

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REVISED

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

LLS NO. 21-0820.01 Sarah Lozano x3858

HOUSE BILL 21-1224

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A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE PROVISIONS GOVERNING**
102 **FORECLOSURE SALES OF REAL PROPERTY.**

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://leg.colorado.gov>.)

Under current law, when real property is sold in a foreclosure sale for an amount above the value of the lien on the property, any excess amount (overbid), after paying all junior lienors, is paid to the owner of the property as of the recording of the election to foreclose. The bill requires that any overbid is instead paid to the person liable under the related evidence of debt.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
April 22, 2021

HOUSE
3rd Reading Unamended
April 8, 2021

HOUSE
Amended 2nd Reading
April 7, 2021

The bill also adds to the definition of "qualified holder" a private company that originates, insures, guaranties, or purchases loans on behalf of an entity that holds time-share evidence of debt and deeds of trust with a minimum of \$5 million in assets or not less than 1,000 loans.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-38-100.3, **amend**
3 (20)(k); and **add** (20)(k.5) as follows:

4 **38-38-100.3. Definitions.** As used in articles 37 to 39 of this title
5 38, unless the context otherwise requires:

6 (20) "Qualified holder" means a holder of an evidence of debt,
7 certificate of purchase, certificate of redemption, or confirmation deed
8 that is also one of the following:

9 (k) Any entity with active certification under the fund that
10 originates, insures, guarantees, or purchases loans or a person acting on
11 behalf of such an entity to enforce an evidence of debt or the deed of trust
12 securing an evidence of debt; ~~or~~

13 (k.5) A PRIVATE COMPANY THAT ORIGINATES, INSURES,
14 GUARANTIES, OR PURCHASES LOANS ON BEHALF OF A HOLDER OF EVIDENCE
15 OF DEBT THAT IS SECURED BY A DEED OF TRUST ENCUMBERING A TIME
16 SHARE ESTATE AS DEFINED IN SECTION 38-33-110(5), WITH A MINIMUM OF
17 FIVE MILLION DOLLARS IN ASSETS OR NOT LESS THAN ONE THOUSAND
18 ACTIVE LOANS; OR

19 **SECTION 2.** In Colorado Revised Statutes, 38-38-111, **amend**
20 (2), (2.5), and (3)(b); **repeal** (5); and **add** (6) as follows:

21 **38-38-111. Treatment of an overbid - agreements to assist in**
22 **recovery of overbid prohibited - penalty - definition.** (2) Upon the
23 expiration of all redemption periods provided in section 38-38-302, any

1 remaining overbid shall be paid in order of recording priority to junior
2 lienors, determined as of the recording date of the notice of election and
3 demand or lis pendens according to the records, who have duly filed a
4 notice of intent to redeem and whose liens have not been redeemed
5 pursuant to section 38-38-302, in each case up to the unpaid amount of
6 each such lienor's lien plus fees and costs. A lienor holding a lien that is
7 not entitled to redeem by virtue of being recorded after the notice of
8 election and demand, a lienor that has not timely filed a notice of intent
9 to redeem pursuant to section 38-38-302, or a lienor who accepts less than
10 a full redemption pursuant to section 38-38-302 (4)(c) shall not have any
11 claim to any portion of the overbid. After payment to all lienors and the
12 holder entitled to receive a portion of the overbid pursuant to this section,
13 any remaining overbid shall be paid to the ~~owner~~ BORROWER.

14 (2.5) (a) If a public trustee maintains a website for his or her
15 office, the public trustee shall include the following statement on such
16 website:

17 **NOTICE TO ~~AN OWNER~~ A BORROWER IN**
18 **FORECLOSURE:** If your property goes to foreclosure
19 auction sale and is purchased for more than the total owed
20 to the lender and to all other lien holders, please contact the
21 public trustee's office after the sale because you may have
22 funds due to you.

23 (b) In order to pay the ~~owner~~ BORROWER of the property as
24 required pursuant to subsection (2) of this section, a public trustee shall
25 send a notice to the ~~owner~~ BORROWER. If the amount of remaining
26 overbid is equal to or greater than twenty-five dollars, the public trustee
27 shall make reasonable efforts to identify the ~~owner's~~ BORROWER'S current

1 address. The public trustee shall mail the ~~owner~~ BORROWER a notice
2 regarding the remaining overbid to the best available address no later than
3 thirty days after the expiration of all redemption periods as provided in
4 section 38-38-302.

