

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0809.01 Ed DeCecco x4216

HOUSE BILL 17-1199

HOUSE SPONSORSHIP

Rosenthal,

SENATE SPONSORSHIP

Cooke,

House Committees
Local Government

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROCESSES THAT DIRECTLY RELATE TO THE ACTUAL**
102 **SALE OF A PROPERTY IN A FORECLOSURE ACTION.**

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 excludes information relating to violations of the requirement for a single point of contact or dual tracking from the published notice that precedes a foreclosure sale. The bill also clarifies:

- ! That the deadline for a public trustee or sheriff (officer) conducting a foreclosure to continue a foreclosure sale is the scheduled date and time of the sale; and

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.

! What happens if a foreclosure sale violates an automatic stay under the federal bankruptcy code, depending on whether full payment of the successful bid amount is received by the officer.

The procedures that apply if a foreclosure sale is set aside by court order are established to mirror the procedures that follow a rescission of a public trustee sale. In addition, a person rescinding a foreclosure sale is no longer required to send envelopes along with their rescission paperwork.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-38-103, **amend**
3 (5)(a) as follows:

4 **38-38-103. Combined notice - publication - providing**
5 **information.** (5) (a) No more than sixty calendar days nor less than
6 forty-five calendar days prior to the first scheduled date of sale, unless a
7 longer period of publication is specified in the deed of trust or other lien
8 being foreclosed, a deed of trust or other lien being foreclosed shall be
9 deemed to require the officer to commence publication of the combined
10 notice, omitting both the statements under ~~subparagraphs (II) and (III) of~~
11 ~~paragraph (a) of subsection (4)~~ SUBSECTION (4)(a)(II), (4)(a)(III), AND
12 (4)(a)(IX) of this section and the copies of the statutes under ~~paragraph~~
13 ~~(b) of subsection (4)~~ SUBSECTION (4)(b) of this section and adding the
14 first and last publication dates if not already specified in the combined
15 notice, for four weeks, which means publication once each week for five
16 consecutive weeks.

17 **SECTION 2.** In Colorado Revised Statutes, 38-38-109, **amend**
18 (1)(a), (2)(c)(I), and (2)(d); and **add** (2)(b.5) and (2)(d.5) as follows:

19 **38-38-109. Continuance of sale - effect of bankruptcy -**
20 **withdrawal of sale - definitions.** (1) **Continuance.** (a) For any reason

1 deemed by the officer to be good cause or upon written request MADE
2 BEFORE THE SCHEDULED DATE AND TIME OF THE SALE by the holder of the
3 evidence of debt or by the attorney for the holder, ~~at any time before~~
4 ~~commencement of the sale~~; the officer may continue the sale to a later
5 date. ~~by making~~; TO CONTINUE THE SALE, THE OFFICER MUST MAKE, at the
6 time and place designated for the sale, an oral announcement of the time
7 and place of such continuance, or by posting or providing a notice of the
8 continuance at the time and place designated for the sale, which shall
9 include the time and place to which the sale is continued. Except as
10 provided in ~~subparagraph (f) of paragraph (b) of subsection (2)~~
11 SUBSECTION (2)(b)(I) of this section, a sale that is not held on the
12 then-scheduled date of sale and is not continued from the then-scheduled
13 date of sale pursuant to this ~~paragraph (a)~~ SUBSECTION (1)(a) shall be
14 deemed to have been continued for a period of one week, and from week
15 to week thereafter in like manner, until the sale is held or otherwise
16 continued pursuant to this ~~paragraph (a)~~ SUBSECTION (1)(a). No sale shall
17 be continued to a date later than twelve months from the originally
18 designated date in the combined notice, except as provided in subsection
19 (2) of this section.

