

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0057.01 Richard Sweetman x4333

HOUSE BILL 24-1011

HOUSE SPONSORSHIP

Brown and Amabile,

SENATE SPONSORSHIP

Cutter,

House Committees
Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MORTGAGE SERVICERS, AND, IN CONNECTION
102 THEREWITH, REQUIRING MORTGAGE SERVICERS TO TAKE
103 CERTAIN ACTIONS REGARDING THE DISBURSEMENT OF
104 INSURANCE PROCEEDS TO BORROWERS.

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://leg.colorado.gov>.)

The bill requires a mortgage servicer to disclose certain information to a borrower concerning the disbursement of insurance proceeds to the borrower in the event that a residential property that is

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

subject to a mortgage is damaged or destroyed and an insurance company pays a claim associated with such damage or destruction.

In the event that half or more of a residential property is damaged or destroyed, a mortgage servicer must work with the borrower to create a repair plan or a rebuild plan that includes specific milestones that require the mortgage servicer to disburse insurance proceeds. However, a mortgage servicer must also disburse insurance proceeds to a borrower in specified amounts, depending on the amount of the insurance proceeds and whether the borrower is delinquent in making payments on the mortgage.

A mortgage servicer must promptly disburse to a borrower any amount of insurance proceeds in excess of the remaining amount that the borrower owes on the mortgage.

A mortgage servicer must hold in an interest-bearing account any insurance proceeds that the mortgage servicer does not immediately disburse to a borrower. A mortgage servicer must ensure that any interest that is credited to the account is credited and disbursed to the borrower.

A mortgage servicer must retain for at least 4 years all written and electronic communications between the mortgage servicer and a borrower.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 38-40-106 as
3 follows:

4 **38-40-106. Mortgage servicers - requirements concerning**
5 **disbursement of insurance proceeds - disclosure of mortgage interest**
6 **rate - retention of communications - definitions.** (1) AS USED IN THIS
7 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

8 (a) "BORROWER" HAS THE MEANING SET FORTH IN SECTION
9 38-38-100.3 (2.5).

10 (b) "MORTGAGE SERVICER" MEANS:

11 (I) A MORTGAGE SERVICER, AS DEFINED IN SECTION 5-21-103 (4);

12 (II) A MORTGAGE SERVICER, AS DEFINED IN SECTION 38-38-100.3
13 (23.3); OR

14 (III) AN AGENT OF A MORTGAGE SERVICER.

1 (c) "REBUILD PLAN" MEANS A PLAN TO REBUILD A RESIDENTIAL
2 PROPERTY THAT HAS BEEN DESTROYED.

3 (d) "REPAIR PLAN" MEANS A PLAN TO REPAIR A RESIDENTIAL
4 PROPERTY THAT HAS BEEN DAMAGED.

5 (e) "RESIDENTIAL PROPERTY" MEANS A RESIDENTIAL PROPERTY
6 THAT IS THE SUBJECT OF A MORTGAGE.

7 (2) (a) UPON THE REQUEST OF A BORROWER, A MORTGAGE
8 SERVICER SHALL PROMPTLY DISCLOSE TO THE BORROWER THE SPECIFIC
9 CONDITIONS UNDER WHICH THE MORTGAGE SERVICER WILL DISBURSE
10 INSURANCE PROCEEDS TO THE BORROWER IN THE EVENT THAT A
11 RESIDENTIAL PROPERTY THAT IS THE SUBJECT OF A MORTGAGE IS
12 DAMAGED OR DESTROYED AND AN INSURANCE COMPANY PAYS INSURANCE
13 PROCEEDS TO SATISFY A CLAIM ASSOCIATED WITH SUCH DAMAGE OR
14 DESTRUCTION. A MORTGAGE SERVICER MAY PROVIDE THE INFORMATION
15 ELECTRONICALLY.

16 (b) IN THE EVENT THAT A RESIDENTIAL PROPERTY IS DAMAGED OR
17 DESTROYED, THE MORTGAGE SERVICER SHALL WORK WITH THE BORROWER
18 TO CREATE A REPAIR PLAN OR A REBUILD PLAN FOR THE RESIDENTIAL
19 PROPERTY, WHICH REPAIR PLAN OR REBUILD PLAN MUST INCLUDE SPECIFIC
20 MILESTONES THAT REQUIRE THE MORTGAGE SERVICER TO DISBURSE
21 INSURANCE PROCEEDS IN CERTAIN AMOUNTS UPON REACHING THE
22 SPECIFIED MILESTONES, AS DESCRIBED IN SUBSECTIONS (2)(c)(I)(B) AND
23 (2)(d)(II) OF THIS SECTION. IF A MORTGAGE SERVICER EMPLOYS
24 INSPECTORS FOR THE PURPOSE OF DETERMINING WHEN SUCH MILESTONES
25 ARE ATTAINED, THE MORTGAGE SERVICER SHALL NOTIFY THE BORROWER
26 OF THE SPECIFIC CRITERIA THAT THE INSPECTORS USE TO MAKE SUCH
27 DETERMINATIONS.

