

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0225.01 Duane Gall

SENATE BILL 11-122

SENATE SPONSORSHIP

Lundberg,

HOUSE SPONSORSHIP

DelGrosso,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING THE REQUIREMENTS FOR REDEMPTION OF A JUNIOR LIEN
102 IN FORECLOSURE PROCEEDINGS.

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/billssummaries>.)

Current law allows a person to purchase, often at a premium, a junior lien with high priority on property in foreclosure and redeem the lien from the purchaser (that is, from the person who either held a senior lien and foreclosed on it or submitted the highest bid at the foreclosure sale) after the foreclosure sale. The bill limits this ability by allowing the

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.

purchaser to pay off the junior lien at face value through the public trustee, without having to find and tender payment to the junior lienor and without giving the junior lienor an opportunity to refuse payment and redeem the property instead. The bill also adds specific requirements for verifying the validity and amount of a debt enforced pursuant to the "Colorado Common Interest Ownership Act" on behalf of a unit owners' association.

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

2 **SECTION 1.** 38-38-302 (1), (3), and (4) (d), Colorado Revised
3 Statutes, are amended to read:

4 **38-38-302. Redemption by lienor - procedure.**

5 (1) **Requirements for redemption.** A lienor or assignee of a lien is
6 entitled to redeem if the following requirements are met to the satisfaction
7 of the officer:

8 (a) The lienor's lien is a deed of trust or other lien that is created
9 or recognized by state or federal statute or by judgment of a court of
10 competent jurisdiction;

11 (b) The lien is a junior lien as defined in section 38-38-100.3 (11);

12 (c) (I) (A) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH
13 (II) OF THIS PARAGRAPH (c), the lienor's lien appears by instruments that
14 were duly recorded in the office of the clerk and recorder of the county
15 prior to the recording of the notice of election and demand or lis pendens
16 and the lienor OR ASSIGNEE is one of the persons who would be entitled
17 to cure pursuant to section 38-38-104 (1), regardless of whether such
18 lienor OR ASSIGNEE filed a notice of intent to cure. IF THE PERSON
19 SEEKING TO REDEEM IS AN ASSIGNEE, THE ASSIGNMENT OF THE LIEN MUST
20 BE RECORDED, ALTHOUGH THE ASSIGNMENT NEED NOT BE RECORDED
21 PRIOR TO THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND OR
22 LIS PENDENS.

1 (B) If, prior to the date and time of the recording of the notice of
2 election and demand or lis pendens, a lien was recorded in an incorrect
3 county, the holder's rights under this section ~~shall be~~ ARE valid only if the
4 lien is rerecorded in the correct county at least fifteen calendar days prior
5 to the actual date of sale.

6 (II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH
7 (c), THE LIEN OF A UNIT OWNERS' ASSOCIATION, AS DEFINED IN SECTION
8 38-33.3-103, NEED NOT BE RECORDED IF THE LIEN IS OTHERWISE VALID
9 UNDER SECTION 38-33.3-316 AND IS ASSERTED BY THE UNIT OWNERS'
10 ASSOCIATION IN WHOSE FAVOR THE LIEN WAS CREATED BY THAT SECTION,
11 BUT ANY ASSIGNMENT OF THE LIEN BY THE ASSOCIATION MUST BE
12 RECORDED IN ORDER FOR THE ASSIGNEE TO EXERCISE ANY RIGHTS UNDER
13 THIS SECTION.

14 (d) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF
15 THIS PARAGRAPH (d), the lienor has FILED WITH THE OFFICER, within eight
16 business days after the sale, ~~filed a notice with the officer~~ of the lienor's
17 intent to redeem. THE NOTICE MUST BE IN A FORM SPECIFIED BY THE
18 OFFICER AND BE TITLED "NOTICE OF INTENT TO REDEEM AND STATEMENT
19 OF AMOUNT REQUIRED TO REDEEM LIENOR'S LIEN".

