

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0023.02 Duane Gall

SENATE BILL 10-093

SENATE SPONSORSHIP

Lundberg,

HOUSE SPONSORSHIP

(None),

Senate Committees

Business, Labor and Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE ORDERLY RESOLUTION OF CLAIMS IN**
102 **FORECLOSURES INVOLVING JUNIOR LIENS.**

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 successful bidder at a foreclosure sale receives a certificate of purchase (COP) entitling the successful bidder to a confirmation deed upon the expiration of all redemption periods unless the property is redeemed by a junior lienor. However, in some situations, a junior lien is purchased by someone who refuses to accept payment

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.*

from the COP holder and then exercise the statutory right to redemption afforded to lienors who have not been paid. If potential bidders know of the lien purchase, they may be discouraged from bidding. This may depress sale prices of foreclosed homes, leaving defaulting homeowners with little or no cash proceeds from the sale or a greater deficiency, for which they typically remain personally liable, than would otherwise be the case.

Section 1 of the bill clarifies that the holder of a COP of property at a public trustee's sale or sheriff's sale is entitled to pay off junior lienors during the redemption period for the amount of the lien plus allowable fees and costs. Section 1 requires a junior lienor to accept the tendered payment and to execute a release of the lien.

Section 2 requires junior lienors to accompany their notice of intent to redeem with a true statement of the amount due on their lien and allows the holder of the COP to avoid redemption by a junior lienor by recording the release obtained under section 1 of the bill. Section 2 also clarifies the right of litigants to claim damages for misstatements of the amount due on a lien or of the lienor's entitlement to use the redemption process.

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

2 **SECTION 1.** 38-38-107, Colorado Revised Statutes, is amended
3 **BY THE ADDITION OF A NEW SUBSECTION to read:**

4 **38-38-107. Fees and costs - definitions - court award.** (6) ANY
5 PERSON AGGRIEVED BY A VIOLATION OF A DUTY IMPOSED UNDER THIS
6 ARTICLE AND WHO PREVAILS IN LITIGATION INSTITUTED TO PROTECT HIS
7 OR HER RIGHTS UNDER THIS ARTICLE SHALL BE AWARDED REASONABLE
8 ATTORNEY FEES AND COSTS INCURRED IN SUCH LITIGATION.

9 **SECTION 2.** 38-38-301, Colorado Revised Statutes, is amended
10 to read:

11 **38-38-301. Holder of certificate of purchase paying charges -**
12 **redemption.** (1) The holder of a certificate of purchase may pay at any
13 time after the sale and during the redemption period described in section
14 38-38-302 the fees and costs that the holder may pay pursuant to section

1 38-38-107 and may include any such amounts as part of the amount to be
2 paid upon redemption.

3

4 (2) THE HOLDER OF A CERTIFICATE OF PURCHASE MAY PAY A
5 JUNIOR LIENOR THE DEBT SECURED BY THE JUNIOR LIENOR'S LIEN. THE
6 JUNIOR LIENOR SHALL NOT REFUSE THE TENDERED PAYMENT.

7 **SECTION 3. Act subject to petition - effective date -**
8 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
9 following the expiration of the ninety-day period after final adjournment
10 of the general assembly (August 11, 2010, if adjournment sine die is on
11 May 12, 2010); except that, if a referendum petition is filed pursuant to
12 section 1 (3) of article V of the state constitution against this act or an
13 item, section, or part of this act within such period, then the act, item,
14 section, or part shall not take effect unless approved by the people at the
15 general election to be held in November 2010 and shall take effect on the
16 date of the official declaration of the vote thereon by the governor.

17 (2) The provisions of this act shall apply to foreclosures in which
18 a notice of intent to redeem is filed on or after the applicable effective
19 date of this act.