1 (c) (I) WITHIN FOURTEEN DAYS AFTER RECEIVING INSURANCE
2 PROCEEDS ON BEHALF OF A BORROWER, A MORTGAGE SERVICER SHALL
3 DISBURSE THE INSURANCE PROCEEDS TO THE BORROWER IF THE BORROWER
4 IS NOT DELINQUENT IN MAKING PAYMENTS ON THE MORTGAGE OR THE
5 BORROWER IS LESS THAN THIRTY-ONE DAYS DELINQUENT IN MAKING
6 PAYMENTS ON THE MORTGAGE, AS FOLLOWS:

7 (A) IF THE AMOUNT OF THE INSURANCE PROCEEDS IS LESS THAN OR
8 EQUAL TO FORTY THOUSAND DOLLARS, THE MORTGAGE SERVICER SHALL
9 DISBURSE THE ENTIRE AMOUNT TO THE BORROWER IN ONE PAYMENT; AND

10 (B) IF THE AMOUNT OF THE INSURANCE PROCEEDS IS MORE THAN
11 FORTY THOUSAND DOLLARS, THE MORTGAGE SERVICER SHALL INITIALLY
12 DISBURSE TO THE BORROWER AN AMOUNT THAT IS FORTY THOUSAND
13 DOLLARS OR THIRTY-THREE PERCENT OF THE TOTAL PROCEEDS,
14 WHICHEVER AMOUNT IS GREATER. THEREAFTER, THE MORTGAGE SERVICER
15 SHALL DISBURSE THE REMAINING PROCEEDS IN THREE PAYMENTS, EACH OF
16 WHICH IS IN THE AMOUNT OF THIRTY-THREE AND ONE-THIRD PERCENT OF
17 THE REMAINING PROCEEDS, IN ACCORDANCE WITH THE MILESTONES
18 ESTABLISHED IN THE REPAIR PLAN OR THE REBUILD PLAN PURSUANT TO
19 SUBSECTION (2)(b) OF THIS SECTION.

20 (II) FOR THE PURPOSES OF THIS SUBSECTION (2)(c), IF A BORROWER
21 HAS MADE ADVANCE PAYMENTS TO A CONTRACTOR OR TO PURCHASE
22 MATERIALS, AS EVIDENCED BY PAID RECEIPTS, THE MORTGAGE SERVICER
23 MAY REIMBURSE THE BORROWER FOR SUCH PAYMENTS.

24 (d) WITHIN FOURTEEN DAYS AFTER RECEIVING INSURANCE
25 PROCEEDS ON BEHALF OF A BORROWER, A MORTGAGE SERVICER SHALL
26 DISBURSE THE INSURANCE PROCEEDS TO THE BORROWER IF THE BORROWER
27 IS MORE THAN THIRTY-ONE DAYS DELINQUENT IN MAKING PAYMENTS ON

1 THE MORTGAGE, AS FOLLOWS:

2 (I) IF THE AMOUNT OF THE INSURANCE PROCEEDS IS LESS THAN OR
3 EQUAL TO FIVE THOUSAND DOLLARS, THE MORTGAGE SERVICER SHALL
4 DISBURSE THE ENTIRE AMOUNT TO THE BORROWER IN ONE PAYMENT; AND

