

**Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REVISED

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

LLS NO. 24-0057.01 Richard Sweetman x4333

HOUSE BILL 24-1011

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A BILL FOR AN ACT

101 **CONCERNING MORTGAGE SERVICERS, AND, IN CONNECTION**
102 **THEREWITH, REQUIRING MORTGAGE SERVICERS TO TAKE**
103 **CERTAIN ACTIONS REGARDING THE DISBURSEMENT OF**
104 **INSURANCE PROCEEDS TO BORROWERS.**

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>.)

The bill requires a mortgage servicer to disclose certain information to a borrower concerning the disbursement of insurance proceeds to the borrower in the event that a residential property that is

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

SENATE
Amended 2nd Reading
April 1, 2024

HOUSE
3rd Reading Unamended
February 6, 2024

HOUSE
Amended 2nd Reading
February 5, 2024

subject to a mortgage is damaged or destroyed and an insurance company pays a claim associated with such damage or destruction.

In the event that half or more of a residential property is damaged or destroyed, a mortgage servicer must work with the borrower to create a repair plan or a rebuild plan that includes specific milestones that require the mortgage servicer to disburse insurance proceeds. However, a mortgage servicer must also disburse insurance proceeds to a borrower in specified amounts, depending on the amount of the insurance proceeds and whether the borrower is delinquent in making payments on the mortgage.

A mortgage servicer must promptly disburse to a borrower any amount of insurance proceeds in excess of the remaining amount that the borrower owes on the mortgage.

A mortgage servicer must hold in an interest-bearing account any insurance proceeds that the mortgage servicer does not immediately disburse to a borrower. A mortgage servicer must ensure that any interest that is credited to the account is credited and disbursed to the borrower.

A mortgage servicer must retain for at least 4 years all written and electronic communications between the mortgage servicer and a borrower.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 38-40-106 as
3 follows:

4 **38-40-106. Mortgage servicers - requirements concerning**
5 **disbursement of insurance proceeds - disclosure of mortgage interest**
6 **rate - retention of communications - definitions.** (1) AS USED IN THIS
7 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

8 (a) "BORROWER" HAS THE MEANING SET FORTH IN SECTION
9 38-38-100.3 (2.5).

10 (b) "MORTGAGE SERVICER" MEANS:

11 (I) A MORTGAGE SERVICER, AS DEFINED IN SECTION 5-21-103 (4);

12 (II) A MORTGAGE SERVICER, AS DEFINED IN SECTION 38-38-100.3
13 (23.3); OR

14 (III) AN AGENT OF A MORTGAGE SERVICER.

1 (c) "REBUILD PLAN" MEANS A WRITTEN PLAN TO REBUILD A
2 RESIDENTIAL PROPERTY THAT HAS BEEN DESTROYED.

3 (d) "REPAIR PLAN" MEANS A WRITTEN PLAN TO REPAIR A
4 RESIDENTIAL PROPERTY THAT HAS BEEN DAMAGED.

5 (e) "RESIDENTIAL PROPERTY" MEANS A RESIDENTIAL PROPERTY
6 THAT IS THE SUBJECT OF A MORTGAGE.

7 (2) (a) UPON THE REQUEST OF A BORROWER, A MORTGAGE
8 SERVICER SHALL PROMPTLY DISCLOSE TO THE BORROWER THE SPECIFIC
9 CONDITIONS UNDER WHICH THE MORTGAGE SERVICER WILL DISBURSE
10 INSURANCE PROCEEDS TO THE BORROWER IN THE EVENT THAT A
11 RESIDENTIAL PROPERTY THAT IS THE SUBJECT OF A MORTGAGE IS
12 DAMAGED OR DESTROYED AND AN INSURANCE COMPANY PAYS INSURANCE
13 PROCEEDS TO SATISFY A CLAIM ASSOCIATED WITH SUCH DAMAGE OR
14 DESTRUCTION. A MORTGAGE SERVICER MAY PROVIDE THE INFORMATION
15 ELECTRONICALLY.

