

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0532.01 Duane Gall x4335

HOUSE BILL 16-1090

HOUSE SPONSORSHIP

McCann,

SENATE SPONSORSHIP

Jahn,

House Committees
Finance

Senate Committees

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.

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.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-38-111, **amend**
3 (3) (a) and (3) (b); and **add** (2.5) (c) as follows:

4 **38-38-111. Treatment of an overbid - definition - agreements**
5 **to assist in recovery of overbid - conditions.** (2.5) (c) (I) AN
6 AGREEMENT TO PAY COMPENSATION TO RECOVER OR ASSIST IN
7 RECOVERING AN AMOUNT DUE TO THE OWNER FROM THE PUBLIC TRUSTEE
8 UNDER SUBSECTION (2) OF THIS SECTION IS NOT ENFORCEABLE UNLESS IT
9 WAS ENTERED INTO AT LEAST SIX MONTHS, AND NOT MORE THAN
10 TWENTY-FOUR MONTHS, AFTER THE SALE DATE.

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

1 MONTHS, AFTER THE SALE DATE AND:

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

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

5 (C) THE AGREEMENT SETS FORTH THE NATURE OF THE SERVICES
6 TO BE PROVIDED;

7 (D) 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 (E) 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 (3) (a) Unless the property is sold by the sheriff and all the
15 proceeds of the sale are deposited into the registry of the court, any
16 unclaimed remaining overbid from a foreclosure sale held prior to
17 September 1, 2012, shall be transferred by the officer to the county
18 treasurer within ninety calendar days after the expiration of all
19 redemption periods as provided in section 38-38-302 and held in escrow,
20 and any unclaimed remaining overbid from a foreclosure sale held on or
21 after September 1, 2012, shall be held by the officer in escrow. In either
22 case, the remaining overbid shall be held for ~~five~~ TWO years from the date
23 of the sale. The county treasurer or officer, whomever holds the
24 remaining overbid in escrow, shall be answerable for the funds without
25 interest at any time within the ~~five-year~~ TWO-YEAR period to ~~such persons~~
26 ~~as shall be~~ ANY PERSON legally entitled to the funds. Any interest earned
27 on the escrowed funds shall be paid to the county at least annually.

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

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

1 address, if any, of the property sold at the sale and ~~shall~~ MUST state that
2 an overbid was realized from the sale and that, unless the funds are
3 claimed by the owner or other person entitled thereto within ~~five~~ TWO
4 years ~~from~~ AFTER the date of sale, the funds shall be transferred to the
5 state treasurer as part of the "Unclaimed Property Act". The county
6 treasurer or officer, whomever holds the remaining overbid in escrow,
7 shall also mail a copy of the notice to the owner at the best available
8 address.

9 **SECTION 2.** In Colorado Revised Statutes, 38-13-128, **add** (6)
10 as follows:

11 **38-13-128. Agreements to locate reported property - general**
12 **provisions.** (6) THIS SECTION DOES NOT APPLY TO AGREEMENTS TO
13 RECOVER OR ASSIST IN RECOVERING UNCLAIMED OVERBIDS TRANSFERRED
14 TO THE ADMINISTRATOR UNDER SECTION 38-38-111.

15 **SECTION 3.** In Colorado Revised Statutes, **add** 38-13-128.5 as
16 follows:

17 **38-13-128.5. Agreements to locate reported property -**
18 **overbids from foreclosure sales.** (1) AN AGREEMENT TO PAY
19 COMPENSATION TO RECOVER OR ASSIST IN RECOVERING AN UNCLAIMED
20 OVERBID TRANSFERRED TO THE ADMINISTRATOR UNDER SECTION
21 38-38-111 IS NOT ENFORCEABLE UNLESS ENTERED INTO AT LEAST TWO
22 YEARS AFTER THE DATE OF THE TRANSFER.

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

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

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

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

5 (III) THE AGREEMENT SETS FORTH THE NATURE OF THE SERVICES
6 TO BE PROVIDED; AND

7 (IV) THE COMPENSATION TO BE PAID UNDER THE TERMS OF THE
8 AGREEMENT DOES NOT EXCEED TWENTY PERCENT OF THE AMOUNT OF THE
9 OVERBID; OR

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

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

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

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

18 (IV) THE COMPENSATION TO BE PAID UNDER THE TERMS OF THE
19 AGREEMENT DOES NOT EXCEED THIRTY PERCENT OF THE AMOUNT OF THE
20 OVERBID.

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

25 (4) THE RESTRICTIONS SET FORTH IN THIS SECTION DO NOT APPLY
26 TO AN AGREEMENT TO PAY COMPENSATION TO RECOVER OR ASSIST IN
27 RECOVERING AN OVERBID OF LESS THAN ONE THOUSAND DOLLARS.

1 **SECTION 4. Act subject to petition - effective date -**
2 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
3 the expiration of the ninety-day period after final adjournment of the
4 general assembly (August 10, 2016, if adjournment sine die is on May 11,
5 2016); except that, if a referendum petition is filed pursuant to section 1
6 (3) of article V of the state constitution against this act or an item, section,
7 or part of this act within such period, then the act, item, section, or part
8 will not take effect unless approved by the people at the general election
9 to be held in November 2016 and, in such case, will take effect on the
10 date of the official declaration of the vote thereon by the governor.

11 (2) (a) Sections 2 and 3 of this act apply to the proceeds of
12 foreclosure sales conducted on or after the applicable effective date of
13 this act.

14 (b) Section 1 of this act applies to the proceeds of foreclosure
15 sales conducted on, after, or up to five years before the applicable
16 effective date of this act.