining overbid  
23 shall be paid in order of recording priority to junior lienors, determined

1 as of the recording date of the notice of election and demand or lis  
2 pendens according to the records, who have duly filed a notice of intent  
3 to redeem and whose liens have not been redeemed pursuant to section  
4 38-38-302, in each case up to the unpaid amount of each such lienor's lien  
5 plus fees and costs. A lienor holding a lien that is not entitled to redeem  
6 by virtue of being recorded after the notice of election and demand, a  
7 lienor that has not timely filed a notice of intent to redeem pursuant to  
8 section 38-38-302, or a lienor who accepts less than a full redemption  
9 pursuant to section 38-38-302 (4)(c) shall not have any claim to any  
10 portion of the overbid. After payment to all lienors and the holder entitled  
11 to receive a portion of the overbid pursuant to this section, any remaining  
12 overbid shall be paid to the ~~owner~~ BORROWER.

13 (2.5) (a) If a public trustee maintains a website for his or her  
14 office, the public trustee shall include the following statement on such  
15 website:

16 **NOTICE TO ~~AN OWNER~~ A BORROWER IN**  
17 **FORECLOSURE:** If your property goes to foreclosure  
18 auction sale and is purchased for more than the total owed  
19 to the lender and to all other lien holders, please contact the  
20 public trustee's office after the sale because you may have  
21 funds due to you.

22 (b) In order to pay the ~~owner~~ BORROWER of the property as  
23 required pursuant to subsection (2) of this section, a public trustee shall  
24 send a notice to the ~~owner~~ BORROWER. If the amount of remaining  
25 overbid is equal to or greater than twenty-five dollars, the public trustee  
26 shall make reasonable efforts to identify the ~~owner's~~ BORROWER'S current  
27 address. The public trustee shall mail the ~~owner~~ BORROWER a notice

1 regarding the remaining overbid to the best available address no later than  
2 thirty days after the expiration of all redemption periods as provided in  
3 section 38-38-302.

4 (c) An agreement to pay compensation to recover or assist in  
5 recovering an amount due to the ~~owner~~ BORROWER from the public  
6 trustee under subsection (2) of this section is not enforceable. A person  
7 who induces or attempts to induce another person to enter into such an  
8 agreement commits a misdemeanor, as defined in section 18-1.3-504,  
9 ~~€R.S.~~, and is subject to imprisonment in county jail for up to six months,  
10 a fine of up to ten thousand dollars, or both.

11 (3) (b) If the unclaimed remaining overbids exceed five hundred  
12 dollars and have not been claimed by any person entitled thereto within  
13 sixty calendar days after the expiration of all redemption periods as  
14 provided by section 38-38-302, the public trustee shall, within ninety  
15 calendar days after the expiration of all redemption periods, commence  
16 publication of a notice for four weeks, which means publication once  
17 each week for five successive weeks, in a newspaper of general  
18 circulation in the county where the subject property is located. The notice  
19 must contain the name of the ~~owner~~ BORROWER, the ~~owner's~~ BORROWER'S  
20 address as given in the recorded instrument evidencing the ~~owner's~~  
21 BORROWER'S interest, and the legal description and street address, if any,  
22 of the property sold at the sale and must state that an overbid was realized  
23 from the sale and that, unless the funds are claimed by the ~~owner~~  
24 BORROWER or other person entitled thereto within six months after the  
25 date of sale, the funds shall be transferred to the state treasurer for  
26 disposition in accordance with the "Revised Uniform Unclaimed Property  
27 Act", article 13 of this title 38. The public trustee shall also mail a copy

1 of the notice to the ~~owner~~ BORROWER at the best available address.

2 (5) ~~As used in this section, unless the context otherwise requires,~~  
3 ~~"owner" means the record owner of the property as of the recording of the~~  
4 ~~notice of election and demand or lis pendens.~~

5 **SECTION 3. Safety clause.** The general assembly hereby finds,  
6 determines, and declares that this act is necessary for the immediate  
7 preservation of the public peace, health, or safety.