16 (b) IN THE EVENT THAT A RESIDENTIAL PROPERTY IS DAMAGED OR
17 DESTROYED, A BORROWER, AFTER CONSULTING WITH THE BORROWER'S
18 CONTRACTOR, SHALL CREATE A REPAIR PLAN OR REBUILD PLAN FOR THE
19 RESIDENTIAL PROPERTY. THE BORROWER SHALL SUBMIT THE REPAIR PLAN
20 OR REBUILD PLAN TO THE MORTGAGE SERVICER FOR APPROVAL. THE
21 MORTGAGE SERVICER SHALL INDICATE APPROVAL OR DENIAL OF THE PLAN
22 WITHIN THIRTY DAYS OF RECEIPT. THE REPAIR PLAN OR REBUILD PLAN
23 MUST INCLUDE SPECIFIC MILESTONES THAT REQUIRE THE MORTGAGE
24 SERVICER TO DISBURSE INSURANCE PROCEEDS IN CERTAIN AMOUNTS UPON
25 REACHING THE SPECIFIED MILESTONES, AS DESCRIBED IN SUBSECTIONS
26 (2)(c)(I)(B) AND (2)(d)(II) OF THIS SECTION. IF A MORTGAGE SERVICER
27 EMPLOYS INSPECTORS FOR THE PURPOSE OF DETERMINING WHEN SUCH

1 MILESTONES ARE ATTAINED, THE MORTGAGE SERVICER SHALL NOTIFY THE
2 BORROWER OF THE SPECIFIC CRITERIA THAT THE INSPECTORS USE TO MAKE
3 SUCH DETERMINATIONS.

4 (c) (I) IF A BORROWER IS NOT DELINQUENT IN MAKING PAYMENTS
5 ON THE MORTGAGE OR THE BORROWER IS LESS THAN THIRTY-ONE DAYS
6 DELINQUENT IN MAKING PAYMENTS ON THE MORTGAGE, A MORTGAGE
7 SERVICER SHALL DISBURSE THE INSURANCE PROCEEDS TO THE BORROWER
8 AS FOLLOWS:

9 (A) IF THE AMOUNT OF THE INSURANCE PROCEEDS IS LESS THAN OR
10 EQUAL TO FORTY THOUSAND DOLLARS, THE MORTGAGE SERVICER SHALL
11 DISBURSE THE ENTIRE AMOUNT TO THE BORROWER IN ONE PAYMENT; AND

12 (B) IF THE AMOUNT OF THE INSURANCE PROCEEDS IS MORE THAN
13 FORTY THOUSAND DOLLARS, THE MORTGAGE SERVICER SHALL INITIALLY
14 DISBURSE TO THE BORROWER AN AMOUNT THAT IS FORTY THOUSAND
15 DOLLARS OR THIRTY-THREE PERCENT OF THE TOTAL PROCEEDS,
16 WHICHEVER AMOUNT IS GREATER. THEREAFTER, THE MORTGAGE SERVICER
17 SHALL DISBURSE THE REMAINING PROCEEDS BASED ON PERIODIC
18 INSPECTIONS AND PROGRESS ON THE WORK IN ACCORDANCE WITH THE
19 MILESTONES IN THE REPAIR PLAN OR REBUILD PLAN DESCRIBED IN
20 SUBSECTION (2)(b) OF THIS SECTION AND, WHERE REQUIRED BY FEDERAL
21 LAW OR REGULATION, AFTER APPROVAL BY THE FEDERAL HOME LOAN
22 BANKS OR APPLICABLE FEDERAL AGENCY.

23 (II) FOR THE PURPOSES OF THIS SUBSECTION (2)(c), IF A BORROWER
24 HAS MADE ADVANCE PAYMENTS TO A CONTRACTOR OR TO PURCHASE
25 MATERIALS, AS EVIDENCED BY PAID RECEIPTS, THE MORTGAGE SERVICER
26 MAY REIMBURSE THE BORROWER FOR SUCH PAYMENTS.