20 (II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH
21 (d), a lienor may file a notice of intent to redeem more than eight business
22 days after THE sale if:

23 ~~(H)~~ (A) No lienor junior to the lienor seeking to file the late intent
24 to redeem has redeemed;

25 ~~(H)~~ (B) The redemption period for the lienor seeking to file the
26 late intent to redeem has not expired;

27 ~~(H)~~ (C) A redemption period has been created by the timely filing

1 of a notice of intent to redeem; and

2 ~~(IV)~~ (D) The notice of intent to redeem is accompanied by a
3 written authorization from the attorney for the holder of the certificate of
4 purchase according to the records of the officer conducting the sale, or,
5 if no attorney is shown, then the holder of the certificate of purchase, or,
6 if a redemption has occurred, from the immediately prior redeeming
7 lienor, or the attorney for the immediately prior redeeming lienor,
8 authorizing the officer to accept such notice of intent to redeem.

9 (e) (I) The lienor has attached to the notice of intent to redeem the
10 original instrument or a certified copy thereof, or in the case of a qualified
11 holder, a copy of the instrument evidencing the lien and any assignment
12 of the lien to the person attempting to redeem. If the original instrument
13 is delivered to the officer, the officer shall return the instrument to the
14 lienor and retain a copy.

15 (II) IF THE LIEN IS FOR AMOUNTS DUE TO A UNIT OWNERS'
16 ASSOCIATION UNDER SECTION 38-33.3-316, THE LIENOR OR ASSIGNEE HAS
17 ATTACHED TO THE NOTICE OF INTENT TO REDEEM THE FOLLOWING
18 DOCUMENTS:

19 (A) WRITTEN EVIDENCE OF THE DATE AND RECEPTION NUMBER OF
20 THE DECLARATION, RECORDED PURSUANT TO SECTION 38-33.3-201, THAT
21 CREATED THE COMMON INTEREST COMMUNITY OF WHICH THE SUBJECT
22 PROPERTY IS A UNIT;

23 (B) IF THE LIEN WAS ASSIGNED, A COPY OF THE ORIGINAL
24 STATEMENT OF LIEN, IF ANY, AND COPIES OF ALL ASSIGNMENTS, TOGETHER
25 WITH WRITTEN EVIDENCE OF THE DATE AND RECEPTION NUMBER OF THE
26 RECORDING OF EACH ASSIGNMENT;

27 (C) AN ITEMIZED ACCOUNTING OF ALL AMOUNTS CLAIMED DUE TO

1 THE ASSOCIATION, SEPARATELY STATING MONTHLY ASSESSMENTS BY
2 MONTH, LATE CHARGES, FINES, INTEREST, AND ANY ATTORNEY FEES OR
3 COLLECTION COSTS ASSESSED. THE ACCOUNTING MUST IDENTIFY THE
4 PROPERTY BY ADDRESS AND MUST CONTAIN THE NOTARIZED SIGNATURE
5 OF AN AUTHORIZED REPRESENTATIVE OF THE ASSOCIATION OR THE
6 SIGNATURE AND ATTORNEY REGISTRATION NUMBER OF THE ASSOCIATION'S
7 ATTORNEY; AND

8 (D) EVIDENCE SATISFACTORY TO THE OFFICER TO DETERMINE
9 WHETHER ALL OR ANY PART OF THE LIEN IS ENTITLED TO REDEMPTION,
10 INCLUDING THE PORTION, IF ANY, THAT HAS PRIORITY OVER THE DEED OF
11 TRUST IN FORECLOSURE PURSUANT TO SECTION 38-33.3-316 (2) (b).

