

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

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 **add** (1) (b) (I.5) 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 (I.5) FOR THE COST OF CONDUCTING A PUBLIC FORECLOSURE SALE
12 BY MEANS OF THE INTERNET OR ANOTHER ELECTRONIC MEDIUM PURSUANT
13 TO SECTION 38-38-110 (1), A SUM NOT TO EXCEED SIXTY DOLLARS;

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

16 **38-37-108. Payments to public trustee - electronic transfers -**
17 **definition.** (1) All moneys payable to a public trustee at any foreclosure
18 sale under the provisions of this article or upon redemption or cure
19 pursuant to article 38 of this title shall be in the form of cash, electronic
20 transfer to an account of the public trustee available for such purpose and
21 in compliance with the conditions placed on the account by the public
22 trustee for such electronic transfer, or certified check, cashier's check,
23 teller's check, or draft denominated as an official check that is a teller's

1 check or a cashier's check as those terms are defined in and governed by
2 the "Uniform Commercial Code", title 4, C.R.S., made payable to the
3 public trustee, and certified or issued by a state-chartered bank, savings
4 and loan association, or credit union licensed to do business in the state
5 of Colorado or a federally chartered bank, savings bank, or credit union.

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

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

14 **38-38-103. Combined notice - publication - providing**
15 **information.** (4) (a) The combined notices required to be mailed
16 pursuant to subsections (1), (2), and (3) of this section must contain the
17 following:

- 18 (I) The information required by section 38-38-101 (4);
- 19 (II) The statement: A notice of intent to cure filed pursuant to
20 section 38-38-104 shall be filed with the officer at least fifteen calendar
21 days prior to the first scheduled sale date or any date to which the sale is
22 continued;
- 23 (II.5) The statement, which must be in bold: If the sale date is
24 continued to a later date, the deadline to file a notice of intent to cure by
25 those parties entitled to cure may also be extended;
- 26 (III) The statement: A notice of intent to redeem filed pursuant to
27 section 38-38-302 shall be filed with the officer no later than eight

1 business days after the sale;

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

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

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

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

8 (A) THE ELECTRONIC ADDRESS;

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

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

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

17 ~~(IX)~~ (IX) A statement that, if the borrower believes that a lender
18 or servicer has violated the requirements for a single point of contact in
19 section 38-38-103.1 or the prohibition on dual tracking in section
20 38-38-103.2, the borrower may file a complaint with the Colorado
21 attorney general, the CFPB, or both, but the filing of a complaint will not
22 stop the foreclosure process. The notice must include contact information
23 for both the Colorado attorney general's office and the CFPB. If the
24 officer maintains a web site, the officer shall also post this information on
25 the web site for viewing by all borrowers.

26 **SECTION 4.** In Colorado Revised Statutes, 38-38-110, **amend**
27 (1) and (2) as follows:

1 **38-38-110. Sales by officer - location - announcement - records**

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

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

19 (b) The combined notice shall designate the actual place of sale
20 OR, IF THE SALE IS CONDUCTED BY MEANS OF THE INTERNET OR ANOTHER
21 ELECTRONIC MEDIUM, THE INFORMATION PRESCRIBED BY SECTION
22 38-38-103 (4) (a) (VII).

23 (2) At a sale, the officer shall read only the public trustee's sale
24 number for a sale by the public trustee or the court case number for a sale
25 by the sheriff, the name of the original grantor, the street address or, if
26 none, the legal description of the property, the name of the holder of the
27 evidence of debt, the date of sale, the first and last publication dates of the

1 combined notice, and, in accordance with section 38-38-106 (4), the
2 amount of the bid and the name of the person that submitted the bid. In
3 lieu of reading the information listed above, the officer may post the
4 information ~~or~~ AT THE LOCATION OF THE SALE, provide a written copy of
5 the information to all persons present at the sale, OR POST THE
6 INFORMATION ON THE INTERNET OR OTHER ELECTRONIC MEDIUM IF THE
7 SALE IS CONDUCTED BY MEANS OF THE INTERNET OR ANOTHER
8 ELECTRONIC MEDIUM.

9 **SECTION 5.** In Colorado Revised Statutes, 38-38-112, **amend**
10 (2) as follows:

11 **38-38-112. Use of electronic documents authorized.**

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

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

23 **SECTION 6. Act subject to petition - effective date -**
24 **applicability.** (1) This act takes effect September 1, 2015; except that,
25 if a referendum petition is filed pursuant to section 1 (3) of article V of
26 the state constitution against this act or an item, section, or part of this act
27 within the ninety-day period after final adjournment of the general

1 assembly, then the act, item, section, or part will not take effect unless
2 approved by the people at the general election to be held in November
3 2016 and, in such case, will take effect on the date of the official
4 declaration of the vote thereon by the governor.

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