CHAPTER 90

PROPERTY

HOUSE BILL 26-1098

BY REPRESENTATIVE(S) Brooks and Stewart R., Duran, Gonzalez R., Lindsay, Marshall, Richardson, Carter, McCluskie; also SENATOR(S) Frizell and Kipp, Lindstedt, Coleman.

AN ACT

CONCERNING MODIFICATIONS TO THE "COLORADO PUBLIC TRUSTEE ACT" RELATED TO FORECLOSURE PROCEDURES.

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

SECTION 1. In Colorado Revised Statutes, 38-37-104, **amend** (2) and (3), and **repeal** (8) as follows:

38-37-104. Duties of public trustees - fees, expenses, and salaries - reports - definition.

(2) (a) ~~The salary of the public trustee in the different counties of the state shall be fixed at the following amounts, to wit: In counties of the second class, twenty-six thousand dollars per annum for full-time public trustees and, in counties of the third class, six thousand five hundred dollars per annum~~ FOR PUBLIC TRUSTEES IN ALL COUNTIES WHEREIN THE COUNTY TREASURER SERVES AS THE PUBLIC TRUSTEE, THE SALARY SHALL BE FIXED AT TWELVE THOUSAND FIVE HUNDRED DOLLARS PER ANNUM.

(b) ~~For public trustees whose terms begin on or after July 1, 1998, but prior to January 1, 2003, the salary of the public trustee in the different counties of the state shall be fixed at the following amounts, to wit: In counties of the second class, thirty-two thousand dollars per annum for full-time public trustees and, in counties of the third class, eight thousand dollars per annum; except that, in the city and county of Broomfield, such salary shall be as set forth in its annual budget.~~

(b.3) ~~(I) For public trustees whose terms begin on or after January 1, 2003, except as otherwise provided in subparagraph (II), (III), or (IV) of this paragraph (b.3), the salary of the public trustee in the different counties of the state shall be~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

~~fixed at the following amounts, to wit: In counties of the second class, forty-eight thousand five hundred dollars per annum, and in counties of the third class, twelve thousand five hundred dollars per annum.~~

~~(II) For public trustees who are serving in office on or after March 13, 2008, the salary of the public trustee in the different counties of the state shall be fixed at the following amounts, to wit: In counties of the second class, fifty-six thousand five hundred dollars per annum; and in counties of the third class, twelve thousand five hundred dollars per annum.~~

~~(III) For public trustees in counties of the second class who are serving in office on or after February 1, 2009, the salary shall be fixed at sixty-four thousand five hundred dollars per annum.~~

~~(IV) For public trustees in counties of the second class who are serving in office on or after February 1, 2010, the salary shall be fixed at seventy-two thousand five hundred dollars per annum.~~

~~(V) For public trustees in counties of the second class wherein the county treasurer serves as the public trustee, the salary shall be fixed at twelve thousand five hundred dollars per annum.~~

(b.5) Repealed.

(c) Such salaries shall be paid MONTHLY FROM THE GENERAL FUND AS PART OF THE COUNTY'S STANDARD PAYROLL PROCESS. ON A QUARTERLY BASIS, THE PUBLIC TRUSTEE SHALL REIMBURSE THE COUNTY GENERAL FUND FOR THE MONTHLY SALARIES from the fees collected by the public trustee as provided in this section ~~and not otherwise~~ OR FROM THE PUBLIC TRUSTEE SPECIAL RESERVE ACCOUNT. IF THERE ARE NOT SUFFICIENT FUNDS AVAILABLE, THEN THE PUBLIC TRUSTEE SHALL REIMBURSE THE GENERAL FUND ACCOUNT AS SOON AS ENOUGH FEES HAVE BEEN COLLECTED.