12 (f) The lienor has attached to the notice of intent to redeem a
13 signed and properly acknowledged statement of the lienor, or a signed
14 statement by the lienor's attorney, setting forth the amount required to
15 redeem the lienor's lien, including per diem interest BUT NOT INCLUDING
16 ANY ASSIGNMENT FEE, PREMIUM, ATTORNEY'S FEE FOR ASSIGNMENT, OR
17 OTHER ADDITIONAL CHARGE, HOWEVER DENOMINATED, PAID UPON ANY
18 ASSIGNMENT OF A LIEN AUTHORIZED BY SECTION 38-33.3-316, through the
19 end of the nineteenth business day after the sale with the same specificity
20 and itemization as required in section 38-38-106. If the amount required
21 to redeem the lienor's lien shown on the statement is zero, the lienor has
22 no right to redeem unless section 38-38-305 applies.

23 (3) **Statement of redemption.** (a) Upon receipt of notice that an
24 intent to redeem was filed, AND NO LATER THAN THIRTEEN BUSINESS DAYS
25 FOLLOWING THE SALE, the holder of a certificate of purchase shall
26 EXERCISE EITHER OR BOTH OF THE FOLLOWING TWO OPTIONS:

27 (I) (A) Submit a signed and acknowledged statement, or the

1 attorney for the holder shall submit a signed statement, to the officer, ~~no~~
2 ~~later than thirteen business days following the sale,~~ specifying all sums
3 necessary to redeem as of the date of the statement, the amount of per
4 diem interest accruing thereafter, and the interest rate on which the
5 amount is based. A holder of the certificate of purchase, ~~that is not a~~
6 ~~qualified holder,~~ or the attorney for the holder, shall also submit to the
7 officer receipts, invoices, evidence of electronic account-to-account
8 transfers, or copies of loan servicing computer screens evidencing the
9 fees and costs and verifying that the fees and costs were actually incurred
10 FOR GOODS AND SERVICES PROVIDED BY OTHERS as of the date of the
11 statement, along with the per diem amounts that accrue after the date of
12 sale. The holder or the attorney for the holder may amend the statement
13 from time to time to reflect additional sums advanced as allowed by law,
14 but the statement shall not be amended later than two business days prior
15 to the commencement of the redemption period pursuant to paragraph (a)
16 of subsection (4) of this section or each subsequent redemption period
17 pursuant to paragraph (b) of subsection (4) of this section.

18 (B) WITHIN ONE BUSINESS DAY AFTER RECEIPT OF ALL DOCUMENTS
19 SPECIFIED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I), THE
20 OFFICER SHALL FORWARD COPIES OF THE DOCUMENTS BY MAIL, FACSIMILE,
21 OR OTHER ELECTRONIC MEANS TO THE PARTIES FILING NOTICES OF INTENT
22 TO REDEEM WHO WERE NOT SATISFIED IN ACCORDANCE WITH
23 SUBPARAGRAPH (II) OF THIS PARAGRAPH (a).

24 (II) (A) PAY TO THE OFFICER, EITHER BY ELECTRONIC FUNDS
25 TRANSFER AT THE HOLDER'S EXPENSE OR IN CASH, THE FULL AMOUNT DUE
26 TO THE LIENOR AS STATED PURSUANT TO PARAGRAPH (f) OF SUBSECTION
27 (1) OF THIS SECTION PLUS A FEE OF THIRTY DOLLARS PLUS THE APPLICABLE

1 RECORDING FEE FOR EACH CERTIFICATE OF SATISFACTION TO BE FILED BY
2 THE OFFICER IN ACCORDANCE WITH SUB-SUBPARAGRAPH (B) OF THIS
3 SUBPARAGRAPH (II). IF MORE THAN ONE LIENOR FILED NOTICES OF INTENT
4 TO REDEEM, THE HOLDER OF THE CERTIFICATE OF PURCHASE MAY, BUT
5 NEED NOT, SATISFY ALL OF THEM.