5 (c) An agreement to pay compensation to recover or assist in
6 recovering an amount due to the ~~owner~~ BORROWER from the public
7 trustee under subsection (2) of this section is not enforceable. A person
8 who induces or attempts to induce another person to enter into such an
9 agreement commits a misdemeanor, as defined in section 18-1.3-504,
10 ~~C.R.S.~~, and is subject to imprisonment in county jail for up to six months,
11 a fine of up to ten thousand dollars, or both.

12 (3) (b) If the unclaimed remaining overbids exceed five hundred
13 dollars and have not been claimed by any person entitled thereto within
14 sixty calendar days after the expiration of all redemption periods as
15 provided by section 38-38-302, the public trustee shall, within ninety
16 calendar days after the expiration of all redemption periods, commence
17 publication of a notice for four weeks, which means publication once
18 each week for five successive weeks, in a newspaper of general
19 circulation in the county where the subject property is located. The notice
20 must contain the name of the ~~owner~~ BORROWER, the ~~owner's~~ BORROWER'S
21 address as given in the recorded instrument evidencing the ~~owner's~~
22 BORROWER'S interest, and the legal description and street address, if any,
23 of the property sold at the sale and must state that an overbid was realized
24 from the sale and that, unless the funds are claimed by the ~~owner~~
25 BORROWER or other person entitled thereto within six months after the
26 date of sale, the funds shall be transferred to the state treasurer for
27 disposition in accordance with the "Revised Uniform Unclaimed Property

1 Act", article 13 of this title 38. The public trustee shall also mail a copy
2 of the notice to the ~~owner~~ BORROWER at the best available address.

3 (5) ~~As used in this section, unless the context otherwise requires,~~
4 ~~"owner" means the record owner of the property as of the recording of the~~
5 ~~notice of election and demand or lis pendens.~~

6 (6) AS USED IN THIS SECTION, "BORROWER" MEANS A PERSON
7 OR ENTITY LIABLE UNDER AN EVIDENCE OF DEBT CONSTITUTING A
8 MORTGAGE LOAN OR DEED OF TRUST.

9 **SECTION 3.** In Colorado Revised Statutes, 38-38-306, **amend**
10 **(2); and add (3) as follows:**

11 **38-38-306. Rights of other lienors to redeem - definition.** (2) A
12 mechanic's lien claimant or any other person claiming the right to a
13 statutory lien on real property shall have the right to redeem as a lienor
14 despite the fact that the claim has not been reduced to judgment, if the
15 lien or lien claim has been recorded as required or permitted by statute
16 and the holder thereof has complied with the other conditions required of
17 a lienor by this article. If another lienor redeems after such lien claimant,
18 that portion of the redemption amount attributable to the claim of such
19 lien claimant, as evidenced by such claimant's recorded lien, shall be held
20 in escrow by the officer until a final judgment has been entered in favor
21 of such claimant confirming the claimant's right to a lien and all periods
22 for appeal have expired, whereupon there shall be paid to such claimant
23 from the escrow the amount of the lien claim as established by the
24 judgment, with any interest earned thereon, and the balance, if any, shall
25 be refunded to the owner of the property as of the date of the sale,
26 BORROWER, so long as the last redeeming lienor has otherwise been
27 satisfied. If the claimant releases the lien or fails to establish a right to the

1 lien, the entire escrow shall be paid to the owner of the property as of the
2 date of the sale, BORROWER, so long as the last redeeming lienor has
3 otherwise been satisfied. Lien claimants of equal priority, for the purposes
4 of this subsection (2), may act in concert and be deemed to represent one
5 claim in which they share pro rata. The right of the owner of the property
6 as of the date of the sale BORROWER to excess sale proceeds pursuant to
7 a homestead exemption under section 38-41-201 is subordinate to the
8 right of a subsequent deed of trust beneficiary for whose benefit the
9 owner waived the homestead exemption HOMESTEAD EXEMPTION WAS
10 WAIVED.

11 (3) AS USED IN THIS SECTION, "BORROWER" HAS THE SAME
12 MEANING AS SET FORTH IN SECTION 38-38-111 (6).

13 **SECTION 4. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, or safety.