27 (d) IF A BORROWER IS MORE THAN THIRTY-ONE DAYS

1 DELINQUENT IN MAKING PAYMENTS ON THE MORTGAGE, A MORTGAGE
2 SERVICER SHALL DISBURSE THE INSURANCE PROCEEDS TO THE BORROWER
3 AS FOLLOWS:

4 (I) IF THE AMOUNT OF THE INSURANCE PROCEEDS IS LESS THAN OR
5 EQUAL TO FIVE THOUSAND DOLLARS, THE MORTGAGE SERVICER SHALL
6 DISBURSE THE ENTIRE AMOUNT TO THE BORROWER IN ONE PAYMENT; AND

7 (II) IF THE AMOUNT OF THE INSURANCE PROCEEDS IS MORE THAN
8 FIVE THOUSAND DOLLARS, THE MORTGAGE SERVICER SHALL INITIALLY
9 DISBURSE TO THE BORROWER AN AMOUNT THAT IS TWENTY-FIVE PERCENT
10 OF THE TOTAL PROCEEDS; EXCEPT THAT THE AMOUNT OF THIS INITIAL
11 DISBURSEMENT MAY NOT EXCEED TEN THOUSAND DOLLARS OR THE
12 AMOUNT BY WHICH THE TOTAL PROCEEDS EXCEED THE SUM OF THE
13 UNPAID BALANCE ON THE MORTGAGE, ANY INTEREST ACCRUED ON THE
14 MORTGAGE, AND ANY ADVANCES MADE ON THE MORTGAGE. THEREAFTER,
15 THE MORTGAGE SERVICER SHALL DISBURSE THE REMAINING PROCEEDS IN
16 AMOUNTS NOT TO EXCEED TWENTY-FIVE PERCENT OF THE REMAINING
17 PROCEEDS, IN ACCORDANCE WITH THE MILESTONES ESTABLISHED IN THE
18 REPAIR PLAN OR THE REBUILD PLAN PURSUANT TO SUBSECTION (2)(b) OF
19 THIS SECTION; EXCEPT THAT THE MORTGAGE SERVICER SHALL NOT
20 DISBURSE ANY REMAINING PROCEEDS UNTIL THE MORTGAGE SERVICER OR
21 THE MORTGAGE SERVICER'S AGENT HAS INSPECTED THE REPAIRS, IF ANY,
22 THAT HAVE BEEN MADE PURSUANT TO A REPAIR PLAN ESTABLISHED
23 PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION.

24 (e) FOR THE PURPOSES OF DISBURSEMENT OF INSURANCE PROCEEDS
25 AS DESCRIBED IN SUBSECTIONS (2)(c) AND (2)(d) OF THIS SECTION:

26 (I) A MORTGAGE SERVICER SHALL MAKE THE FIRST DISBURSEMENT
27 OF INSURANCE PROCEEDS TO THE BORROWER:

1 (A) WITHIN FOURTEEN DAYS AFTER THE MORTGAGE SERVICER
2 RECEIVES THE INSURANCE PROCEEDS IF THE MORTGAGE IS INSURED BY THE
3 FEDERAL GOVERNMENT OR SECURITIZED BY THE FEDERAL NATIONAL
4 MORTGAGE ASSOCIATION OR THE FEDERAL HOME LOAN MORTGAGE
5 CORPORATION; AND

6 (B) AS SOON AS REASONABLY POSSIBLE AND NO LATER THAN
7 THIRTY DAYS AFTER THE MORTGAGE SERVICER RECEIVES THE INSURANCE
8 PROCEEDS IF THE MORTGAGE IS NOT INSURED BY THE FEDERAL
9 GOVERNMENT OR SECURITIZED BY THE FEDERAL NATIONAL MORTGAGE
10 ASSOCIATION OR THE FEDERAL HOME LOAN MORTGAGE CORPORATION;
11 AND

12 (II) A MORTGAGE SERVICER MAY DISBURSE FUNDS DIRECTLY TO A
13 DESIGNEE OF A BORROWER SO LONG AS:

14 (A) THE DESIGNEE IS AGREED TO BY BOTH THE BORROWER AND
15 THE MORTGAGE SERVICER; AND

16 (B) THE DESIGNATION IS PERMITTED BY FEDERAL AND STATE LAW
17 AND ANY ASSOCIATED RULES.

