

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**  
Business, Labor, & Technology

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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/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  
3rd Reading Unamended  
February 9, 2016

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.

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

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

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

13 **6-1-105. Deceptive trade practices.** (1) A person engages in a  
14 deceptive trade practice when, in the course of the person's business,

1 vocation, or occupation, the person:

2 (iii) KNOWINGLY ENTERS INTO, OR ATTEMPTS TO ENFORCE, AN  
3 AGREEMENT REGARDING THE RECOVERY OF AN OVERBID ON FORECLOSED  
4 PROPERTY IF THE AGREEMENT:

5 (I) CONCERNS THE RECOVERY OF FUNDS IN THE POSSESSION OF A  
6 PUBLIC TRUSTEE AND IS NOT ENFORCEABLE UNDER SECTION 38-38-111  
7 (2.5), C.R.S.; OR

8 (II) CONCERNS THE RECOVERY OF FUNDS IN THE POSSESSION OF  
9 THE STATE TREASURER AND IS NOT ENFORCEABLE UNDER SECTION  
10 38-13-128.5, C.R.S.

11 **SECTION 3.** In Colorado Revised Statutes, 6-1-1103, **repeal** (4)

12 (a) (IX) as follows:

13 **6-1-1103. Definitions.** As used in this part 11, unless the context  
14 otherwise requires:

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

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

26 **SECTION 4.** In Colorado Revised Statutes, 38-38-111, **amend**

27 (3) (a) and (3) (b); and **add** (2.5) (c) as follows:

1           **38-38-111. Treatment of an overbid - definition - agreements**

2           **to assist in recovery of overbid - conditions.** (2.5) (c) (I) AN  
3           AGREEMENT TO PAY COMPENSATION TO RECOVER OR ASSIST IN  
4           RECOVERING AN AMOUNT DUE TO THE OWNER FROM THE PUBLIC TRUSTEE  
5           UNDER SUBSECTION (2) OF THIS SECTION IS NOT ENFORCEABLE UNLESS IT  
6           WAS ENTERED INTO AT LEAST SIX MONTHS, AND NOT MORE THAN  
7           TWENTY-FOUR MONTHS, AFTER THE SALE DATE.

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

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

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

16          (C) THE AGREEMENT SETS FORTH THE NATURE OF THE SERVICES  
17          TO BE PROVIDED;

18          (D) THE AGREEMENT CONTAINS A STATEMENT THAT THE OWNER  
19          MAY DIRECT ANY QUESTIONS ABOUT ITS LEGALITY TO THE COLORADO  
20          FORECLOSURE HOTLINE. THE STATEMENT MUST INCLUDE A CURRENT,  
21          VALID TELEPHONE NUMBER FOR THE COLORADO FORECLOSURE HOTLINE.

22          (E) THE AGREEMENT DISCLOSES THAT THE COUNTY PUBLIC  
23          TRUSTEE DOES NOT CHARGE A FEE TO DISBURSE OVERBID FUNDS, AND THE  
24          OWNER MAY OBTAIN THE FUNDS WITHOUT THE ASSISTANCE OF A FINDER;  
25          AND

26          (F) THE COMPENSATION TO BE PAID UNDER THE TERMS OF THE  
27          AGREEMENT DOES NOT EXCEED TWENTY PERCENT OF THE AMOUNT DUE TO

1 THE OWNER.

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

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

1 twenty-five dollars and that are not claimed within ~~five~~ TWO years from  
2 the date of the sale ~~shall be presumed to be~~ ARE unclaimed property for  
3 purposes of the "Unclaimed Property Act", ARTICLE 13 OF THIS TITLE, and  
4 SHALL BE transferred to the administrator in accordance with ~~such~~ THE  
5 act. After the unclaimed remaining overbids are transferred to the  
6 administrator or to the general fund of the county, the county treasurer  
7 and officer ~~shall be~~ ARE discharged from any further liability or  
8 responsibility for the moneys.

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

1 treasurer or officer, whomever holds the remaining overbid in escrow,  
2 shall also mail a copy of the notice to the owner at the best available  
3 address.

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

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

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

12 **38-13-128.5. Agreements to locate reported property -**  
13 **overbids from foreclosure sales.** (1) AN AGREEMENT TO PAY  
14 COMPENSATION TO RECOVER OR ASSIST IN RECOVERING AN UNCLAIMED  
15 OVERBID TRANSFERRED TO THE ADMINISTRATOR UNDER SECTION  
16 38-38-111 IS NOT ENFORCEABLE UNLESS ENTERED INTO AT LEAST TWO  
17 YEARS AFTER THE DATE OF THE TRANSFER.

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

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

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

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

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

1 TO BE PROVIDED; AND

2 (IV) THE COMPENSATION TO BE PAID UNDER THE TERMS OF THE  
3 AGREEMENT DOES NOT EXCEED TWENTY PERCENT OF THE AMOUNT OF THE  
4 OVERBID; OR

5 (b) ENTERED INTO AT LEAST THREE YEARS AFTER THE DATE OF THE  
6 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 THIRTY PERCENT OF THE AMOUNT OF THE  
15 OVERBID.

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

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

26 (5) THE RESTRICTIONS SET FORTH IN THIS SECTION DO NOT APPLY  
27 TO AN AGREEMENT TO PAY COMPENSATION TO RECOVER OR ASSIST IN



1 RECOVERING AN OVERBID OF LESS THAN ONE THOUSAND DOLLARS.

2 **SECTION 7. Act subject to petition - effective date -**

3 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following

4 the expiration of the ninety-day period after final adjournment of the

5 general assembly (August 10, 2016, if adjournment sine die is on May 11,

6 2016); except that, if a referendum petition is filed pursuant to section 1

7 (3) of article V of the state constitution against this act or an item, section,

8 or part of this act within such period, then the act, item, section, or part

9 will not take effect unless approved by the people at the general election

10 to be held in November 2016 and, in such case, will take effect on the

11 date of the official declaration of the vote thereon by the governor.

12 (2) (a) Sections 4 and 5 of this act apply to the proceeds of

13 foreclosure sales conducted on or after the applicable effective date of

14 this act.

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

16 sales conducted on, after, or up to five years before the applicable

17 effective date of this act.