5 (II) IF THE AMOUNT OF THE INSURANCE PROCEEDS IS MORE THAN
6 FIVE THOUSAND DOLLARS, THE MORTGAGE SERVICER SHALL INITIALLY
7 DISBURSE TO THE BORROWER AN AMOUNT THAT IS TWENTY-FIVE PERCENT
8 OF THE TOTAL PROCEEDS; EXCEPT THAT THE AMOUNT OF THIS INITIAL
9 DISBURSEMENT MAY NOT EXCEED TEN THOUSAND DOLLARS OR THE
10 AMOUNT BY WHICH THE TOTAL PROCEEDS EXCEED THE SUM OF THE
11 UNPAID BALANCE ON THE MORTGAGE, ANY INTEREST ACCRUED ON THE
12 MORTGAGE, AND ANY ADVANCES MADE ON THE MORTGAGE. THEREAFTER,
13 THE MORTGAGE SERVICER SHALL DISBURSE THE REMAINING PROCEEDS IN
14 AMOUNTS NOT TO EXCEED TWENTY-FIVE PERCENT OF THE REMAINING
15 PROCEEDS, IN ACCORDANCE WITH THE MILESTONES ESTABLISHED IN THE
16 REPAIR PLAN OR THE REBUILD PLAN PURSUANT TO SUBSECTION (2)(b) OF
17 THIS SECTION; EXCEPT THAT THE MORTGAGE SERVICER SHALL NOT
18 DISBURSE ANY REMAINING PROCEEDS UNTIL THE MORTGAGE SERVICER OR
19 THE MORTGAGE SERVICER'S AGENT HAS INSPECTED THE REPAIRS, IF ANY,
20 THAT HAVE BEEN MADE PURSUANT TO A REPAIR PLAN ESTABLISHED
21 PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION.

22 (e) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
23 A MORTGAGE SERVICER SHALL PROMPTLY DISBURSE TO A BORROWER ANY
24 AMOUNT OF INSURANCE PROCEEDS IN EXCESS OF THE REMAINING AMOUNT
25 THAT THE BORROWER OWES ON THE MORTGAGE.

26 (f) A MORTGAGE SERVICER SHALL HOLD IN AN INTEREST-BEARING
27 ACCOUNT ANY INSURANCE PROCEEDS THAT THE MORTGAGE SERVICER

1 DOES NOT IMMEDIATELY DISBURSE TO A BORROWER. SUCH AN ACCOUNT
2 MUST GENERATE INTEREST AT A RATE THAT IS NOT LESS THAN THE
3 NATIONAL RATE FOR MONEY MARKET ACCOUNTS, AS DETERMINED
4 ACCORDING TO 12 CFR 337.7. A MORTGAGE SERVICER SHALL ENSURE
5 THAT ANY INTEREST THAT IS CREDITED TO THE ACCOUNT IS CREDITED AND
6 DISBURSED TO THE BORROWER.

7 (3) IMMEDIATELY UPON COMMENCING THE SERVICING OF A
8 MORTGAGE, AND AT ANY TIME THEREAFTER AT THE REQUEST OF THE
9 BORROWER, A MORTGAGE SERVICER SHALL:

10 (a) DISCLOSE TO THE BORROWER THE INTEREST RATE ASSOCIATED
11 WITH THE MORTGAGE; AND

12 (b) PROVIDE THE BORROWER WITH A PRIMARY POINT OF CONTACT
13 FOR THE PURPOSE OF COMMUNICATING WITH THE MORTGAGE SERVICER.

14 (4) A MORTGAGE SERVICER SHALL RETAIN FOR AT LEAST FOUR
15 YEARS ALL WRITTEN AND ELECTRONIC COMMUNICATIONS BETWEEN THE
16 MORTGAGE SERVICER AND A BORROWER.

17 **SECTION 2.** In Colorado Revised Statutes, 38-40-104, **amend**
18 (1) as follows:

19 **38-40-104. Cause of action - attorney fees.** (1) If any applicant
20 or debtor is aggrieved by a violation of section 38-40-102, 38-40-103, ~~or~~
21 38-40-103.5, OR 38-40-106 and the violation is not remedied in a
22 reasonable, timely, and good faith manner by the party obligated to do so,
23 and after a good faith effort to resolve the dispute is made by the debtor
24 or borrower, the debtor or borrower may bring an action in a court of
25 competent jurisdiction for any such violation. If the court finds that actual
26 damages have occurred, the court shall award to the debtor or borrower,
27 in addition to actual damages, the amount of one thousand dollars,

1 together with costs and reasonable attorney fees.

2 **SECTION 3.** In Colorado Revised Statutes, **add** 5-21-107.5 as
3 follows:

4 **5-21-107.5. Disbursement of insurance proceeds to borrowers**
5 **- disclosure of mortgage interest rate - retention of communications.**

6 A MORTGAGE SERVICER SHALL COMPLY WITH THE REQUIREMENTS OF
7 SECTION 38-40-106 REGARDING DISBURSEMENT OF INSURANCE PROCEEDS
8 TO BORROWERS, DISCLOSURE OF MORTGAGE INTEREST RATES, AND
9 RETENTION OF COMMUNICATIONS.

10 **SECTION 4. Safety clause.** The general assembly finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, or safety or for appropriations for
13 the support and maintenance of the departments of the state and state
14 institutions.