

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 14-0132.01 Duane Gall x4335

HOUSE BILL 14-1130

HOUSE SPONSORSHIP

McCann, Fields, Lebsock, Lee, Moreno, Salazar, Schafer, Singer

SENATE SPONSORSHIP

Ulibarri,

House Committees
Local Government

Senate Committees
Local Government

A BILL FOR AN ACT

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

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>.)

Current law is silent on when and how fees for court filings, published notices, and other costs of foreclosure are to be calculated and paid and, if overpaid, refunded. The bill specifies that all costs and fees charged to a borrower must be accurately accounted for and that any overpayments based on prepayments or estimates must be promptly

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.

HOUSE
3rd Reading Unamended
February 11, 2014

HOUSE
Amended 2nd Reading
February 10, 2014

refunded to the borrower.

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

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

4 **38-38-100.3. Definitions.** As used in articles 37 to 39 of this title,
5 unless the context otherwise requires:

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

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

16 **38-38-101. Holder of evidence of debt may elect to foreclose.**

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

22 (b) The public trustee may allow the attorney for the holder of the
23 evidence of debt OR SERVICER OR THE HOLDER OR SERVICER, IF NOT
24 REPRESENTED BY AN ATTORNEY, to establish one or more accounts with
25 the public trustee ONE OR MORE ACCOUNTS, FROM which the public trustee

1 may ~~use to~~ pay the fees and costs of the public trustee in any foreclosure
2 filed by the holder or the attorney for the holder ~~or~~ AND through which the
3 public trustee may transmit refunds or cures, overbids, or redemption
4 proceeds.

5
6 **SECTION 3.** In Colorado Revised Statutes, 38-38-104, **amend**
7 (2) (a) (I) and (2) (d); and add (2) (a) (III), (2) (a) (IV), (2) (a) (V), and
8 (2) (a) (VI) as follows:

9 **38-38-104. Right to cure when default is nonpayment - right**
10 **to cure for certain technical defaults.** (2) (a) (I) Promptly upon receipt
11 of a notice of intent to cure by the officer, but no less than twelve
12 calendar days prior to the date of sale, the officer shall transmit by mail,
13 facsimile, or electronic means to the person executing the notice of
14 election and demand a request for a statement of all sums necessary to
15 cure the default. The cure statement shall be filed with the officer by The
16 attorney for the holder OR SERVICER or, if none, by the holder of the
17 evidence of debt OR SERVICER, SHALL FILE THE CURE STATEMENT WITH
18 THE OFFICER, and shall THE CURE STATEMENT MUST set forth the amounts
19 necessary to cure, as identified in the cure statement. Upon receipt of the
20 statement of the amounts needed to cure, the officer shall transmit the
21 cure statement in writing to the person filing the notice of intent to cure
22 the default:

- 23 (A) THE CURE STATEMENT; AND
24 (B) A STATEMENT THAT THE PERSON FILING THE NOTICE OF INTENT
25 TO CURE IS ENTITLED TO RECEIVE FROM THE ATTORNEY FOR THE HOLDER
26 OR SERVICER OR, IF NOT REPRESENTED, FROM THE HOLDER OR SERVICER,
27 UPON WRITTEN REQUEST MAILED TO THE ATTORNEY FOR THE HOLDER OR

1 SERVICER OR, IF NOT REPRESENTED, TO THE HOLDER OF SERVICER AT THE
2 ADDRESS STATED ON THE CURE STATEMENT, COPIES OF RECEIPTS OR
3 OTHER CREDIBLE EVIDENCE TO SUPPORT THE COSTS CLAIMED ON THE CURE
4 STATEMENT. THIS REQUEST MAY BE SENT ONLY AFTER PAYMENT TO THE
5 OFFICER OF THE AMOUNT SHOWN ON THE CURE STATEMENT AND MUST BE
6 SENT WITHIN NINETY DAYS AFTER PAYMENT OF THE CURE AMOUNT.

7 (III) THE CURE STATEMENT IS A REPRESENTATION OF FACT, MADE
8 UPON THE CURRENT INFORMATION AND BELIEF OF THE PERSON SIGNING IT.