6 (B) EXCEPT AS OTHERWISE PROVIDED IN SUB-SUBPARAGRAPH (C)
7 OF THIS SUBPARAGRAPH (II), WITHIN ONE BUSINESS DAY AFTER RECEIPT OF
8 ALL AMOUNTS SPECIFIED IN SUB-SUBPARAGRAPH (A) OF THIS
9 SUBPARAGRAPH (II), THE OFFICER SHALL PAY THE LIENOR THE FULL
10 AMOUNT DUE TO THE LIENOR AS STATED PURSUANT TO PARAGRAPH (f) OF
11 SUBSECTION (1) OF THIS SECTION AND SHALL ISSUE TO THE HOLDER OF THE
12 CERTIFICATE OF PURCHASE, AND FILE WITH THE COUNTY CLERK AND
13 RECORDER, A CERTIFICATE OF PAYMENT. THE CERTIFICATE OF PAYMENT
14 MUST BE TITLED "CERTIFICATE OF SATISFACTION OF JUNIOR LIENOR
15 ATTEMPTING TO REDEEM" AND STATE THAT THE LIEN HAS BEEN PAID AND
16 EXTINGUISHED AND THAT THE JUNIOR LIENOR IS NO LONGER ELIGIBLE TO
17 REDEEM. THE OFFICER SHALL NOT THEREAFTER ACCEPT ANY TENDERED
18 PAYMENT OF FUNDS FOR REDEMPTION OF THE LIEN FROM THE JUNIOR
19 LIENOR.

20 (C) THE OFFICER SHALL HOLD IN ESCROW ANY PAYMENT MADE
21 UNDER SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) THAT WOULD
22 SATISFY A LIEN AS DESCRIBED IN SECTION 38-38-306 (2) UNTIL A FINAL
23 JUDGMENT HAS BEEN ENTERED IN FAVOR OF THE CLAIMANT AND ALL
24 PERIODS FOR APPEAL HAVE EXPIRED. AT THAT TIME, THE OFFICER SHALL
25 ACT IN ACCORDANCE WITH SUB-SUBPARAGRAPH (B) OF THIS
26 SUBPARAGRAPH (II) AND RETURN ANY EXCESS PAYMENT TO THE HOLDER
27 OF THE CERTIFICATE OF PURCHASE.

1 (b) If the holder of the certificate of purchase or the attorney for
2 the holder fails to ~~submit the initial written statement to the officer~~
3 EXERCISE EITHER OF THE OPTIONS SPECIFIED IN PARAGRAPH (a) OF THIS
4 SUBSECTION (3) within thirteen business days after the sale, the officer
5 may calculate the amount necessary to redeem by adding to the successful
6 bid the accrued interest from the sale through the redemption date. The
7 accrued interest ~~shall be~~ IS calculated by multiplying the amount of the
8 bid by the regular rate of annual interest specified in the evidence of debt,
9 deed of trust, or other lien being foreclosed, divided by three hundred
10 sixty-five and then multiplied by the number of days from the date of sale
11 through the redemption date. The officer shall transmit by mail,
12 facsimile, or other electronic means to the party filing the notice of intent
13 to redeem, promptly upon receipt, the statement filed by the holder, or if
14 no such statement is filed, the officer's estimate of the redemption figure,
15 which shall be transmitted no later than the commencement of the
16 redemption period pursuant to paragraph (a) of subsection (4) of this
17 section or each subsequent redemption period pursuant to paragraph (b)
18 of subsection (4) of this section.

19 (4) **Redemption period.** (d) On the ninth business day after the
20 date of sale, the officer shall set the dates of the redemption period of
21 each lienor in accordance with this subsection (4). The redemption period
22 of a lienor ~~shall~~ IS not ~~be~~ shortened or altered by the fact that a prior
23 lienor redeemed before the expiration of his or her redemption period OR
24 BY THE FACT THAT A PRIOR LIENOR'S LIEN WAS SATISFIED BY THE HOLDER
25 OF THE CERTIFICATE OF PURCHASE.

