



Legislative Council Staff

Research Note

Version: Final

Date: 6/1/2016

Bill Number

House Bill 16-1090

Sponsors

***Representative McCann
Senator Jahn***

Short Title

***Excess Foreclosure Proceeds
Limit Finder's Fees***

Research Analyst

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Status

This research note reflects the final version of the bill, which was signed by the Governor on April 15, 2016, and becomes effective August 10, 2016, assuming no petition is filed.

Summary

The bill limits the premium (finder's fee) that a person may charge for offering assistance in recovering the balance of the purchase price of a foreclosed property after all liens and claims against the property have been satisfied. It reduces the period during which the public trustee must hold these funds before transferring the funds to the Unclaimed Property Division of the State Treasurer's office from five years to six months.

Any contract for finder's fee payments is voided during the first six months of the public trustee's custody of the funds and during the first two years of the State Treasurer's custody of the funds, and the finder's fee is capped at 20 percent of the amount recovered once these periods expire. For amounts that have been in the custody of the State Treasurer for three years or more, the finder's fee is capped at 30 percent. The bill also imposes additional contract requirements for finders, such as disclosing that the owner of the funds may obtain the funds free of charge without a finder's assistance.

Inducing or attempting to induce a person to enter into a contract that violates these requirements is punishable as an unclassified misdemeanor with penalties of up to six months in jail, a fine of up to \$10,000, or both, and is designated as a deceptive trade practice under the state's consumer protection laws.

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Background

The Unclaimed Property Division of the State Treasurer's office holds lost or forgotten assets of individuals and businesses in Colorado in perpetuity or until claimed. The Unclaimed Property Trust Fund (UPTF) consists of all moneys collected under the Unclaimed Property Act and interest earned on the account.

Foreclosure balances occur when a foreclosed property is sold for more than the property owner owes to all claim and lien holders on the property. The difference between the sale price and the amount owed to creditors is the foreclosure balance, which belongs to the property owner. If the property owner does not claim the foreclosure balance, county public trustees hold these funds until they are transferred to the UPTF. Up until recent years, the division has not received a significant amount of money from unclaimed foreclosure balances.

A finder's fee is a fee a person may charge for offering assistance in recovering unclaimed foreclosure balances and any unclaimed property. Currently, the State Treasurer's office provides a website for citizens to search for their unclaimed property in the UPTF free of charge.

House Action

House Finance Committee (February 3, 2016). At the hearing, representatives of the Denver County Public Trustee, the Routt County Public Trustee, and the Public Trustee Association of Colorado (PTAC) testified in support of the bill. The committee adopted amendment L.001, which added certain penalties regarding deceptive trade practices, finder's fee agreements, and recovery of funds and added information regarding the foreclosure hotline. The committee referred the bill to the House Committee of the Whole, as amended.

House second reading (February 8, 2016). The House adopted the House Finance Committee report. The House also adopted technical amendment L.002 and amendment L.003. Amendment L.003 addressed certain depository procedures during a sheriff's sale of property. The House passed the bill on second reading, as amended.

House third reading (February 9, 2016). The House passed the bill on third reading with no amendments.

House consideration of amendments (March 28, 2016). The House concurred with Senate amendments and repassed the bill.

Senate Action

Senate Business, Labor, and Technology Committee (March 9, 2016). At the hearing, representatives of the Denver County Public Trustee, the Routt County Public Trustee, and the PTAC testified in support of the bill. The committee adopted amendment L.009, which added a legislative declaration and defined "foreclosure consultant." The committee referred the bill to the Senate Committee of the Whole, as amended.

Senate second reading (March 15, 2016). The Senate adopted the Senate Business, Labor and Technology Committee report and then adopted a strike-below amendment to the Senate Business, Labor, and Technology Committee report that addressed the length of time various departments hold foreclosure balances. The Senate passed the amended bill on second reading, as amended.

Senate third reading (March 16, 2016). The Senate passed the bill on third reading with no amendments.