20 (2) **Effect of bankruptcy proceedings.** (b.5) IF A SALE IS HELD
21 IN VIOLATION OF THE AUTOMATIC STAY PROVISION OF THE FEDERAL
22 BANKRUPTCY CODE OF 1978, TITLE 11 OF THE UNITED STATES CODE, AS
23 AMENDED, AND FULL PAYMENT OF THE SUCCESSFUL BID AMOUNT FOR THE
24 FORECLOSED PROPERTY IS NOT RECEIVED BY THE OFFICER PRIOR TO THE
25 RECEIPT OF NOTIFICATION OF THE BANKRUPTCY BY THE OFFICER, THEN:

26 (I) THE SALE IS VOID;

27 (II) THE OFFICER SHALL RETURN ANY FUNDS RECEIVED FROM THE

1 SALE OF THE PROPERTY; AND

2 (III) THE OFFICER SHALL FOLLOW THE PROCEDURES SET FORTH IN
3 SUBSECTION (2)(a) OF THIS SECTION.

4 (c) (I) If a sale is held in violation of the automatic stay provisions
5 of the federal bankruptcy code of 1978, title 11 of the United States Code,
6 as amended; FULL PAYMENT OF THE SUCCESSFUL BID AMOUNT FOR THE
7 FORECLOSED PROPERTY IS RECEIVED BY THE OFFICER; and an order is
8 subsequently entered by a bankruptcy court of competent jurisdiction
9 dismissing the bankruptcy, abandoning the property being foreclosed, or
10 closing the bankruptcy case, or an order is subsequently entered granting
11 relief from the automatic stay provided by the federal bankruptcy code,
12 then the evidence of debt, deed of trust, or other lien being foreclosed
13 shall immediately be deemed reinstated, and the deed of trust or other lien
14 shall have the same priority as if the sale had not occurred. The
15 reinstatement shall be confirmed by the officer's indorsement on the
16 original evidence of debt and deed of trust or other lien, if deposited with
17 the officer, or on the copy thereof if one has been submitted pursuant to
18 section 38-38-101 (1), although the failure to so indorse shall not affect
19 the validity of the reinstatement. Immediately upon reinstatement, the
20 power of sale provided therein, if any, shall be deemed revived. The
21 indorsement shall be in substantially the following form:

22 The undersigned, as _____ (Public Trustee) (Sheriff) _____ for the
23 _____, county of _____, state of Colorado, by this indorsement,
24 hereby confirms the reinstatement of this _____ (evidence of
25 debt) (deed of trust) (lien) _____ in accordance with the
26 requirements of section 38-38-109 (2)(c)(I), Colorado Revised Statutes.

27 Date:

1 (III) WITHIN TEN CALENDAR DAYS AFTER RECEIPT OF ALL
2 DOCUMENTS AND FEES AND COSTS SPECIFIED IN SUBSECTION (2)(d) OF THIS
3 SECTION, THE OFFICER SHALL MAIL A COPY OF THE COURT ORDER TO EACH
4 PERSON WHO WAS ENTITLED TO RECEIVE THE COMBINED NOTICE PURSUANT
5 TO SECTION 38-38-103.

6 (IV) (A) AFTER THE COURT ORDER IS RECORDED, THE HOLDER OF
7 THE EVIDENCE OF DEBT, THE HOLDER'S ASSIGNEE, OR THE ATTORNEY FOR
8 THE HOLDER OR THE ASSIGNEE MAY NOTIFY THE OFFICER IN WRITING TO
9 RESCHEDULE THE SALE. THE OFFICER SHALL SET A NEW DATE OF SALE AT
10 LEAST THIRTY CALENDAR DAYS BUT NOT MORE THAN FORTY-FIVE
11 CALENDAR DAYS AFTER THE DATE ON WHICH THE OFFICER RECEIVES
12 NOTICE TO SCHEDULE A NEW DATE OF SALE, SUBJECT TO THE
13 REQUIREMENTS OF THIS SUBSECTION (2).

14 (B) NO LATER THAN TEN CALENDAR DAYS AFTER RECEIVING
15 NOTICE TO SCHEDULE A NEW DATE OF SALE, THE OFFICER SHALL MAIL A
16 COMBINED NOTICE SETTING FORTH THE RESCHEDULED DATE OF SALE TO
17 EACH PERSON WHO WAS ENTITLED TO RECEIVE THE COMBINED NOTICE
18 PURSUANT TO SECTION 38-38-103.

