

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

March 27, 2002  
Date

Committee on Finance.

After consideration on the merits, the Committee recommends the following:

SB02-161 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend reengrossed bill, page 6, strike line 9 and substitute "ECONOMIC  
2 LOSS";

3 line 10, strike "SECTION." and substitute "SECTION, INCLUDING  
4 REASONABLE ATTORNEY FEES AND COSTS."

5 Page 10, strike line 26 and substitute the following:

6 "(1.8) IN THE EVENT THAT A FORECLOSURE IS CONDUCTED BY AN  
7 ALLEGED".

8 Page 11, line 3, strike "SOLE REMEDY" and substitute "ONLY CLAIMS";

9 line 4, after "BE", insert "SOLELY";

10 line 5, strike "SECTION." and substitute "SECTION AND NOT AGAINST THE  
11 REAL PROPERTY."

12 Page 16, strike lines 7 and 8 and substitute the following:

13 "DEBT IN FORECLOSING THE LIEN AS OF THE DATE OF CURE AND THAT ARE";

1 line 9, strike "SECTION" and substitute "SECTIONS 38-38-106 AND".

2 Page 17, line 27, strike " PROPERTY, THE PROPERTY, AND" and substitute  
3 "PROPERTY OR".

4 Page 18, strike lines 2 through 17 and substitute the following:

5 (I) ALL EXPENSES ACTUALLY INCURRED BY THE OFFICER  
6 CONDUCTING THE SALE, PUBLICATION COSTS, STATUTORY NOTICE COSTS  
7 AND POSTAGE, AND APPRAISAL FEES;

8 (II) ANY GENERAL OR SPECIAL TAXES OR DITCH OR WATER  
9 ASSESSMENTS LEVIED OR ACCRUING AGAINST SAID PROPERTY AND ANY  
10 GOVERNMENTAL OR QUASI-GOVERNMENTAL LIEN, FINE, PENALTY, OR  
11 ASSESSMENT AGAINST THE PROPERTY;

12 (III) THE PREMIUMS ON ANY PROPERTY, CASUALTY, GENERAL  
13 LIABILITY, AND TITLE INSURANCE ACQUIRED TO PROTECT THE HOLDER'S  
14 INTEREST IN THE PROPERTY OR THE IMPROVEMENTS COMPRISING A PART  
15 OF SUCH PROPERTY;

16 (IV) SUMS DUE ON ANY PRIOR LIEN OR ENCUMBRANCE ON SUCH  
17 PROPERTY, INCLUDING THAT PORTION OF AN ASSESSMENT BY A  
18 HOMEOWNERS' ASSOCIATION THAT CONSTITUTES A LIEN PRIOR TO THE LIEN  
19 BEING FORECLOSED;

20 (V) IF THE PROPERTY IS SUBJECT TO A LEASE, ALL SUMS DUE UNDER  
21 SUCH LEASE;

22 (VI) THE REASONABLE COSTS AND EXPENSES OF DEFENDING,  
23 PROTECTING, SECURING, MAINTAINING, AND REPAIRING SUCH PROPERTY  
24 AND THE HOLDER'S INTEREST IN SUCH PROPERTY, OR THE IMPROVEMENTS  
25 ON SUCH PROPERTY, RECEIVER'S FEES AND EXPENSES, INSPECTION FEES,  
26 COURT COSTS, ATTORNEY FEES, AND FEES AND COSTS OF THE ATTORNEY IN  
27 THE EMPLOYMENT OF THE HOLDER OF THE CERTIFICATE OF PURCHASE;

28 (VII) COSTS AND EXPENSES MADE PURSUANT TO A VALID ORDER

1 FROM A COURT OF COMPETENT JURISDICTION TO BRING THE PROPERTY AND  
2 THE IMPROVEMENTS THEREON IN COMPLIANCE WITH THE FEDERAL, STATE,  
3 COUNTY, AND LOCAL LAWS, ORDINANCES, AND REGULATIONS AFFECTING  
4 THE PROPERTY, THE IMPROVEMENTS ON THE PROPERTY, OR THE USE OF THE  
5 PROPERTY; AND

6 (VIII) SUCH OTHER COSTS AND EXPENSES THAT MAY BE PERMITTED  
7 BY THE DEED OF TRUST, MORTGAGE, OR OTHER LIEN SECURING THE DEBT  
8 OR THAT MAY BE AUTHORIZED BY A COURT OF COMPETENT JURISDICTION.";

9 strike line 18 and substitute the following:

10 "(b) Bids shall be in substantially the following form:

11 **BID**  
12 To: \_\_\_\_\_  
13 (Public Trustee)\*(Sheriff)\* of the County of \_\_\_\_\_, State of Colorado.

