

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

REREVISED

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

LLS NO. 15-0142.01 Duane Gall x4335

HOUSE BILL 15-1142

HOUSE SPONSORSHIP

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House Committees
Business Affairs and Labor
Finance

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A BILL FOR AN ACT

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

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/billsummaries>.)

The bill authorizes the public trustee of a county to conduct foreclosure sales through the internet or another electronic means, and

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
3rd Reading Unamended
March 31, 2015

SENATE
Amended 2nd Reading
March 30, 2015

HOUSE
3rd Reading Unamended
March 17, 2015

HOUSE
Amended 2nd Reading
March 16, 2015

allows for the collection of a specific fee for sales that are conducted electronically. The trustee shall publish information related to such sales electronically as well as through traditional means such as posting a physical document.

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

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

4 **38-37-104. Duties of public trustees - fees, expenses, and**
5 **salaries - reports.** (1) The public trustees of each county of this state
6 shall perform the functions and exercise the powers conferred upon them
7 by statute. They shall be entitled to receive as fees for such services the
8 following sums and no other fees or perquisites: ~~whatever:~~

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

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

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

20 **38-37-108. Payments to public trustee - electronic transfers -**
21 **definition.** (1) All moneys payable to a public trustee at any foreclosure
22 sale under the provisions of this article or upon redemption or cure
23 pursuant to article 38 of this title shall be in the form of cash, electronic

1 transfer to an account of the public trustee available for such purpose and
2 in compliance with the conditions placed on the account by the public
3 trustee for such electronic transfer, or certified check, cashier's check,
4 teller's check, or draft denominated as an official check that is a teller's
5 check or a cashier's check as those terms are defined in and governed by
6 the "Uniform Commercial Code", title 4, C.R.S., made payable to the
7 public trustee, and certified or issued by a state-chartered bank, savings
8 and loan association, or credit union licensed to do business in the state
9 of Colorado or a federally chartered bank, savings bank, or credit union.

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

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

18 **38-38-103. Combined notice - publication - providing**
19 **information.** (4) (a) The combined notices required to be mailed
20 pursuant to subsections (1), (2), and (3) of this section must contain the
21 following:

- 22 (I) The information required by section 38-38-101 (4);
- 23 (II) The statement: A notice of intent to cure filed pursuant to
24 section 38-38-104 shall be filed with the officer at least fifteen calendar
25 days prior to the first scheduled sale date or any date to which the sale is
26 continued;
- 27 (II.5) The statement, which must be in bold: If the sale date is

1 continued to a later date, the deadline to file a notice of intent to cure by
2 those parties entitled to cure may also be extended;

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

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

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

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

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

12 (A) THE ELECTRONIC ADDRESS;

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

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

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

21 ~~(IX)~~ (IX) A statement that, if the borrower believes that a lender
22 or servicer has violated the requirements for a single point of contact in
23 section 38-38-103.1 or the prohibition on dual tracking in section
24 38-38-103.2, the borrower may file a complaint with the Colorado
25 attorney general, the CFPB, or both, but the filing of a complaint will not
26 stop the foreclosure process. The notice must include contact information
27 for both the Colorado attorney general's office and the CFPB. If the

1 officer maintains a web site, the officer shall also post this information on
2 the web site for viewing by all borrowers.

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

5 **38-38-106. Bid required - form of bid.** (1) (a) The holder of the
6 evidence of debt or the attorney for the holder shall submit a bid SETTING
7 FORTH THE HOLDER'S INITIAL BID FOR THE PROPERTY that is received by
8 the officer no later than 12 noon on the second business day prior to the
9 date of sale as provided in this section. IN ADDITION, IF THE SALE WILL BE
10 CONDUCTED ELECTRONICALLY, THE HOLDER MAY ALSO INCLUDE A
11 MAXIMUM BID FOR THE PROPERTY. The holder or the attorney for the
12 holder need not personally attend the sale. IF THE SALE WILL BE
13 CONDUCTED ELECTRONICALLY AND THE HOLDER HAS ELECTED TO INCLUDE
14 A MAXIMUM BID, THE BID SHALL BE INCREASED ELECTRONICALLY IN
15 INCREMENTS INCORPORATED IN THE ELECTRONIC PROGRAM USED BY THE
16 OFFICER TO CONDUCT THE ELECTRONIC SALE UP TO SUCH MAXIMUM BID IF
17 ONE OR MORE THIRD PARTIES SUBMIT COMPETING BIDS FOR THE PROPERTY.

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

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

25 **BID**

26 To: _____

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

1 _____, State of Colorado (hereinafter the "officer").
2 Date: _____
3 _____, whose mailing address is _____, bids
4 the sum of \$ _____ in your Sale No. _____ to be held on the _____ day
5 of _____, 20____.

