

CHAPTER 113

PROPERTY

HOUSE BILL 15-1142

BY REPRESENTATIVE(S) McCann, Coram, Duran, Pabon, Williams, Brown, Fields, Garnett, Melton, Mitsch Bush, Moreno, Ransom, Rosenthal, Tate, Becker K., Ginal, Kagan, Lebsack, Lontine;
also SENATOR(S) Guzman, Merrifield, Ulibarri.

AN ACT

CONCERNING THE CONDUCT OF FORECLOSURE SALES BY A PUBLIC TRUSTEE, AND, IN CONNECTION THEREWITH, AUTHORIZING THE CONDUCT OF FORECLOSURE SALES THROUGH THE INTERNET AND OTHER ELECTRONIC MEDIA AND AUTHORIZING THE COLLECTION OF FEES BY ELECTRONIC TRANSFER.

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

SECTION 1. In Colorado Revised Statutes, 38-37-104, **amend** (1) introductory portion and (1) (b) (X) as follows:

38-37-104. Duties of public trustees - fees, expenses, and salaries - reports.

(1) The public trustees of each county of this state shall perform the functions and exercise the powers conferred upon them by statute. They shall be entitled to receive as fees for such services the following sums and no other fees or perquisites:
~~whatever:~~

(b) For performing a foreclosure under article 38 of this title, the following sums, which shall be cumulative:

(X) The sum of all amounts paid by the public trustee to third parties in connection with processing a foreclosure, including ~~but not limited to~~ all recording, filing, publication, and electronic transmission fees; EXCEPT THAT, FOR THE COST OF CONDUCTING A PUBLIC FORECLOSURE SALE BY MEANS OF THE INTERNET OR ANOTHER ELECTRONIC MEDIUM PURSUANT TO SECTION 38-38-110 (1), THE PUBLIC TRUSTEE MAY COLLECT NO MORE THAN SIXTY DOLLARS.

SECTION 2. In Colorado Revised Statutes, **amend** 38-37-108 as follows:

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

38-37-108. Payments to public trustee - electronic transfers - definition.

(1) All moneys payable to a public trustee at any foreclosure sale under the provisions of this article or upon redemption or cure pursuant to article 38 of this title shall be in the form of cash, electronic transfer to an account of the public trustee available for such purpose and in compliance with the conditions placed on the account by the public trustee for such electronic transfer, or certified check, cashier's check, teller's check, or draft denominated as an official check that is a teller's check or a cashier's check as those terms are defined in and governed by the "Uniform Commercial Code", title 4, C.R.S., made payable to the public trustee, and certified or issued by a state-chartered bank, savings and loan association, or credit union licensed to do business in the state of Colorado or a federally chartered bank, savings bank, or credit union.

(2) AS USED IN THIS SECTION, "ELECTRONIC TRANSFER" MEANS A TRANSFER OF FUNDS INITIATED BY USING AN ELECTRONIC TERMINAL, TELEPHONIC INSTRUMENT, OR COMPUTER OR MAGNETIC TAPE TO ORDER OR AUTHORIZE A FINANCIAL INSTITUTION TO CREDIT OR DEBIT AN ACCOUNT. "ELECTRONIC TRANSFER" PAYMENTS DO NOT INCLUDE TRANSACTIONS ORIGINATED BY CHECK, DRAFT, OR SIMILAR PAPER INSTRUMENT.

SECTION 3. In Colorado Revised Statutes, 38-38-103, **amend** (4) (a) as follows:

38-38-103. Combined notice - publication - providing information.

(4) (a) The combined notices required to be mailed pursuant to subsections (1), (2), and (3) of this section must contain the following:

(I) The information required by section 38-38-101 (4);

(II) The statement: A notice of intent to cure filed pursuant to section 38-38-104 shall be filed with the officer at least fifteen calendar days prior to the first scheduled sale date or any date to which the sale is continued;

(II.5) The statement, which must be in bold: If the sale date is continued to a later date, the deadline to file a notice of intent to cure by those parties entitled to cure may also be extended;

(III) The statement: A notice of intent to redeem filed pursuant to section 38-38-302 shall be filed with the officer no later than eight business days after the sale;

(IV) The date to which the sale has been continued pursuant to paragraph (a) of subsection (2) of this section;

(V) The date of sale determined pursuant to section 38-38-108;

(VI) The place of sale determined pursuant to section 38-38-110;

(VII) IF THE SALE IS CONDUCTED BY MEANS OF THE INTERNET OR ANOTHER ELECTRONIC MEDIUM PURSUANT TO SECTION 38-38-110 (1);

(A) THE ELECTRONIC ADDRESS;

