

**Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-0532.01 Duane Gall x4335

**HOUSE BILL 16-1090**

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**HOUSE SPONSORSHIP**

**McCann,**

**SENATE SPONSORSHIP**

**Jahn,**

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**House Committees**  
Finance

**Senate Committees**

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**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.**

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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://www.leg.state.co.us/bills summaries>.)*

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.*

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.

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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 MAINTAINED BY THE COLORADO HOUSING AND  
5 FINANCE AUTHORITY. THE STATEMENT MUST INCLUDE A CURRENT, VALID  
6 TELEPHONE NUMBER FOR THE COLORADO FORECLOSURE HOTLINE.

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

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

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

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

1 after September 1, 2012, shall be held by the officer in escrow. In either  
2 case, the remaining overbid shall be held for ~~five~~ TWO years from the date  
3 of the sale. The county treasurer or officer, whomever holds the  
4 remaining overbid in escrow, shall be answerable for the funds without  
5 interest at any time within the ~~five-year~~ TWO-YEAR period to ~~such persons~~  
6 ~~as shall be~~ ANY PERSON legally entitled to the funds. Any interest earned  
7 on the escrowed funds shall be paid to the county at least annually.  
8 Unclaimed remaining overbids that are less than twenty-five dollars and  
9 that are not claimed within ~~five~~ TWO years from the date of sale shall be  
10 paid to the general fund of the county, and such moneys paid to the  
11 general fund of the county ~~shall~~ become the property of the county.  
12 Unclaimed remaining overbids that are equal to or greater than  
13 twenty-five dollars and that are not claimed within ~~five~~ TWO years from  
14 the date of the sale ~~shall be presumed to be~~ ARE unclaimed property for  
15 purposes of the "Unclaimed Property Act", ARTICLE 13 OF THIS TITLE, and  
16 SHALL BE transferred to the administrator in accordance with ~~such~~ THE  
17 act. After the unclaimed remaining overbids are transferred to the  
18 administrator or to the general fund of the county, the county treasurer  
19 and officer ~~shall be~~ ARE discharged from any further liability or  
20 responsibility for the moneys.

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

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

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

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

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

24 **38-13-128.5. Agreements to locate reported property -**  
25 **overbids from foreclosure sales.** (1) AN AGREEMENT TO PAY  
26 COMPENSATION TO RECOVER OR ASSIST IN RECOVERING AN UNCLAIMED  
27 OVERBID TRANSFERRED TO THE ADMINISTRATOR UNDER SECTION

1 38-38-111 IS NOT ENFORCEABLE UNLESS ENTERED INTO AT LEAST TWO  
2 YEARS AFTER THE DATE OF THE TRANSFER.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) Section 3 of this act applies to the proceeds of foreclosure

- 1 sales conducted on, after, or up to five years before the applicable
- 2 effective date of this act.