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

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

13 (Inapplicable items may be omitted):

14 Amounts due under the evidence of debt:
15 Principal \$ _____
16 Interest _____
17 Late charges _____
18 Allowable prepayment penalties
19 or premiums _____
20 Other amounts due under the evidence of debt
21 (specify) _____
22 _____
23 Category subtotal: \$ _____

24 Other fees and costs advanced by the holder of evidence of debt:
25 Property, general liability, and
26 casualty insurance _____
27 Property inspections _____

1	Appraisals	_____	
2	Taxes and assessments	_____	
3	Utility charges owed or		
4	incurred	_____	
5	Owner association		
6	assessment paid	_____	
7	Permitted amounts paid		
8	on prior liens	_____	
9	Permitted lease		
10	payments	_____	
11	Less impound/escrow		
12	account credit	_____	
13	Plus impound/escrow		
14	account deficiency	_____	
15	Other (describe)	_____	
16	Category subtotal:		\$ _____
17	Attorney fees and advances:		
18	Attorney fees	_____	
19	Title commitments and		
20	insurances or abstractor		
21	charges	_____	
22	Court docketing	_____	
23	Statutory notice	_____	
24	Postage	_____	
25	Electronic transmissions	_____	
26	Photocopies	_____	
27	Telephone	_____	

1 Other (describe) _____

2 Category subtotal: \$ _____

3 Officer fees and costs:

4 Officer statutory fee _____

5 Publication charges _____

6 Confirmation deed fee _____

7 Confirmation deed

8 recording fee _____

9 Other (describe) _____

10 Category subtotal: \$ _____

11 Total due holder of the

12 evidence of debt _____

13 INITIAL Bid \$ _____

14 Deficiency \$ _____

15 MAXIMUM BID (APPLIES TO ELECTRONIC BIDS ONLY) \$ _____

16 I enclose herewith the following:

17 1. Order authorizing sale.

18 2. Check (if applicable) to your order in the sum of \$_____ covering the

19 balance of your fees and costs.

20 3. Other: _____.

21 Please send us the following:

22 1. Promissory note with the deficiency, if any, noted thereon

23 2. Refund for overpayment of officer's fees and costs, if any

24 3. Other: _____.

25 Name of the holder of the evidence of debt

26 and the attorney for the holder:

27 Holder: _____

1 Attorney: _____
2 By: _____
3 Attorney registration number: _____
4 Attorney address: _____
5 Attorney business telephone: _____

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

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

18 **38-38-110. Sales by officer - location - announcement - records -**
19 **electronic devices - definitions.** (1) (a) (I) Notwithstanding the
20 provisions of any deed of trust or other lien being foreclosed, the officer
21 shall conduct the sale at any door or entrance to, or in any room in any
22 building temporarily or permanently used as, a courthouse or at or within
23 any building where the office of the county clerk and recorder or the
24 office of the officer is located, which place shall be specifically
25 designated in the combined notice; EXCEPT THAT A SALE MAY BE
26 CONDUCTED BY MEANS OF THE INTERNET OR OTHER ELECTRONIC MEDIUM.
27 THE COUNTY, THE OFFICER, AND EMPLOYEES OF THE COUNTY OR THE

1 OFFICER, ACTING IN THEIR OFFICIAL CAPACITIES IN PREPARING,
2 CONDUCTING, AND EXECUTING A SALE UNDER THIS ARTICLE BY MEANS OF
3 THE INTERNET OR ANOTHER ELECTRONIC MEDIUM, ARE NOT LIABLE FOR
4 THE FAILURE OF A DEVICE THAT PREVENTS A PERSON FROM PARTICIPATING
5 IN A SALE UNDER THIS ARTICLE.

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

9 (b) The combined notice shall designate the actual place of sale OR,
10 IF THE SALE IS CONDUCTED BY MEANS OF THE INTERNET OR ANOTHER
11 ELECTRONIC MEDIUM, THE INFORMATION PRESCRIBED BY SECTION
12 38-38-103 (4) (a) (VII).

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

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

1 **38-38-112. Use of electronic documents authorized.**

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

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

13 **SECTION 7. Act subject to petition - effective date - applicability.**

14 (1) This act takes effect September 1, 2015; except that, if a referendum
15 petition is filed pursuant to section 1 (3) of article V of the state
16 constitution against this act or an item, section, or part of this act within
17 the ninety-day period after final adjournment of the general assembly,
18 then the act, item, section, or part will not take effect unless approved by
19 the people at the general election to be held in November 2016 and, in
20 such case, will take effect on the date of the official declaration of the
21 vote thereon by the governor.

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