

**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

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/bills summaries>.)

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.

refunded to the borrower.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-38-101, **amend**
3 (10) as follows:

4 **38-38-101. Holder of evidence of debt may elect to foreclose.**
5 (10) **Deposit.** (a) The public trustee may require THE HOLDER OF THE
6 EVIDENCE OF DEBT OR THE ATTORNEY FOR THE HOLDER TO MAKE a deposit
7 of up to six hundred fifty dollars or the amount of the fee permitted
8 pursuant to section 38-37-104 (1) (b) (I), whichever is greater, at the time
9 the notice of election and demand is filed, to be applied against the fees
10 and costs of the public trustee.

11 (b) (I) The public trustee may allow the attorney for the holder of
12 the evidence of debt to establish ~~one or more accounts~~ with the public
13 trustee ONE OR MORE ACCOUNTS, FROM which the public trustee may ~~use~~
14 ~~to~~ pay the fees and costs of the public trustee in any foreclosure filed by
15 the holder or the attorney for the holder ~~or~~ AND through which the public
16 trustee may transmit refunds or cures, overbids, or redemption proceeds.

17 (II) THE PUBLIC TRUSTEE SHALL NOT TRANSMIT TO THE HOLDER OR
18 TO THE ATTORNEY FOR THE HOLDER, WHETHER THROUGH AN ACCOUNT
19 ESTABLISHED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) OR
20 OTHERWISE, ANY AMOUNT THAT REPRESENTS A FEE OR COST LISTED ON
21 THE CURE STATEMENT REQUIRED BY SECTION 38-38-104 (2) (a) (I) THAT
22 EXCEEDS THE FEE OR COST ACTUALLY INCURRED.

23 **SECTION 2.** In Colorado Revised Statutes, 38-38-104, **amend**
24 (2) (d); and **add** (2) (a) (III) and (2) (a) (IV) as follows:

25 **38-38-104. Right to cure when default is nonpayment - right**

1 **to cure for certain technical defaults.** (2) (a) (III) THE CURE
2 STATEMENT IS A REPRESENTATION OF FACT, MADE UPON THE CURRENT
3 INFORMATION AND BELIEF OF THE PERSON SIGNING IT. IF ANY AMOUNT
4 CLAIMED ON THE CURE STATEMENT IS FOUND TO BE INACCURATE FOR ANY
5 REASON, IT IS THE DUTY OF THE SIGNER OR THE SIGNER'S DESIGNEE TO
6 INFORM THE OFFICER IMMEDIATELY AND PROVIDE A NEW CURE STATEMENT
7 WITH UPDATED FIGURES; EXCEPT THAT ANY ADDITIONAL OR INCREASED
8 AMOUNTS MUST BE ADDED AT LEAST TEN CALENDAR DAYS BEFORE THE
9 EFFECTIVE DATE OF THE ORIGINAL CURE STATEMENT.

10 (IV) THE HOLDER IS RESPONSIBLE FOR RETAINING RECEIPTS OR
11 OTHER CREDIBLE EVIDENCE TO SUPPORT ALL FEES AND COSTS CLAIMED ON
12 THE CURE STATEMENT, INCLUDING RULE 120 DOCKET FEES AND POSTING
13 COSTS, AND THE PERSON WHO PAID THE CURE AMOUNT IS ENTITLED TO
14 RECEIVE COPIES UPON REQUEST.

15 (d) (I) Upon receipt of the cure amount, and a CONDITIONED UPON
16 THE withdrawal or dismissal of the foreclosure from the holder of the
17 evidence of debt or the attorney for the holder, the officer shall:

18 (A) Deliver the cure amount, less the fees and costs of the officer
19 AND ANY ADJUSTMENTS REQUIRED UNDER SUBPARAGRAPH (III) OF
20 PARAGRAPH (a) OF THIS SUBSECTION (2), to the attorney for the holder or,
21 if none, to the holder; ~~the foreclosure shall be withdrawn or dismissed as~~
22 ~~provided by law~~, and

23 (B) REMIT TO THE PERSON WHO PAID THE CURE AMOUNT ANY
24 PORTION OF THE CURE AMOUNT THAT REPRESENTS A FEE OR COST LISTED
25 ON THE CURE STATEMENT THAT EXCEEDS THE AMOUNT ACTUALLY
26 INCURRED.

27 (II) FOLLOWING THE WITHDRAWAL OR DISMISSAL, the evidence of

1 debt shall be returned uncanceled to the attorney for the holder of the
2 evidence of debt or, if none, to the holder by the public trustee or to the
3 court by the sheriff.

4 **SECTION 3. Applicability.** This act applies to foreclosure
5 proceedings in which the notice of election and demand is filed on or
6 after the effective date of this act.

7 **SECTION 4. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.