(3) The public trustee of each county shall quarterly make and file with the board of county commissioners of the county a full ~~and complete~~ statement ~~under oath~~ of all transactions of the office of the public trustee and shall, upon the approval of said report, pay to the county treasurer all sums that the public trustee has received as fees in excess of the amount of salary then due to the public trustee and in excess of all necessary and reasonable expenses for staff wages and any benefits provided pursuant to county personnel policy and other expenses incidental to the conduct of the office of the public trustee for the quarter ending at the time of such report, which ~~moneys~~ MONEY shall, by the county treasurer, be placed to the credit of a fund to be known as the public trustee salary fund. The public trustee shall, before remitting such excess funds, retain such excess funds in a special reserve fund, which fund shall be maintained in a separate interest-bearing account as permitted under section 38-37-113, until such special reserve fund, including accrued interest, reaches an amount equal to the public trustee's total operating expenses and authorized salary for the previous fiscal year, as filed pursuant to this subsection (3). If, in any particular quarter, the public trustee's operating expenses and authorized salary exceed the fees collected in the quarter, the public trustee may draw on the special reserve fund to cover the public trustee's operating expenses and authorized

salary for that quarter. At such time as the special reserve fund has reached the permitted amount, excess funds shall be paid to the county treasurer to be placed in the public trustee salary fund. At the expiration of each year, the county treasurer shall, out of any ~~moneys~~ MONEY in the public trustee salary fund and not otherwise, pay to the public trustee such an amount, if any, as may be still due to the public trustee on account of the public trustee's salary for that year just expired, such payment to be made only upon the certificate of the board stating the amount of such salary still remaining due and unpaid, and the balance of said fund shall thereupon be transferred to the general fund of the county.

(8) ~~Each public trustee who is appointed by the governor shall be subject to the state "Procurement Code", articles 101 to 112 of title 24, C.R.S., for any purchase of twenty thousand dollars or more and for any multiple year purchase agreement; except that, if the procurement rules established for the county in which the public trustee serves require an open and competitive bidding process, the public trustee may apply the county procurement rules.~~

SECTION 2. In Colorado Revised Statutes, 38-38-100.3, **repeal** (3); and **add** (15.5) as follows:

38-38-100.3. Definitions.

As used in articles 37 to 39 of this title 38, unless the context otherwise requires:

(3) ~~"Certified copy" means, with respect to a recorded document, a copy of the document certified by the clerk and recorder of the county where the document was recorded.~~

(15.5) "NONMATERIAL MISSTATEMENT" MEANS AN ERROR, INACCURACY, OR OMISSION THAT IS MINOR OR INCONSEQUENTIAL AND DOES NOT SIGNIFICANTLY AFFECT THE UNDERSTANDING, VALIDITY, OR ENFORCEABILITY OF THE DOCUMENT.

SECTION 3. In Colorado Revised Statutes, 38-38-101, **amend** (1)(b)(III), (1)(c)(I), (2), and (5) as follows:

38-38-101. Holder of evidence of debt may elect to foreclose.

(1) **Documents required.** Whenever a holder of an evidence of debt declares a violation of a covenant of a deed of trust and elects to publish all or a portion of the property therein described for sale, the holder or the attorney for the holder shall file the following with the public trustee of the county where the property is located:

(b) The original evidence of debt, including any modifications to the original evidence of debt, together with the original indorsement or assignment thereof, if any, to the holder of the evidence of debt or other proper indorsement or assignment in accordance with subsection (6) of this section or, in lieu of the original evidence of debt, one of the following:

(III) A ~~certified~~ RECORDED copy of a monetary judgment entered by a court of competent jurisdiction;

(c) The original recorded deed of trust securing the evidence of debt and any original recorded modifications of the deed of trust or any recorded partial releases of the deed of trust, or in lieu thereof, one of the following:

(I) ~~Certified~~ Copies of the recorded deed of trust and any recorded modifications of the deed of trust or recorded partial releases of the deed of trust; or

(2) **Foreclosure by qualified holder without original evidence of debt, original or recorded copy of deed of trust, or proper indorsement.**