19 (C) NO LATER THAN TWENTY CALENDAR DAYS AFTER RECEIVING
20 NOTICE TO SCHEDULE A NEW DATE OF SALE, BUT NO LESS THAN TEN
21 CALENDAR DAYS PRIOR TO THE NEW DATE OF SALE, THE OFFICER SHALL
22 PUBLISH THE SALE ONE TIME ONLY, IN THE FORMAT SPECIFIED FOR
23 PUBLICATION BY SECTION 38-38-103.

24 (D) ALL FEES AND COSTS OF THE OFFICER FOR ACTIONS
25 PERFORMED UNDER THIS SECTION AND THE COST OF RECORDING OF THE
26 COURT ORDER AND DOCUMENTS INCORPORATED INTO THE COURT ORDER
27 BY ATTACHMENT ARE PART OF THE FORECLOSURE COSTS.

1 (E) AFTER A SALE HAS BEEN ENJOINED OR SET ASIDE AND
2 SUBSEQUENTLY RESCHEDULED, THE SALE MAY BE CONTINUED IN
3 ACCORDANCE WITH SUBSECTION (1)(a) OF THIS SECTION.

4 (V) NOTHING IN THIS SECTION PREVENTS THE FORECLOSING
5 LENDER FROM SEEKING A RESCISSION OF SALE PURSUANT TO SECTION
6 38-38-113 IF THE REQUIREMENTS SET FORTH IN SECTION 38-38-113 (1)
7 ARE MET.

8 (VI) CLAIMS FOR DAMAGES BY ANY PERSON ARISING OUT OF AN
9 ENJOINED OR SET ASIDE SALE PURSUANT TO THIS SECTION ARE LIMITED TO
10 THE REASONABLE ACTUAL EXPENSES OF THE PERSON AND SHALL NOT
11 INCLUDE ANY SPECULATIVE OR EXPECTATION DAMAGES, AWARDS, OR
12 CLAIMS OF ANY KIND, WHETHER LEGAL OR EQUITABLE.

13 (VII) THE OFFICER SHALL PREPARE THE INDORSEMENT PURSUANT
14 TO SUBSECTION (2)(d.5)(II) OF THIS SECTION IN SUBSTANTIALLY THE
15 FOLLOWING FORM:

16 THE UNDERSIGNED, AS _____ (PUBLIC TRUSTEE)
17 (SHERIFF) _____ FOR THE COUNTY OF _____,
18 STATE OF COLORADO, BY THIS INDORSEMENT, HEREBY
19 CONFIRMS THE REINSTATEMENT OF THIS (EVIDENCE OF
20 DEBT) (DEED OF TRUST) (LIEN) IN ACCORDANCE WITH THE
21 REQUIREMENTS OF SECTION 38-38-109, COLORADO
22 REVISED STATUTES.

23 DATE: _____

24 SIGNATURE: _____

25 (PUBLIC TRUSTEE) (SHERIFF) _____

26 FOR THE COUNTY OF _____,

27 STATE OF COLORADO.

1 **SECTION 3.** In Colorado Revised Statutes, 38-38-113, **amend**
2 (3) as follows:

3 **38-38-113. Rescission of public trustee sale.** (3) Within ten
4 calendar days after receipt of all documents and fees and costs specified
5 in subsection (1) of this section, the public trustee shall mail a copy of the
6 notice of rescission of sale to each person who was entitled to receive the
7 combined notice pursuant to section 38-38-103. ~~The person rescinding the~~
8 ~~sale shall provide addressed and stamped envelopes to the public trustee~~
9 ~~for mailing the copies.~~

10 **SECTION 4. Act subject to petition - effective date.** This act
11 takes effect at 12:01 a.m. on the day following the expiration of the
12 ninety-day period after final adjournment of the general assembly (August
13 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
14 referendum petition is filed pursuant to section 1 (3) of article V of the
15 state constitution against this act or an item, section, or part of this act
16 within such period, then the act, item, section, or part will not take effect
17 unless approved by the people at the general election to be held in
18 November 2018 and, in such case, will take effect on the date of the
19 official declaration of the vote thereon by the governor.