(B) THE LOCATION OF COMPUTER WORKSTATIONS THAT ARE AVAILABLE TO THE PUBLIC AND INFORMATION ABOUT HOW TO OBTAIN INSTRUCTIONS ON ACCESSING THE SALE AND SUBMITTING BIDS; AND

(C) A STATEMENT THAT THE BIDDING RULES FOR THE SALE WILL BE POSTED ON THE INTERNET OR OTHER ELECTRONIC MEDIUM USED TO CONDUCT THE SALE AT LEAST TWO WEEKS BEFORE THE DATE OF SALE;

~~(VII)~~ (VIII) The statement as required by section 24-70-109, C.R.S.: The lien being foreclosed may not be a first lien; and

~~(VIII)~~ (IX) A statement that, if the borrower believes that a lender or servicer has violated the requirements for a single point of contact in section 38-38-103.1 or the prohibition on dual tracking in section 38-38-103.2, the borrower may file a complaint with the Colorado attorney general, the CFPB, or both, but the filing of a complaint will not stop the foreclosure process. The notice must include contact information for both the Colorado attorney general's office and the CFPB. If the officer maintains a web site, the officer shall also post this information on the web site for viewing by all borrowers.

SECTION 4. In Colorado Revised Statutes, 38-38-106, **amend** (1), (2), and (5) as follows:

38-38-106. Bid required - form of bid. (1) (a) The holder of the evidence of debt or the attorney for the holder shall submit a bid SETTING FORTH THE HOLDER'S INITIAL BID FOR THE PROPERTY that is received by the officer no later than 12 noon on the second business day prior to the date of sale as provided in this section. IN ADDITION, IF THE SALE WILL BE CONDUCTED ELECTRONICALLY, THE HOLDER MAY ALSO INCLUDE A MAXIMUM BID FOR THE PROPERTY. The holder or the attorney for the holder need not personally attend the sale. IF THE SALE WILL BE CONDUCTED ELECTRONICALLY AND THE HOLDER HAS ELECTED TO INCLUDE A MAXIMUM BID, THE BID SHALL BE INCREASED ELECTRONICALLY IN INCREMENTS INCORPORATED IN THE ELECTRONIC PROGRAM USED BY THE OFFICER TO CONDUCT THE ELECTRONIC SALE UP TO SUCH MAXIMUM BID IF ONE OR MORE THIRD PARTIES SUBMIT COMPETING BIDS FOR THE PROPERTY.

(b) If the bid is not received by the officer by the deadline, the officer shall continue the sale for one week and shall announce or post a notice of the continuance at the time and place designated for the sale.

(2) The holder of the evidence of debt shall submit a signed and acknowledged bid, or the attorney for the holder shall submit a signed bid, which shall specify the following amounts, itemized in substantially the following categories and in substantially the following form:

BID

To: _____

Public Trustee (or Sheriff) of the County (or City and County) of

_____, State of Colorado (hereinafter the "officer").

Date: _____, whose mailing address is _____, bids the sum of \$ _____ in your Sale No. _____ to be held on the _____ day of _____, 20 _____.

The following is an itemization of all amounts due the holder of the evidence of debt secured by the deed of trust or other lien being foreclosed.

Street address of property being foreclosed, if known: _____
Regular [] / default [] rate of interest as of the date of sale: _____

(Inapplicable items may be omitted):

Amounts due under the evidence of debt:	
Principal	\$ _____
Interest	_____
Late charges	_____
Allowable prepayment penalties or premiums	_____
Other amounts due under the evidence of debt (specify)	_____
Category subtotal:	\$ _____
Other fees and costs advanced by the holder of evidence of debt:	
Property, general liability, and casualty insurance	_____
Property inspections	_____
Appraisals	_____
Taxes and assessments	_____
Utility charges owed or incurred	_____
Owner association assessment paid	_____
Permitted amounts paid on prior liens	_____
Permitted lease payments	_____
Less impound/escrow account credit	_____
Plus impound/escrow account deficiency	_____
Other (describe)	_____
Category subtotal:	\$ _____
Attorney fees and advances:	
Attorney fees	_____
Title commitments and insurances or abstractor charges	_____
Court docketing	_____
Statutory notice	_____

Postage _____
 Electronic transmissions _____
 Photocopies _____
 Telephone _____
 Other (describe) _____
 Category subtotal: \$ _____
 Officer fees and costs:
 Officer statutory fee _____
 Publication charges _____
 Confirmation deed fee _____
 Confirmation deed recording fee _____
 Other (describe) _____
 Category subtotal: \$ _____
 Total due holder of the evidence of debt _____
 INITIAL Bid \$ _____
 Deficiency \$ _____
 MAXIMUM BID _____
 (APPLIES TO ELECTRONIC BIDS ONLY) \$ _____

I enclose herewith the following:

1. Order authorizing sale.
2. Check (if applicable) to your order in the sum of \$ _____ covering the balance of your fees and costs.
3. Other: _____.