(a) A qualified holder, whether acting for itself or as agent, nominee, or trustee under section 38-38-100.3 (20), that elects to foreclose without the original evidence of debt pursuant to ~~subparagraph (II) of paragraph (b) of subsection (1)~~ SUBSECTION (1)(b)(II) of this section, or without the original recorded deed of trust or a ~~certified~~ RECORDED copy thereof pursuant to ~~subparagraph (II) of paragraph (c) of subsection (1)~~ SUBSECTION (1)(c)(II) of this section, or without the proper indorsement or assignment of an evidence of debt under ~~paragraph (b) of subsection (1)~~ SUBSECTION (1)(b) of this section shall, by operation of law, be deemed to have agreed to indemnify and defend any person liable for repayment of any portion of the original evidence of debt in the event that the original evidence of debt is presented for payment to the extent of any amount, other than the amount of a deficiency remaining under the evidence of debt after deducting the amount bid at sale, and any person who sustains a loss due to any title defect that results from reliance upon a sale at which the original evidence of debt was not presented. The indemnity granted by this subsection (2) ~~shall be~~ IS limited to actual economic loss suffered together with any court costs and reasonable attorney fees and costs incurred in defending a claim brought as a direct and proximate cause of the failure to produce the original evidence of debt, but such indemnity shall not include, and no claimant ~~shall be~~ IS entitled to, any special, incidental, consequential, reliance, expectation, or punitive damages of any kind. A qualified holder acting as agent, nominee, or trustee ~~shall be~~ IS liable for the indemnity pursuant to this subsection (2).

(b) In the event that a qualified holder or the attorney for the holder commences a foreclosure without production of the original evidence of debt, COPY OF RECORDED MODIFICATION, proper indorsement or assignment, or the original recorded deed of trust or a ~~certified~~ RECORDED copy thereof, the qualified holder or the attorney for the holder may submit the original evidence of debt, COPY OF RECORDED MODIFICATION, proper indorsement or assignment, or the original recorded deed of trust or a ~~certified~~ RECORDED copy thereof to the officer prior to the sale. In such event, the sale ~~shall be~~ IS conducted and administered as if the original evidence of debt, COPY OF RECORDED MODIFICATION, proper indorsement or assignment, or the original recorded deed of trust or a ~~certified~~ RECORDED copy thereof had been submitted at the time of commencement of such proceeding, and any indemnities deemed to have been given by the qualified holder under ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION ~~shall be null and~~ ARE void as to the instrument produced under this ~~paragraph (b)~~ SUBSECTION (2)(b).

(c) In the event that a foreclosure is conducted where the original evidence of debt, proper indorsement or assignment, or original recorded deed of trust or ~~certified~~ RECORDED copy thereof has not been produced, the only claims ~~shall be~~

ARE against the indemnitor as provided in ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION and not against the foreclosed property or the attorney for the holder of the evidence of debt. Nothing in this section ~~shall preclude~~ PRECLUDES a person liable for repayment of the evidence of debt from pursuing remedies allowed by law.

(5) **Error in notice.** In the event that the amount of the outstanding principal balance due and owing upon the secured indebtedness OR ANY NONMATERIAL MISSTATEMENT is erroneously set forth in the notice of election and demand or the combined notice, the error shall not affect the validity of the notice of election and demand, the combined notice, the publication, the sale, the certificate of purchase described in section 38-38-401, the certificate of redemption described in section 38-38-402, the confirmation deed as defined in section 38-38-100.3 (5), or any other document executed in connection therewith.

SECTION 4. In Colorado Revised Statutes, 38-38-103, **amend** (2)(a) as follows:

38-38-103. Combined notice - publication - providing information.

(2) (a) The holder of the evidence of debt or the attorney for the holder shall deliver an amended mailing list to the officer as needed. If an OFFICER RECEIVES AN amended mailing list ~~is received~~ after the officer has sent the mailing described in ~~paragraph (b) of subsection (1)~~ SUBSECTION (1)(b) of this section, the officer shall continue the sale to no less than sixty-five calendar days after receipt of the amended mailing list. The officer shall send the notice pursuant to subsection (4) of this section to the persons on the amended mailing list no less than forty-five calendar days prior to the ~~actual~~ NEWLY SCHEDULED date of sale.