18 (f) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
19 A MORTGAGE SERVICER SHALL PROMPTLY DISBURSE TO A BORROWER ANY
20 AMOUNT OF INSURANCE PROCEEDS IN EXCESS OF THE REMAINING AMOUNT
21 THAT THE BORROWER OWES ON THE MORTGAGE UNLESS:

22 (I) THE PROPERTY IS AN AFFORDABLE RESIDENTIAL RENTAL
23 PROPERTY THAT IS SUBJECT TO RENT OR INCOME RESTRICTIONS AS
24 REQUIRED BY FEDERAL, STATE, LOCAL, OR POLITICAL SUBDIVISION
25 PROGRAM REQUIREMENTS; AND

26 (II) THE INSURANCE PROCEEDS IN EXCESS OF THE REMAINING
27 AMOUNT THAT THE BORROWER OWES ON THE MORTGAGE ARE NECESSARY

1 TO RETURN THE PROPERTY TO THE SAME CONDITION IN WHICH THE
2 PROPERTY EXISTED PRIOR TO THE DAMAGE OR DESTRUCTION.

3 (g) A MORTGAGE SERVICER SHALL HOLD IN AN INTEREST-BEARING
4 ACCOUNT ANY INSURANCE PROCEEDS THAT THE MORTGAGE SERVICER
5 DOES NOT IMMEDIATELY DISBURSE TO A BORROWER AS REQUIRED BY THIS
6 SECTION. SUCH AN ACCOUNT MUST GENERATE INTEREST AT A RATE THAT
7 IS NOT LESS THAN THE NATIONAL RATE FOR MONEY MARKET ACCOUNTS,
8 AS DETERMINED ACCORDING TO 12 CFR 337.7. A MORTGAGE SERVICER
9 SHALL ENSURE THAT ANY INTEREST THAT IS CREDITED TO THE ACCOUNT
10 IS CREDITED AND DISBURSED TO THE BORROWER.

11 (3) IMMEDIATELY UPON COMMENCING THE SERVICING OF A
12 MORTGAGE, AND AT ANY TIME THEREAFTER AT THE REQUEST OF THE
13 BORROWER, A MORTGAGE SERVICER SHALL:

14 (a) DISCLOSE TO THE BORROWER THE INTEREST RATE ASSOCIATED
15 WITH THE MORTGAGE; AND

16 (b) PROVIDE THE BORROWER, IN WRITING, WITH A PRIMARY POINT
17 OF CONTACT FOR THE PURPOSE OF COMMUNICATING WITH THE MORTGAGE
18 SERVICER.

19 (4) A MORTGAGE SERVICER SHALL RETAIN FOR AT LEAST FOUR
20 YEARS ALL WRITTEN AND ELECTRONIC COMMUNICATIONS BETWEEN THE
21 MORTGAGE SERVICER AND A BORROWER.

22 (5) NOTHING IN THIS SECTION:

23 (a) PROHIBITS A MORTGAGE SERVICER FROM RELEASING
24 INSURANCE PROCEEDS IN AMOUNTS GREATER THAN REQUIRED BY THIS
25 SECTION;

26 (b) PROHIBITS OR LIMITS A MORTGAGE SERVICER FROM
27 DISTRIBUTING ADDITIONAL MONEY THAT IS MADE AVAILABLE DURING A

1 DECLARED STATE OF EMERGENCY OR NATURAL DISASTER; OR

2 (c) PROHIBITS A MORTGAGE SERVICER FROM COMPLYING WITH
3 FEDERAL RULES, REGULATIONS, AND REQUIREMENTS.

4 **SECTION 2.** In Colorado Revised Statutes, 38-40-104, **amend**
5 (1) as follows:

6 **38-40-104. Cause of action - attorney fees.** (1) If any applicant
7 or debtor is aggrieved by a violation of section 38-40-102, 38-40-103, ~~or~~
8 38-40-103.5, OR 38-40-106 and the violation is not remedied in a
9 reasonable, timely, and good faith manner by the party obligated to do so,
10 and after a good faith effort to resolve the dispute is made by the debtor
11 or borrower, the debtor or borrower may bring an action in a court of
12 competent jurisdiction for any such violation. If the court finds that actual
13 damages have occurred, the court shall award to the debtor or borrower,
14 in addition to actual damages, the amount of one thousand dollars,
15 together with costs and reasonable attorney fees.