14 Date: \_\_\_\_\_  
15 \_\_\_\_\_, whose mailing address is \_\_\_\_\_, bids the sum of \$ \_\_\_\_\_ in  
16 your Sale No. \_\_\_\_\_ to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.  
17 The following is an itemization of all amounts due the owner of the  
18 evidence of debt secured by the (deed of trust) (mortgage) (lien) being  
19 foreclosed.

20 (Inapplicable items may be omitted):

21	Principal	\$ _____
22	Interest	_____
23	Late charges	_____
24	Less impound account credit	_____
25	Plus impound account deficiency	_____
26	Title or abstracting charges	_____
27	Docket fee	_____
28	Appraisal fee	_____
29	STATUTORY NOTICE COSTS	_____
30	Postage	_____
31	Photocopies	_____
32	Attorney fees	_____

1 Telephone charges \_\_\_\_\_  
2 PREMIUM INSURANCE \_\_\_\_\_  
3 Other (describe): \_\_\_\_\_  
4 Total due holder \_\_\_\_\_

5 (Public Trustee's)\*(Sheriff's)\* FEES AND COSTS  
6 ~~Fee and costs\*~~ \_\_\_\_\_  
7 PUBLICATION COSTS \_\_\_\_\_  
8 Total \_\_\_\_\_  
9 Bid \_\_\_\_\_  
10 Deficiency \_\_\_\_\_

11 I enclose herewith the following:  
12 1. Order authorizing sale.  
13 2. Check to your order in the sum of \$ \_\_\_\_ covering the balance of  
14 your fees.  
15 3. Other: \_\_\_\_\_.

16 Please send us the following:  
17 1. Original Certificate of Purchase.\*  
18 2. Promissory Note (with deficiency noted thereon).\*  
19 3. Refund Check for overpayment of (Public Trustee's)\*(Sheriff's)\*  
20 costs if any.  
21 4. Other: \_\_\_\_\_.

22 \*Delete as case may be.  
23 Name of foreclosing party, agent, or attorney

24 By: \_\_\_\_\_  
25 Address: \_\_\_\_\_  
26 Telephone: \_\_\_\_\_ ".

27 Page 20, line 24, after "sale.", insert "ALIENOR HOLDING A CONSENSUAL  
28 LIEN PURSUANT TO SECTION 38-38-303 (2) (e) THAT IS NOT ENTITLED TO  
29 REDEEM PURSUANT TO SECTION 38-38-303 (2) (d) SHALL NOT CLAIM ANY  
30 PORTION OF THE EXCESS MONEYS."

31 Page 22, line 9, strike "deeds" and substitute "~~deeds~~ DEED";  
32 strike lines 19 and 20 and substitute the following:

1           (b) The premiums on any PROPERTY, CASUALTY, GENERAL  
2 LIABILITY, AND TITLE insurance ~~necessary~~ ACQUIRED to protect ~~any~~ THE  
3 HOLDER'S INTEREST IN THE PROPERTY OR THE";

4 line 24, strike "PRIORLIEN;" and substitute "LIEN PRIOR TO THE LIEN BEING  
5 FORECLOSED;"

6 line 25, strike "a leasehold or is" and substitute "~~a leasehold or is~~".

7 Page 23, strike lines 1 through 8 and substitute the following:

8 "SECURING, and maintaining such ~~property, and~~ PROPERTY;

9           (f) THE REASONABLE COSTS AND EXPENSES OF SECURING AND  
10 MAINTAINING the holder's interest in such property, AND ANY  
11 IMPROVEMENTS ON SUCH PROPERTY, including repair and maintenance  
12 costs and expenses, costs and expenses of protecting and securing THE  
13 PROPERTY, THE HOLDER'S INTEREST IN the property, AND ANY  
14 IMPROVEMENTS ON THE PROPERTY;

15           (g) THE REASONABLE COSTS AND EXPENSES OF receiver's fees and  
16 expenses, inspection fees, INSURANCE PREMIUMS, court costs, attorney  
17 fees, and fees and costs of ~~an~~ THE attorney in the employment of the  
18 holder of the certificate of purchase; ~~and~~

19 Reletter succeeding paragraphs accordingly.

20 Page 23, line 9, strike "THE COSTS" and substitute "COSTS" and after  
21 "INCURRED", insert "PURSUANT TO A VALID ORDER FROM A COURT OF  
22 COMPETENT JURISDICTION";

23 line 22, after "(1)", insert "(a)".