SECTION 5. In Colorado Revised Statutes, 38-38-104, **amend** (1)(d) as follows:

38-38-104. Right to cure when default is nonpayment - right to cure for certain technical defaults.

(1) Unless the order authorizing the sale described in section 38-38-105 contains a determination that there is a reasonable probability that a default in the terms of the evidence of debt, deed of trust, or other lien being foreclosed other than nonpayment of sums due thereunder has occurred, any of the following persons is entitled to cure the default if the person files with the officer, no later than fifteen calendar days prior to the date of sale, a written notice of intent to cure together with evidence of the person's right to cure to the satisfaction of the officer:

(d) ~~A holder of an interest junior to the lien being foreclosed by virtue of being a lienor or lessee of, or a holder of an easement or license on, the property or a contract vendee of the property, if the instrument evidencing the interest was recorded in the records prior to the date and time of the recording of the notice of election and demand or lis pendens.~~ A JUNIOR LIENOR, AS DEFINED IN SECTION 38-38-100.3. If, prior to the date and time of the recording of the notice of election and demand or lis pendens, a lien is recorded in an incorrect county, the holder's rights under this section ~~shall~~ ARE only ~~be~~ valid if the lien is rerecorded in the correct county at least fifteen calendar days prior to the actual date of sale.

SECTION 6. In Colorado Revised Statutes, 38-38-106, **amend** (7)(a)(II) as follows:

38-38-106. Bid required - form of bid.

(7) (a) (II) If the holder of the evidence of debt is the highest bidder with a bid that exceeds the total amount due shown on the bid pursuant to subsection (2) of this section, the holder of the evidence of debt is only required to pay the excess of the amount bid over the amount due the holder of the evidence of debt, as shown on the bid submitted pursuant to subsection (2) of this section. THE HOLDER SHALL PAY THE EXCESS OF THE AMOUNT BID TO THE OFFICE WITHIN THREE BUSINESS DAYS AFTER THE SALE.

SECTION 7. In Colorado Revised Statutes, 38-38-108, **amend** (2)(a)(I)(A) as follows:

38-38-108. Date of sale.

(2) (a) (I) If it is not evident from the legal description contained in the deed of trust or other lien being foreclosed whether the property described therein is agricultural property, the officer shall make that determination no less than ten calendar days nor more than twenty calendar days after the recording of the notice of election and demand; except that the officer may make the determination at any earlier time upon presentation of acceptable evidence that the property is not agricultural property. The officer shall accept the following as evidence that the property is not agricultural property:

(A) A ~~certified~~ copy of the subdivision plat containing the property or any portion thereof recorded in the office of the clerk and recorder of the county where the property or any portion thereof is located; or

SECTION 8. In Colorado Revised Statutes, 38-38-109, **amend** (1)(b) and (2)(a) as follows:

38-38-109. Continuance of sale - effect of bankruptcy - withdrawal of sale.

(1) **Continuance.**

(b) At the request of the holder of the evidence of debt or the attorney for the holder or upon the officer's own initiative, the officer shall correct any errors in a published combined notice and shall continue the then-scheduled date of sale to a future date within the period of continuance allowed by ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION to permit a corrected combined notice to be published or the original combined notice to be republished pursuant to section 38-38-103 (5). If the officer failed to publish the combined notice as required by section 38-38-103 (5), the officer shall continue the then-scheduled date of sale to a future date within the period of continuance allowed by ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION. The future date of sale to which the sale is continued pursuant to this ~~paragraph (b)~~ SUBSECTION (1)(b) shall be no later than thirty calendar days after the fifth publication of the corrected combined notice or republished combined notice. The officer shall mail a copy of

the combined notice, or corrected combined notice if the original combined notice was erroneous, to the persons and addresses on the most recent amended mailing list no later than ten calendar days after the first correct publication or republication and no less than forty-five calendar days prior to the ~~actual~~ NEWLY SCHEDULED date of sale in the same manner as set forth in section 38-38-103. If there is no amended mailing list, the officer shall mail a copy of the combined notice, or corrected combined notice if the original combined notice was erroneous, to the persons as set forth in the mailing list.