26 **SECTION 2.** The introductory portion to 38-37-104 (1) and
27 38-37-104 (1) (b) (XI) and (1) (b) (XII), Colorado Revised Statutes, are

1 amended, and the said 38-37-104 (1) (b) is further amended BY THE
2 ADDITION OF A NEW SUBPARAGRAPH, to read:

3 **38-37-104. Duties of public trustees - fees, expenses, and**
4 **salaries - reports.** (1) The public trustees of each county of this state
5 shall perform the functions and exercise the powers conferred upon them
6 by statute. They ~~shall be~~ ARE entitled to receive as fees for such services
7 the following sums and no other fees or perquisites whatever:

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

10 (XI) For processing a rescission of sale pursuant to section
11 38-38-113, the sum of one hundred dollars; ~~and~~

12 (XII) For rescheduling a sale after a rescission of sale pursuant to
13 section 38-38-113 (4), the additional sum of fifty dollars; AND

14 (XIII) FOR ACCEPTING AND TRANSMITTING A PAYMENT AND
15 PERFORMING OTHER DUTIES AS SET FORTH IN SECTION 38-38-302 (3) (a)
16 (II), THE SUM OF THIRTY DOLLARS.

17 **SECTION 3.** 38-38-111 (2), Colorado Revised Statutes, is
18 amended to read:

19 **38-38-111. Treatment of excess proceeds.** (2) (a) Upon the
20 expiration of all redemption periods provided in section 38-38-302, any
21 remaining excess proceeds shall be paid in order of recording priority to
22 junior lienors, determined as of the recording date of the notice of
23 election and demand or lis pendens according to the records, who have
24 duly filed a notice of intent to redeem and whose liens have not been
25 redeemed pursuant to section 38-38-302, in each case up to the unpaid
26 amount of each such lienor's lien plus fees and costs.

27 (b) A lienor ~~holding~~ DOES NOT HAVE A CLAIM TO ANY PORTION OF

1 THE EXCESS PROCEEDS IF:

2 (I) THE LIENOR HOLDS a lien that is not entitled to ~~redeem~~ BE
3 REDEEMED by virtue of being recorded after the notice of election and
4 demand;

5 (II) a THE lienor ~~that~~ has not timely filed a notice of intent to
6 redeem pursuant to section 38-38-302;

7 (III) THE LIENOR'S LIEN HAS BEEN PAID AND EXTINGUISHED
8 PURSUANT TO SECTION 38-38-302 (3) (a) (II); or a

9 (IV) THE lienor ~~who accepts~~ HAS ACCEPTED less than a full
10 redemption pursuant to section 38-38-302 (4) (c). ~~shall not have any~~
11 ~~claim to any portion of the excess proceeds.~~

12 (c) After payment to all lienors and the holder entitled to receive
13 excess proceeds pursuant to this section, any remaining excess proceeds
14 shall be paid to the owner of the property as of the date and time of the
15 recording of the notice of election and demand or lis pendens.

16 **SECTION 4.** The introductory portion to 38-38-702 (1) and
17 38-38-702 (1) (a), Colorado Revised Statutes, are amended to read:

18 **38-38-702. Limitation of officer's liability.** (1) An officer ~~shall~~
19 DOES not have responsibility or liability for determining:

20 (a) The amount or reasonableness of a bid at a sale under section
21 38-38-106, the amount required to cure under section 38-38-104, or the
22 amount required to redeem, INCLUDING THE AMOUNT REQUIRED FOR
23 SATISFACTION OF A JUNIOR LIEN, under section 38-38-302;

24 **SECTION 5. Act subject to petition - effective date -**
25 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
26 following the expiration of the ninety-day period after final adjournment
27 of the general assembly (August 10, 2011, if adjournment sine die is on

1 May 11, 2011); except that, if a referendum petition is filed pursuant to
2 section 1 (3) of article V of the state constitution against this act or an
3 item, section, or part of this act within such period, then the act, item,
4 section, or part shall not take effect unless approved by the people at the
5 general election to be held in November 2012 and shall take effect on the
6 date of the official declaration of the vote thereon by the governor.

7 (2) This act shall apply to foreclosures in which a notice of intent
8 to redeem is filed on or after the applicable effective date of this act.