16 **SECTION 3.** In Colorado Revised Statutes, **add** 5-21-107.5 as
17 follows:

18 **5-21-107.5. Disbursement of insurance proceeds to borrowers**
19 **- disclosure of mortgage interest rate - retention of communications.**

20 A MORTGAGE SERVICER SHALL COMPLY WITH THE REQUIREMENTS OF
21 SECTION 38-40-106 REGARDING DISBURSEMENT OF INSURANCE PROCEEDS
22 TO BORROWERS, DISCLOSURE OF MORTGAGE INTEREST RATES, AND
23 RETENTION OF COMMUNICATIONS.

24 **SECTION 4.** In Colorado Revised Statutes, **repeal** 10-4-112 as
25 follows:

26 **10-4-112. Property damage - time of payment.** (1) ~~After an~~
27 ~~insurer has issued a draft or check to a loss payee and the insured under~~

1 the terms of a property damage policy for the repair of property damage
2 to a one- to four-family dwelling unit or an owner-operated commercial
3 property when the mortgage or deed of trust secures a debt not in excess
4 of two hundred thousand dollars, such draft or check, if satisfactory in an
5 amount to the insured, shall be properly endorsed by the insured in favor
6 of the loss payee and delivered to the loss payee.

7 (2) If the draft or check is for the full amount of the loss and is in
8 an amount of one thousand dollars or less, the loss payee shall return the
9 draft or check, properly endorsed, to the insured within ten days after the
10 date of its receipt by the loss payee, unless the evidence of the debt or the
11 instrument given as security for the debt is in default.

12 (3) If the draft or check is in an amount in excess of one thousand
13 dollars, or is a partial payment on a loss in an amount in excess of one
14 thousand dollars, the loss payee shall either:

15 (a) Send the draft or check, properly endorsed, to the insured
16 within ten days after the date of its receipt by the loss payee;

17 (b) Process the draft or check for collection or deposit, except as
18 provided in paragraph (c) of this subsection (3). Any loss payee holding
19 funds under this paragraph (b), upon its approval of contracts or plans for
20 the completion of repairs, shall make reasonable advances or progress
21 payments as appropriate to be applied to the completion of repairs and
22 shall be entitled to require appropriate lien waivers and to inspect the
23 repairs during the progress of the repairs. The loss payee shall be entitled
24 to retain up to fifteen percent of the amount of the draft or check as
25 retainage until completion and inspection, satisfactory to the insured, of
26 the work.

27 (c) Process the draft or check for collection or deposit. Any loss

1 payee holding funds under this paragraph (c) shall hold such funds for the
2 payment of the cost of repairs unless any one of the following
3 circumstances is present:

4 (I) The evidence of the debt or the instrument given as security for
5 the debt is in default. If the default is a result of failure to make payments
6 in a timely manner as required by the evidence of debt or the instrument
7 securing the debt, the loss payee may apply an amount of such proceeds
8 sufficient to cure the default, including taxes, penalties, and late charges,
9 and hold the balance for the cost of repairs, pursuant to paragraph (b) of
10 this subsection (3):

11 (II) The restoration of the property would violate local, state, or
12 federal laws or regulations;

13 (III) The property cannot reasonably be restored to its condition
14 prior to the loss at a cost of not to exceed the amount of the draft, reduced
15 by an amount applied to cure a default pursuant to subparagraph (I) of
16 this paragraph (c):

17 (d) Advise the insurer and insured that it is not satisfied with the
18 amount of the draft or check and pursue a claim for the loss under the
19 terms of the policy. Upon such notification the insured shall not be
20 precluded from pursuing, either singly or jointly with the loss payee, a
21 claim for the loss under the terms of the policy.

22 (4) Neither approval of contracts, plans for the completion of
23 repairs, nor inspection of the work shall make the loss payee liable to any
24 person for any improper, negligent, or unsatisfactory repairs.

25 **SECTION 5. Safety clause.** The general assembly finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, or safety or for appropriations for

- 1 the support and maintenance of the departments of the state and state
- 2 institutions.