(2) **Effect of bankruptcy proceedings.**

(a) If all publications of the combined notice prescribed by section 38-38-103 (5) or 13-56-201 (1) ~~C.R.S.,~~ have been completed before ~~a~~ ANY INJUNCTION OR bankruptcy petition has been filed that automatically stays the officer from conducting the sale, the officer shall announce, post, or provide notice of that fact on the then-scheduled date of sale, take no action at the then-scheduled sale, and allow the sale to be automatically continued from week to week in accordance with ~~paragraph (a) of subsection (1)~~ SUBSECTION (1)(a) of this section, unless otherwise requested in writing prior to any such date of sale by the holder of the evidence of debt or the attorney for the holder.

SECTION 9. In Colorado Revised Statutes, 38-38-111, **amend** (3)(a)(II) and (3)(b) as follows:

38-38-111. Treatment of an overbid - agreements to assist in recovery of overbid prohibited - penalty - definition.

(3) (a) (II) When the property is sold by the public trustee, any unclaimed remaining overbid from a foreclosure sale ~~shall be~~ IS held by the public trustee in escrow. The remaining overbid ~~shall be~~ IS held for six months from the date of the sale. The public trustee is answerable for the funds without interest at any time within the ~~six-month~~ TWO-YEAR period to any person legally entitled to the funds. Any interest earned on the escrowed funds must be paid to the county at least annually. Unclaimed remaining overbids that are less than twenty-five dollars and that are not claimed within six months from the date of sale must be paid to the general fund of the county, and such money paid to the general fund of the county becomes the property of the county. Unclaimed remaining overbids that are equal to or greater than twenty-five dollars and that are not claimed within ~~six months~~ TWO YEARS from the date of the sale ~~are unclaimed property for purposes of the "Revised Uniform Unclaimed Property Act", article 13 of this title 38, and must be transferred to the administrator in accordance with article 13~~ SHALL BE TRANSFERRED TO THE STATE TREASURER FOR DISPOSITION IN ACCORDANCE WITH THE "REVISED UNIFORM UNCLAIMED PROPERTY ACT", ARTICLE 13 OF THIS TITLE 38. After unclaimed remaining overbids are transferred to the administrator or to the general fund of the county, the public trustee is discharged from any further liability or responsibility for the money.

(b) If the unclaimed remaining overbids exceed five hundred dollars and have not been claimed by any person entitled thereto within sixty calendar days after the expiration of all redemption periods as provided by section 38-38-302, the public trustee shall, within ninety calendar days after the expiration of all redemption

periods, commence publication of a notice for four weeks, which means publication once each week for five successive weeks, in a newspaper of general circulation in the county where the subject property is located. The notice must contain the name of the borrower, the borrower's address as given in the recorded instrument evidencing the borrower's interest, and the legal description and street address, if any, of the property sold at the sale and must state that an overbid was realized from the sale and that, unless the funds are claimed by the borrower or other person entitled thereto within ~~six months after~~ TWO YEARS FROM the date of sale, the funds shall be transferred to the state treasurer for disposition in accordance with the "Revised Uniform Unclaimed Property Act", article 13 of this title 38. The public trustee shall also mail a copy of the notice to the borrower at the best available address.

SECTION 10. In Colorado Revised Statutes, **amend** 38-13-214 as follows:

38-13-214. Foreclosure sale - overbid.

Any overbid, as defined in section 38-38-100.3, that is equal to or greater than twenty-five dollars and that remains unclaimed for ~~six months~~ TWO YEARS after the date of sale is presumed abandoned.

SECTION 11. In Colorado Revised Statutes, 38-38-302, **amend** (1)(e) and (1)(f); and **add** (1)(c.5) as follows:

38-38-302. Redemption by lienor - procedure - definition.