9 IF THE HOLDER OR SERVICER DETERMINES THAT THERE IS AN
10 INACCURATE AMOUNT CONTAINED IN THE CURE STATEMENT, THE HOLDER
11 OR SERVICER, OR THE ATTORNEY FOR THE HOLDER OR SERVICER, SHALL
12 INFORM THE OFFICER IMMEDIATELY AND PROVIDE A CURE STATEMENT
13 WITH UPDATED FIGURES; EXCEPT THAT ANY ADDITIONAL OR INCREASED
14 AMOUNTS MUST BE ADDED AT LEAST TEN CALENDAR DAYS BEFORE THE
15 EFFECTIVE DATE OF THE ORIGINAL CURE STATEMENT. IF AN INACCURATE
16 AMOUNT IS REPORTED AND A CORRECTED CURE STATEMENT IS NOT
17 PROVIDED WITHIN THE TIME SPECIFIED IN THIS SUBPARAGRAPH (III), THE
18 OFFICER MAY CONTINUE THE SALE FOR ONE WEEK IN ACCORDANCE WITH
19 SECTION 38-38-109 (1). AN ESTIMATE AS ALLOWED UNDER SUBSECTION
20 (5) OF THIS SECTION IS NOT AN INACCURATE AMOUNT FOR PURPOSES OF
21 THIS SUBPARAGRAPH (III).

22 (IV) WITHIN SEVEN BUSINESS DAYS AFTER THE OFFICER'S
23 NOTIFICATION TO THE HOLDER OR SERVICER, OR TO THE ATTORNEY FOR
24 THE HOLDER OR SERVICER, THAT THE OFFICER HAS RECEIVED THE FUNDS
25 NECESSARY TO CURE THE DEFAULT AS REFLECTED ON THE INITIAL OR
26 UPDATED CURE STATEMENT, THE HOLDER OR SERVICER OR THE ATTORNEY
27 FOR THE HOLDER OR SERVICER SHALL DELIVER TO THE OFFICER A FINAL

1 STATEMENT, RECONCILED FOR ESTIMATED AMOUNTS THAT WERE NOT OR
2 WOULD NOT BE INCURRED AS OF THE DATE THE CURE PROCEEDS WERE
3 RECEIVED BY THE OFFICER, ALONG WITH RECEIPTS OR INVOICES FOR ALL
4 RULE 120 DOCKET COSTS AND ALL STATUTORILY MANDATED POSTING
5 COSTS CLAIMED ON THE CURE STATEMENT. ALL AMOUNTS OF CURE
6 PROCEEDS RECEIVED BY THE OFFICER IN EXCESS OF THE AMOUNTS
7 REFLECTED ON THE FINAL STATEMENT SHALL BE REMITTED BY THE
8 OFFICER TO THE PERSON WHO PAID THE CURE AMOUNT.

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

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

19 (VI) THE HOLDER OR SERVICER IS RESPONSIBLE FOR RETAINING
20 RECEIPTS OR OTHER CREDIBLE EVIDENCE TO SUPPORT ALL COSTS CLAIMED
21 ON THE CURE STATEMENT, INCLUDING RULE 120 DOCKET FEES AND
22 POSTING COSTS, AND THE PERSON WHO PAID THE CURE AMOUNT IS
23 ENTITLED TO RECEIVE COPIES UPON WRITTEN REQUEST MAILED TO THE
24 ATTORNEY FOR THE HOLDER OR SERVICER OR, IF NOT REPRESENTED, TO
25 THE HOLDER OR SERVICER AT THE ADDRESS STATED ON THE CURE
26 STATEMENT. THE REQUEST MAY BE MADE AT ANY TIME AFTER PAYMENT
27 TO THE OFFICER OF THE AMOUNT SHOWN ON THE CURE STATEMENT, BUT

1 MUST BE MADE WITHIN NINETY DAYS AFTER PAYMENT OF THE CURE
2 AMOUNT. THE ATTORNEY FOR THE HOLDER OR SERVICER OR, IF NOT
3 REPRESENTED, THE HOLDER OR SERVICER SHALL PROVIDE COPIES OF ALL
4 RECEIPTS OR OTHER CREDIBLE EVIDENCE WITHIN THIRTY DAYS AFTER
5 RECEIVING THE REQUEST, AND MAY PROVIDE THE COPIES
6 ELECTRONICALLY.

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

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

16 =====
17 (B) OBTAIN AND RETAIN, IN THE OFFICER'S RECORDS, THE NAME
18 AND MAILING ADDRESS OF THE PERSON WHO PAID THE CURE AMOUNT.

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

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

26 **SECTION 5. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.