

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 16-0532.01 Duane Gall x4335

HOUSE BILL 16-1090

HOUSE SPONSORSHIP

McCann,

SENATE SPONSORSHIP

Jahn,

House Committees
Finance

Senate Committees
Business, Labor, & Technology

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.

SENATE
Amended 2nd Reading
March 15, 2016

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.

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 CONCERNS THE RECOVERY OF FUNDS IN THE
5 POSSESSION OF:

6 (I) A PUBLIC TRUSTEE PRIOR TO TRANSFER OF THE FUNDS TO THE
7 STATE TREASURER UNDER SECTION 38-38-111, C.R.S.; OR

8 (II) THE STATE TREASURER AND DOES NOT MEET THE
9 REQUIREMENTS FOR SUCH AN AGREEMENT AS SPECIFIED IN 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 prohibited - penalty. (2.5) (c) 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. A PERSON**
6 **WHO INDUCES OR ATTEMPTS TO INDUCE ANOTHER PERSON TO ENTER INTO**
7 **SUCH AN AGREEMENT COMMITS A MISDEMEANOR, AS DEFINED IN SECTION**
8 **18-1.3-504, C.R.S., AND IS SUBJECT TO IMPRISONMENT IN COUNTY JAIL**
9 **FOR UP TO SIX MONTHS, A FINE OF UP TO TEN THOUSAND DOLLARS, OR**
10 **BOTH.**

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

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

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

1 from SIX MONTHS AFTER the date of sale, the funds shall be transferred to
2 the state treasurer as part of the "Unclaimed Property Act". The county
3 treasurer or officer, whomever holds the remaining overbid in escrow,
4 shall also mail a copy of the notice to the owner at the best available
5 address.

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

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

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

14 38-13-128.5. Agreements to locate reported property -
15 overbids from foreclosure sales. (1) AN AGREEMENT TO PAY
16 COMPENSATION TO RECOVER OR ASSIST IN RECOVERING AN UNCLAIMED
17 OVERBID TRANSFERRED TO THE ADMINISTRATOR UNDER SECTION
18 38-38-111 is:

19 (a) NOT ENFORCEABLE UNLESS ENTERED INTO AT LEAST TWO
20 YEARS AFTER THE DATE OF THE TRANSFER;

21 (b) ENFORCEABLE IF:

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

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

26 (III) THE AGREEMENT SETS FORTH THE NATURE OF THE SERVICES
27 TO BE PROVIDED; AND

1 (IV) THE COMPENSATION TO BE PAID UNDER THE TERMS OF THE
2 AGREEMENT DOES NOT EXCEED:

3 (A) TWENTY PERCENT OF THE AMOUNT OF THE OVERBID IF
4 ENTERED INTO AT LEAST TWO YEARS, BUT NOT MORE THAN THREE YEARS,
5 AFTER THE DATE OF THE TRANSFER; OR

6 (B) THIRTY PERCENT OF THE AMOUNT OF THE OVERBID IF ENTERED
7 INTO MORE THAN THREE YEARS AFTER THE DATE OF THE TRANSFER.

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

14 (3) NOTHING IN SUBSECTION (1) OF THIS SECTION PROHIBITS AN
15 OWNER FROM ASSERTING, AT ANY TIME, THAT A WRITTEN, SIGNED
16 AGREEMENT TO RECOVER OR ASSIST IN RECOVERING AN OVERBID IS BASED
17 ON EXCESSIVE OR UNJUST CONSIDERATION.

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

21 **SECTION 7. Act subject to petition - effective date -**
22 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
23 the expiration of the ninety-day period after final adjournment of the
24 general assembly (August 10, 2016, if adjournment sine die is on May 11,
25 2016); except that, if a referendum petition is filed pursuant to section 1
26 (3) of article V of the state constitution against this act or an item, section,
27 or part of this act within such period, then the act, item, section, or part

1 will not take effect unless approved by the people at the general election
2 to be held in November 2016 and, in such case, will take effect on the
3 date of the official declaration of the vote thereon by the governor.

4 (2) (a) Sections 5 and 6 of this act apply to the proceeds of
5 foreclosure sales conducted on or after the applicable effective date of
6 this act.

7 (b) Section 4 of this act applies to the proceeds of foreclosure
8 sales conducted on, after, or up to five years before the applicable
9 effective date of this act.