(1) **Requirements for redemption.** A lienor or assignee of a lien is entitled to redeem if the following requirements are met to the satisfaction of the officer:

(c.5) IF A LIEN IS ASSIGNED, THE HOLDER'S RIGHTS UNDER THIS SECTION ARE VALID ONLY IF THE ASSIGNMENT OF THE LIEN IS DULY RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF THE COUNTY AT LEAST FIFTEEN CALENDAR DAYS PRIOR TO THE ACTUAL DATE OF SALE.

(e) The lienor has attached to the notice of intent to redeem the original instrument and any assignment of the lien to the person attempting to redeem, or ~~certified~~ RECORDED copies thereof, or in the case of a qualified holder, a copy of the instrument evidencing the lien and any assignment of the lien to the person attempting to redeem. If the original instrument is delivered to the officer, the officer shall return the instrument to the lienor and retain a copy.

(f) The lienor has attached to the notice of intent to redeem a signed and properly acknowledged statement of the lienor, or a signed statement by the lienor's attorney, setting forth the amount required to redeem the lienor's lien, including per diem interest, through the end of the nineteenth business day after the sale with the same specificity and itemization as required in section 38-38-106. A JUNIOR LIENOR THAT IS NOT A QUALIFIED HOLDER SHALL ALSO SUBMIT TO THE OFFICER RECEIPTS, INVOICES, AND PROOF OF FEES AND COSTS AND VERIFY THAT ALL FEES AND COSTS ARE REASONABLE AND WERE ACTUALLY INCURRED AS OF THE DATE OF THE FILING

OF THE INTENT TO REDEEM. If the amount required to redeem the lienor's lien shown on the statement is zero, the lienor has no right to redeem unless section 38-38-305 applies.

SECTION 12. In Colorado Revised Statutes, 38-38-306, **amend** (1) as follows:

38-38-306. Rights of other lienors to redeem - definition.

(1) A judgment creditor whose judgment has been made a lien of record BY BEING DULY RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF THE COUNTY AT LEAST FIFTEEN CALENDAR DAYS PRIOR TO THE ACTUAL DATE OF SALE and who has complied with the other conditions of a lienor required by this article BY DULY FILING AN INTENT TO REDEEM PURSUANT TO SECTION 38-38-302 may redeem as a lienor.

SECTION 13. In Colorado Revised Statutes, **amend** 38-38-405 as follows:

38-38-405. Certificate as prima facie evidence.

A certificate of purchase, certificate of redemption, confirmation deed, or a ~~certified~~ RECORDED copy thereof shall be deemed to be prima facie evidence of all statements or recitals contained therein.

SECTION 14. In Colorado Revised Statutes, 38-38-506, **amend** (2)(a) as follows:

38-38-506. Omitted parties - definitions.

(2) (a) The interest of an omitted party in the property that is the subject of a sale may be terminated if the omitted party, or anyone claiming by, through, or under an omitted party, in a civil action commenced at any time by any interested person as defined in ~~paragraph (c) of this subsection (2)~~ SUBSECTION (2)(c) OF THIS SECTION, by an omitted party, or by anyone claiming by, through, or under an omitted party, is afforded ~~rights of cure if the omitted party would have been entitled to cure pursuant to section 38-38-104, or is afforded~~ redemption rights if the omitted party would have been entitled to redeem pursuant to section 38-38-302, upon such terms as the court may deem equitable under the circumstances, which terms shall not, however, be more favorable than the person's statutory rights. The court shall give full consideration to whether the omitted party or anyone claiming by, through, or under an omitted party was given or had actual notice or knowledge of the foreclosure and was given an opportunity to exercise statutory rights to cure or redeem.

SECTION 15. In Colorado Revised Statutes, 38-39-102, **amend** (1)(b) as follows:

38-39-102. When deed of trust shall be released - definitions.

(1) (b) ~~Immediately~~ Upon execution of the release of the deed of trust by the public trustee, the public trustee shall cause, AS SOON AS PRACTICABLE, the release to be recorded in the records of the county clerk and recorder.

SECTION 16. Effective date. This act takes effect July 1, 2026.

SECTION 17. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

Approved: May 4, 2026