

CHAPTER 156

PROPERTY

HOUSE BILL 14-1130

BY REPRESENTATIVE(S) McCann, Fields, Lebsack, Lee, Moreno, Salazar, Schafer, Singer, Exum, Hulinghorst, Labuda, Pettersen, Rosenthal, Ryden, Scott, Vigil, Williams, Young, Ferrandino, Duran, Tyler;
also SENATOR(S) Ulibarri, Aguilar, Heath, Hodge, Kefalas, Kerr, Newell, Nicholson, Schwartz, Todd, Zenzinger, Carroll.

AN ACT**CONCERNING THE DISPOSITION OF MONEYS CHARGED TO BORROWERS FOR COSTS TO BE PAID IN CONNECTION WITH FORECLOSURE.**

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

SECTION 1. In Colorado Revised Statutes, 38-38-100.3, **amend** (10) introductory portion as follows:

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

(10) "Holder of an evidence of debt" OR "HOLDER" means the person in actual possession of or person entitled to enforce an evidence of debt; except that ~~"holder of an evidence of debt"~~ THE TERM does not include a person acting as a nominee solely for the purpose of holding the evidence of debt or deed of trust as an electronic registry without any authority to enforce the evidence of debt or deed of trust. For the purposes of articles 37 to 40 of this title, the following persons are presumed to be the holder of an evidence of debt:

SECTION 2. In Colorado Revised Statutes, 38-38-101, **amend** (10) as follows:

38-38-101. Holder of evidence of debt may elect to foreclose. (10) Deposit.
(a) The public trustee may require THE HOLDER OR SERVICER TO MAKE a deposit of up to six hundred fifty dollars or the amount of the fee permitted pursuant to section 38-37-104 (1) (b) (I), whichever is greater, at the time the notice of election and demand is filed, to be applied against the fees and costs of the public trustee.

(b) The public trustee may allow the attorney for the holder ~~of the evidence of~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~debt~~ OR SERVICER OR THE HOLDER OR SERVICER, IF NOT REPRESENTED BY AN ATTORNEY, to establish ~~one or more accounts~~ with the public trustee ONE OR MORE ACCOUNTS, FROM which the public trustee may ~~use to~~ pay the fees and costs of the public trustee in any foreclosure filed by the holder or the attorney for the holder ~~or~~ AND through which the public trustee may transmit refunds or cures, overbids, or redemption proceeds.

SECTION 3. In Colorado Revised Statutes, 38-38-104, **amend** (2) (a) (I) and (2) (d); and **add** (2) (a) (III), (2) (a) (IV), (2) (a) (V), and (2) (a) (VI) as follows:

38-38-104. Right to cure when default is nonpayment - right to cure for certain technical defaults. (2) (a) (I) Promptly upon receipt of a notice of intent to cure by the officer, but no less than twelve calendar days prior to the date of sale, the officer shall transmit by mail, facsimile, or electronic means to the person executing the notice of election and demand a request for a statement of all sums necessary to cure the default. ~~The cure statement shall be filed with the officer by~~ The attorney for the holder or SERVICER or, if none, ~~by the holder of the evidence of debt~~ OR SERVICER, SHALL FILE THE CURE STATEMENT WITH THE OFFICER, and shall THE CURE STATEMENT MUST set forth the amounts necessary to cure. ~~as identified in the cure statement.~~ Upon receipt of the statement of the amounts needed to cure, the officer shall transmit ~~the cure statement~~ in writing to the person filing the notice of intent to cure the default:

(A) THE CURE STATEMENT; AND

(B) A STATEMENT THAT THE PERSON FILING THE NOTICE OF INTENT TO CURE IS ENTITLED TO RECEIVE FROM THE ATTORNEY FOR THE HOLDER OR SERVICER OR, IF NOT REPRESENTED, FROM THE HOLDER OR SERVICER, UPON WRITTEN REQUEST MAILED TO THE ATTORNEY FOR THE HOLDER OR SERVICER OR, IF NOT REPRESENTED, TO THE HOLDER OF SERVICER AT THE ADDRESS STATED ON THE CURE STATEMENT, COPIES OF RECEIPTS OR OTHER CREDIBLE EVIDENCE TO SUPPORT THE COSTS CLAIMED ON THE CURE STATEMENT. THIS REQUEST MAY BE SENT ONLY AFTER PAYMENT TO THE OFFICER OF THE AMOUNT SHOWN ON THE CURE STATEMENT AND MUST BE SENT WITHIN NINETY DAYS AFTER PAYMENT OF THE CURE AMOUNT.

(III) THE CURE STATEMENT IS A REPRESENTATION OF FACT, MADE UPON THE CURRENT INFORMATION AND BELIEF OF THE PERSON SIGNING IT. IF THE HOLDER OR SERVICER DETERMINES THAT THERE IS AN INACCURATE AMOUNT CONTAINED IN THE CURE STATEMENT, THE HOLDER OR SERVICER, OR THE ATTORNEY FOR THE HOLDER OR SERVICER, SHALL INFORM THE OFFICER IMMEDIATELY AND PROVIDE A CURE STATEMENT WITH UPDATED FIGURES; EXCEPT THAT ANY ADDITIONAL OR INCREASED AMOUNTS MUST BE ADDED AT LEAST TEN CALENDAR DAYS BEFORE THE EFFECTIVE DATE OF THE ORIGINAL CURE STATEMENT. IF AN INACCURATE AMOUNT IS REPORTED AND A CORRECTED CURE STATEMENT IS NOT PROVIDED WITHIN THE TIME SPECIFIED IN THIS SUBPARAGRAPH (III), THE OFFICER MAY CONTINUE THE SALE FOR ONE WEEK IN ACCORDANCE WITH SECTION 38-38-109 (1). AN ESTIMATE AS ALLOWED UNDER SUBSECTION (5) OF THIS SECTION IS NOT AN INACCURATE AMOUNT FOR PURPOSES OF THIS SUBPARAGRAPH (III).