24 Page 24, after line 18, insert the following:

25           (b) THE PUBLIC TRUSTEE OR SHERIFF CONDUCTING THE SALE MAY  
26 ACCEPT A WRITTEN NOTICE OF THE INTENTION TO REDEEM AND THE SUM  
27 NECESSARY TO REDEEM AFTER FIFTEEN CALENDAR DAYS PRIOR TO THE END  
28 OF THE REDEMPTION PERIOD, BUT PRIOR TO THE END OF THE REDEMPTION

1 PERIOD, UPON RECEIPT OF WRITTEN AUTHORIZATION FROM THE ATTORNEY  
2 FOR THE HOLDER OF THE CERTIFICATE OF PURCHASE ACCORDING TO THE  
3 RECORDS OF THE OFFICER CONDUCTING THE SALE, OR IF NO ATTORNEY IS  
4 SHOWN, THEN THE HOLDER OF THE CERTIFICATE OF PURCHASE."

5 Page 28, line 9, strike the first "OF" and substitute "FROM";

6 strike line 11 and substitute the following:

7 "filed as permitted by law ~~and unless~~; WITHIN THE TIME FOR FILING A  
8 NOTICE OF INTENT TO REDEEM PROVIDED FOR IN SECTION 38-38-302;"

9 line 21, strike "~~redeem~~;" and substitute "~~redeem~~. ~~No lienor shall be~~  
10 ~~entitled to redeem under this section unless his lien appears by an~~  
11 ~~instrument so recorded or filed prior to the expiration of the period of~~  
12 ~~redemption provided for in section 38-38-302.~~";

13 strike lines 26 and 27.

14 Page 29, strike line 1.

15 Reletter succeeding paragraphs accordingly.

16 Page 30, line 3, strike "his OR HER agent" and substitute "~~his agent~~ SUCH  
17 LIENOR'S ATTORNEY";

18 line 5, strike "SECTION 38-38-301 (1) (a) to (1) (f)" and substitute  
19 "SUBSECTION (5) OF THIS SECTION";

20 line 16, after "AFFIDAVIT." add "IT SHALL NOT BE THE RESPONSIBILITY OF  
21 THE PUBLIC TRUSTEE OR SHERIFF TO REQUEST A REVISED OR CORRECTED  
22 AFFIDAVIT FROM THE REDEEMING LIENOR.

23 (5) A REDEEMING LIENOR MAY PAY THE FOLLOWING:

24 (a) THE PREMIUMS ON ANY PROPERTY, CASUALTY, GENERAL  
25 LIABILITY, AND TITLE INSURANCE ACQUIRED TO PROTECT THE HOLDER'S  
26 INTEREST IN THE PROPERTY OR THE IMPROVEMENTS COMPRISING A PART OF

1 SUCH PROPERTY; AND

2 (b) AT ANY TIME AFTER RECEIVING A CERTIFICATE OF REDEMPTION  
3 AND DURING THE PERIOD OF REDEMPTION SPECIFIED IN SUBSECTION (1) OF  
4 THIS SECTION:

5 (I) ANY GENERAL OR SPECIAL TAXES OR DITCH OR WATER  
6 ASSESSMENTS LEVIED OR ACCRUING AGAINST SAID PROPERTY AND ANY  
7 GOVERNMENTAL OR QUASI-GOVERNMENTAL LIEN, FINE, PENALTY, OR  
8 ASSESSMENT AGAINST THE PROPERTY;

9 (II) SUMS DUE ON ANY PRIOR LIEN OR ENCUMBRANCE ON SUCH  
10 PROPERTY, INCLUDING THAT PORTION OF AN ASSESSMENT BY A  
11 HOMEOWNER'S ASSOCIATION THAT CONSTITUTES A LIEN PRIOR TO THE LIEN  
12 BEING FORECLOSED; AND

13 (III) IF THE PROPERTY IS SUBJECT TO A LEASE, ALL SUMS DUE  
14 UNDER SUCH LEASE."

15 Renumber succeeding subsections accordingly.

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