Please send us the following:

1. Promissory note with the deficiency, if any, noted thereon
2. Refund for overpayment of officer's fees and costs, if any
3. Other: _____.

Name of the holder of the evidence of debt and the attorney for the holder:

Holder: _____

Attorney: _____

By: _____

Attorney registration number: _____

Attorney address: _____

Attorney business telephone: _____

(5) Bids submitted pursuant to this section may be amended by the holder of the evidence of debt or the attorney for the holder in writing or electronically, as determined by the officer pursuant to section 38-38-112, no later than 12 noon the day prior to the sale, or orally at the time of sale if the person amending the bid is physically present at the sale OR ELECTRONICALLY DURING THE SALE IF THE SALE IS CONDUCTED BY MEANS OF THE INTERNET OR ANOTHER ELECTRONIC MEDIUM. A bid submitted pursuant to this section may be modified orally at the time of sale if the person making the modification modifies and reexecutes the bid at the sale.

SECTION 5. In Colorado Revised Statutes, 38-38-110, **amend** (1) and (2) as follows:

38-38-110. Sales by officer - location - announcement - records - electronic devices - definitions. (1) (a) (I) Notwithstanding the provisions of any deed of trust or other lien being foreclosed, the officer shall conduct the sale at any door or entrance to, or in any room in any building temporarily or permanently used as, a courthouse or at or within any building where the office of the county clerk and recorder or the office of the officer is located, which place shall be specifically designated in the combined notice; EXCEPT THAT A SALE MAY BE CONDUCTED BY MEANS OF THE INTERNET OR OTHER ELECTRONIC MEDIUM. THE COUNTY, THE OFFICER, AND EMPLOYEES OF THE COUNTY OR THE OFFICER, ACTING IN THEIR OFFICIAL CAPACITIES IN PREPARING, CONDUCTING, AND EXECUTING A SALE UNDER THIS ARTICLE BY MEANS OF THE INTERNET OR ANOTHER ELECTRONIC MEDIUM, ARE NOT LIABLE FOR THE FAILURE OF A DEVICE THAT PREVENTS A PERSON FROM PARTICIPATING IN A SALE UNDER THIS ARTICLE.

(II) AS USED IN THIS PARAGRAPH (a), "DEVICE" INCLUDES ANY COMPUTER HARDWARE, COMPUTER NETWORK, COMPUTER SOFTWARE APPLICATION, OR WEB SITE.

(b) The combined notice shall designate the actual place of sale OR, IF THE SALE IS CONDUCTED BY MEANS OF THE INTERNET OR ANOTHER ELECTRONIC MEDIUM, THE INFORMATION PRESCRIBED BY SECTION 38-38-103 (4) (a) (VII).

(2) At a sale, the officer shall read only the public trustee's sale number for a sale by the public trustee or the court case number for a sale by the sheriff, the name of the original grantor, the street address or, if none, the legal description of the property, the name of the holder of the evidence of debt, the date of sale, the first and last publication dates of the combined notice, and, in accordance with section 38-38-106 (4), the amount of the bid and the name of the person that submitted the bid. In lieu of reading the information listed above, the officer may post the information ~~or~~ AT THE LOCATION OF THE SALE, provide a written copy of the information to all persons present at the sale, OR POST THE INFORMATION ON THE INTERNET OR OTHER ELECTRONIC MEDIUM IF THE SALE IS CONDUCTED BY MEANS OF THE INTERNET OR ANOTHER ELECTRONIC MEDIUM.

SECTION 6. In Colorado Revised Statutes, 38-38-112, **amend** (2) as follows:

38-38-112. Use of electronic documents authorized. (2) ~~(a)~~ Consistent with the provisions of the "Uniform Electronic Transactions Act", article 71.3 of title 24, C.R.S., any document or record related to a foreclosure may be accepted by the officer in an electronic format or may be made available to the public by the officer in an electronic format. The officer shall establish and uniformly apply written policies for determining whether and the extent to which the officer shall accept documents or records in electronic form; except that the officer shall not require the use of an electronic format for any purpose under this article EXCEPT AS NECESSARY FOR SALES CONDUCTED BY MEANS OF THE INTERNET OR ANOTHER ELECTRONIC MEDIUM.

~~(b) This subsection (2) shall take effect July 1, 2007.~~

SECTION 7. Act subject to petition - effective date - applicability. (1) This act takes effect September 1, 2015; except that, if a referendum petition is filed

pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to foreclosure sales conducted on or after the applicable effective date of this act.

Approved: April 21, 2015