

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0142.01 Duane Gall x4335

HOUSE BILL 15-1142

HOUSE SPONSORSHIP

McCann, Coram, Duran, Pabon, Williams

SENATE SPONSORSHIP

Guzman,

House Committees

Business Affairs and Labor
Finance

Senate Committees

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.

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
16 ELECTRONIC MEDIUM PURSUANT TO SECTION 38-38-110 (1), THE PUBLIC
17 TRUSTEE MAY 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
13 OR AUTHORIZE A FINANCIAL INSTITUTION TO CREDIT OR DEBIT AN
14 ACCOUNT. "ELECTRONIC TRANSFER" PAYMENTS DO NOT INCLUDE
15 TRANSACTIONS ORIGINATED BY CHECK, DRAFT, OR SIMILAR PAPER
16 INSTRUMENT.

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

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

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

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

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

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

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

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

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

13 (A) THE ELECTRONIC ADDRESS;

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

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

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

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

1 for both the Colorado attorney general's office and the CFPB. If the
2 officer maintains a web site, the officer shall also post this information on
3 the web site for viewing by all borrowers.

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

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

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

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

26 **BID**

27 To: _____

1 Public Trustee (or Sheriff) of the County (or City and County) of
2 _____, State of Colorado (hereinafter the "officer").

3 Date: _____

4 _____, whose mailing address is _____, bids
5 the sum of \$ _____ in your Sale No. _____ to be held on the _____ day
6 of _____, 20____.

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

10 Street address of property being
11 foreclosed, if known: _____

12 Regular [] / default [] rate of interest as of the date of
13 sale: _____

14 (Inapplicable items may be omitted):

15 Amounts due under the evidence of debt:

16 Principal \$ _____

17 Interest _____

18 Late charges _____

19 Allowable prepayment penalties

20 or premiums _____

21 Other amounts due under the evidence of debt

22 (specify) _____

23 _____

24 Category subtotal: \$ _____

25 Other fees and costs advanced by the holder of evidence of debt:

26 Property, general liability, and

27 casualty insurance _____

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

1 Telephone _____
 2 Other (describe) _____
 3 Category subtotal: \$ _____
 4 Officer fees and costs:
 5 Officer statutory fee _____
 6 Publication charges _____
 7 Confirmation deed fee _____
 8 Confirmation deed
 9 recording fee _____
 10 Other (describe) _____
 11 Category subtotal: \$ _____

12 Total due holder of the
 13 evidence of debt _____
 14 INITIAL Bid \$ _____
 15 Deficiency \$ _____
 16 MAXIMUM BID (IF APPLICABLE) \$ _____

17 I enclose herewith the following:
 18 1. Order authorizing sale.
 19 2. Check (if applicable) to your order in the sum of \$ _____ covering the
 20 balance of your fees and costs.
 21 3. Other: _____.

22 Please send us the following:
 23 1. Promissory note with the deficiency, if any, noted thereon
 24 2. Refund for overpayment of officer's fees and costs, if any
 25 3. Other: _____.

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

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

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

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

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

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

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

10 (b) The combined notice shall designate the actual place of sale OR,
11 IF THE SALE IS CONDUCTED BY MEANS OF THE INTERNET OR ANOTHER
12 ELECTRONIC MEDIUM, THE INFORMATION PRESCRIBED BY SECTION
13 38-38-103 (4) (a) (VII).

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

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

1 as follows:

2 **38-38-112. Use of electronic documents authorized.**

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

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

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

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

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