(IV) WITHIN SEVEN BUSINESS DAYS AFTER THE OFFICER'S NOTIFICATION TO THE HOLDER OR SERVICER, OR TO THE ATTORNEY FOR THE HOLDER OR SERVICER, THAT

THE OFFICER HAS RECEIVED THE FUNDS NECESSARY TO CURE THE DEFAULT AS REFLECTED ON THE INITIAL OR UPDATED CURE STATEMENT, THE HOLDER OR SERVICER OR THE ATTORNEY FOR THE HOLDER OR SERVICER SHALL DELIVER TO THE OFFICER A FINAL STATEMENT, RECONCILED FOR ESTIMATED AMOUNTS THAT WERE NOT OR WOULD NOT BE INCURRED AS OF THE DATE THE CURE PROCEEDS WERE RECEIVED BY THE OFFICER, ALONG WITH RECEIPTS OR INVOICES FOR ALL RULE 120 DOCKET COSTS AND ALL STATUTORILY MANDATED POSTING COSTS CLAIMED ON THE CURE STATEMENT. ALL AMOUNTS OF CURE PROCEEDS RECEIVED BY THE OFFICER IN EXCESS OF THE AMOUNTS REFLECTED ON THE FINAL STATEMENT SHALL BE REMITTED BY THE OFFICER TO THE PERSON WHO PAID THE CURE AMOUNT.

(V) (A) THE HOLDER OR SERVICER SHALL REMIT TO THE PERSON WHO PAID THE CURE AMOUNT ANY PORTION OF THE CURE AMOUNT THAT REPRESENTS A FEE OR COST LISTED ON THE CURE STATEMENT THAT EXCEEDS THE AMOUNT ACTUALLY INCURRED AND THAT WAS NOT REMITTED BY THE OFFICER IN ACCORDANCE WITH SUBPARAGRAPH (I) OF PARAGRAPH (d) OF THIS SUBSECTION (2).

(B) THE OFFICER SHALL REMIT TO THE PERSON WHO PAID THE CURE AMOUNT ANY PORTION OF THE CURE AMOUNT THAT REPRESENTS A FEE OR COST OF THE OFFICER THAT EXCEEDS THE AMOUNT ACTUALLY INCURRED BY THE OFFICER.

(VI) THE HOLDER OR SERVICER IS RESPONSIBLE FOR RETAINING RECEIPTS OR OTHER CREDIBLE EVIDENCE TO SUPPORT ALL COSTS CLAIMED ON THE CURE STATEMENT, INCLUDING RULE 120 DOCKET FEES AND POSTING COSTS, AND THE PERSON WHO PAID THE CURE AMOUNT IS ENTITLED TO RECEIVE COPIES UPON WRITTEN REQUEST MAILED TO THE ATTORNEY FOR THE HOLDER OR SERVICER OR, IF NOT REPRESENTED, TO THE HOLDER OR SERVICER AT THE ADDRESS STATED ON THE CURE STATEMENT. THE REQUEST MAY BE MADE AT ANY TIME AFTER PAYMENT TO THE OFFICER OF THE AMOUNT SHOWN ON THE CURE STATEMENT, BUT MUST BE MADE WITHIN NINETY DAYS AFTER PAYMENT OF THE CURE AMOUNT. THE ATTORNEY FOR THE HOLDER OR SERVICER OR, IF NOT REPRESENTED, THE HOLDER OR SERVICER SHALL PROVIDE COPIES OF ALL RECEIPTS OR OTHER CREDIBLE EVIDENCE WITHIN THIRTY DAYS AFTER RECEIVING THE REQUEST, AND MAY PROVIDE THE COPIES ELECTRONICALLY.

(d) (I) Upon receipt of the cure amount, and a CONDITIONED UPON THE withdrawal or dismissal of the foreclosure from the holder of the evidence of debt OR SERVICER or the attorney for the holder OR SERVICER, the officer shall:

(A) Deliver the cure amount, less the fees and costs of the officer AND ANY ADJUSTMENTS REQUIRED UNDER SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (2), to the attorney for the holder OR SERVICER or, if none, to the holder OR SERVICER; ~~the foreclosure shall be withdrawn or dismissed as provided by law,~~ and

(B) OBTAIN AND RETAIN, IN THE OFFICER'S RECORDS, THE NAME AND MAILING ADDRESS OF THE PERSON WHO PAID THE CURE AMOUNT.

(II) FOLLOWING THE WITHDRAWAL OR DISMISSAL, the evidence of debt shall be returned uncanceled to the attorney for the holder of the evidence of debt OR SERVICER or, if none, to the holder OR SERVICER by the public trustee or to the court

by the sheriff.

SECTION 4. Applicability. This act applies to foreclosure proceedings in which the notice of election and demand is filed on or after the effective date of this act.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 9, 2014