

CHAPTER 199

PROPERTY

HOUSE BILL 21-1224

BY REPRESENTATIVE(S) Bird and Neville, Amabile, Catlin, Duran, Hooton, Jodeh, Kipp, Lontine, Lynch, Michaelson Jenet, Pelton, Ricks, Sandridge, Snyder, Valdez D., Van Winkle, Will, Williams, Boesenecker, Exum, Gray, Jackson, Luck, McCluskie, Ortiz, Pico, Ransom, Titone;
also SENATOR(S) Winter, Cooke, Kolker, Pettersen, Priola.

AN ACT**CONCERNING MODIFICATIONS TO THE PROVISIONS GOVERNING FORECLOSURE SALES OF REAL PROPERTY.**

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

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

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

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

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

(k.5) A PRIVATE COMPANY THAT ORIGINATES, INSURES, GUARANTIES, OR PURCHASES LOANS ON BEHALF OF A HOLDER OF EVIDENCE OF DEBT THAT IS SECURED BY A DEED OF TRUST ENCUMBERING A TIME SHARE ESTATE AS DEFINED IN SECTION 38-33-110 (5), WITH A MINIMUM OF FIVE MILLION DOLLARS IN ASSETS OR NOT LESS THAN ONE THOUSAND ACTIVE LOANS; OR

SECTION 2. In Colorado Revised Statutes, 38-38-111, **amend** (2), (2.5), and (3)(b); **repeal** (5); and **add** (6) as follows:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

38-38-111. Treatment of an overbid - agreements to assist in recovery of overbid prohibited - penalty - definition. (2) Upon the expiration of all redemption periods provided in section 38-38-302, any remaining overbid shall be paid in order of recording priority to junior lienors, determined as of the recording date of the notice of election and demand or lis pendens according to the records, who have duly filed a notice of intent to redeem and whose liens have not been redeemed pursuant to section 38-38-302, in each case up to the unpaid amount of each such lienor's lien plus fees and costs. A lienor holding a lien that is not entitled to redeem by virtue of being recorded after the notice of election and demand, a lienor that has not timely filed a notice of intent to redeem pursuant to section 38-38-302, or a lienor who accepts less than a full redemption pursuant to section 38-38-302 (4)(c) shall not have any claim to any portion of the overbid. After payment to all lienors and the holder entitled to receive a portion of the overbid pursuant to this section, any remaining overbid shall be paid to the ~~owner~~ BORROWER.

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

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

(b) In order to pay the ~~owner~~ BORROWER of the property as required pursuant to subsection (2) of this section, a public trustee shall send a notice to the ~~owner~~ BORROWER. If the amount of remaining overbid is equal to or greater than twenty-five dollars, the public trustee shall make reasonable efforts to identify the ~~owner's~~ BORROWER'S current address. The public trustee shall mail the ~~owner~~ BORROWER a notice regarding the remaining overbid to the best available address no later than thirty days after the expiration of all redemption periods as provided in section 38-38-302.

(c) An agreement to pay compensation to recover or assist in recovering an amount due to the ~~owner~~ BORROWER 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) (b) If the unclaimed remaining overbids exceed five hundred dollars and have not been claimed by any person entitled thereto within sixty calendar days after the expiration of all redemption periods as provided by section 38-38-302, the public trustee shall, within ninety calendar days 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 a newspaper of general circulation in the county where the subject property is located. The notice must contain the name of the ~~owner~~ BORROWER, the ~~owner's~~ BORROWER'S address as given in the recorded instrument evidencing the ~~owner's~~ BORROWER'S interest, and the legal description and street address, if any, of the property sold at the sale and must state that an

overbid was realized from the sale and that, unless the funds are claimed by the ~~owner~~ BORROWER or other person entitled thereto within six months after the date of sale, the funds shall be transferred to the state treasurer for disposition in accordance with the "Revised Uniform Unclaimed Property Act", article 13 of this title 38. The public trustee shall also mail a copy of the notice to the ~~owner~~ BORROWER at the best available address.

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

(6) AS USED IN THIS SECTION, "BORROWER" MEANS A PERSON OR ENTITY LIABLE UNDER AN EVIDENCE OF DEBT CONSTITUTING A MORTGAGE LOAN OR DEED OF TRUST.

SECTION 3. In Colorado Revised Statutes, 38-38-306, **amend** (2); and **add** (3) as follows:

38-38-306. Rights of other lienors to redeem - definition. (2) A mechanic's lien claimant or any other person claiming the right to a statutory lien on real property shall have the right to redeem as a lienor despite the fact that the claim has not been reduced to judgment, if the lien or lien claim has been recorded as required or permitted by statute and the holder thereof has complied with the other conditions required of a lienor by this article. If another lienor redeems after such lien claimant, that portion of the redemption amount attributable to the claim of such lien claimant, as evidenced by such claimant's recorded lien, shall be held in escrow by the officer until a final judgment has been entered in favor of such claimant confirming the claimant's right to a lien and all periods for appeal have expired, whereupon there shall be paid to such claimant from the escrow the amount of the lien claim as established by the judgment, with any interest earned thereon, and the balance, if any, shall be refunded to the ~~owner of the property as of the date of the sale,~~ BORROWER, so long as the last redeeming lienor has otherwise been satisfied. If the claimant releases the lien or fails to establish a right to the lien, the entire escrow shall be paid to the ~~owner of the property as of the date of the sale,~~ BORROWER, so long as the last redeeming lienor has otherwise been satisfied. Lien claimants of equal priority, for the purposes of this subsection (2), may act in concert and be deemed to represent one claim in which they share pro rata. The right of the ~~owner of the property as of the date of the sale~~ BORROWER to excess sale proceeds pursuant to a homestead exemption under section 38-41-201 is subordinate to the right of a subsequent deed of trust beneficiary for whose benefit the ~~owner waived the homestead exemption~~ HOMESTEAD EXEMPTION WAS WAIVED.

(3) AS USED IN THIS SECTION, "BORROWER" HAS THE SAME MEANING AS SET FORTH IN SECTION 38-38-111 (6).

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: May 28, 2021