

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0838.01 Duane Gall x4335

HOUSE BILL 16-1096

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A BILL FOR AN ACT

101 CONCERNING THE ELIGIBILITY OF JUNIOR LIENORS TO RECEIVE
102 FORECLOSURE OVERBID FUNDS.

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>.)

Under current law, the owner of real property that is sold in foreclosure for more than the amount owed to the foreclosing party (usually a bank holding a mortgage on the property) may be entitled to the proceeds of the sale in excess of the amount owed to the foreclosing party. This excess is known as an "overbid". The overbid is first applied to satisfy the claims of junior lienors that give notice of their lien to 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.

public trustee but do not redeem their interests during a specified time. After that, title to the property vests in the purchaser at the foreclosure sale or the last of the junior lienors to redeem, if such a redemption has occurred.

Certain junior lienors are defined as ineligible to receive any portion of the overbid. These include junior lienors that miss filing deadlines or that settle their lien claims for a discount. The bill adds the last redeeming lienor to the list of persons who are ineligible to receive overbid funds, ensuring that to the extent any overbid remains, it goes to the original owner.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-38-111, **amend**
3 (2) as follows:

4 **38-38-111. Treatment of an overbid - definition.** (2) Upon the
5 expiration of all redemption periods provided in section 38-38-302, any
6 remaining overbid shall be paid in order of recording priority to junior
7 lienors, determined as of the recording date of the notice of election and
8 demand or lis pendens according to the records, who have duly filed a
9 notice of intent to redeem and whose liens have not been redeemed
10 pursuant to section 38-38-302, in each case up to the unpaid amount of
11 each such lienor's lien plus fees and costs. A lienor holding a lien that is
12 not entitled to redeem by virtue of being recorded after the notice of
13 election and demand, A LIENOR THAT OBTAINS TITLE THROUGH
14 REDEMPTION PURSUANT TO SECTION 38-38-501, a lienor that has not
15 timely filed a notice of intent to redeem pursuant to section 38-38-302, ~~or~~
16 AND a lienor ~~who~~ THAT accepts less than a full redemption pursuant to
17 section 38-38-302 (4) (c) ~~shall~~ DO not have any claim to any portion of
18 the overbid. After payment to all lienors and the holder entitled to receive
19 a portion of the overbid pursuant to this section, any remaining overbid
20 shall be paid to the owner.

1 **SECTION 2. Effective date - applicability.** This act takes effect
2 upon passage, and applies to foreclosure sales occurring on or after said
3 date.

4 **SECTION 3. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, and safety.