

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 18-0823.01 Gregg Fraser x4325

HOUSE BILL 18-1254

HOUSE SPONSORSHIP

Van Winkle,

SENATE SPONSORSHIP

Smallwood,

House Committees
Finance

Senate Committees
Finance

A BILL FOR AN ACT

101 **CONCERNING THE MODIFICATION OF THE FORECLOSURE PROCESS ON**
102 **PROPERTY THAT IS ENCUMBERED BY A DEED OF TRUST.**

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 modifies and clarifies certain aspects of the foreclosure process on property encumbered by a deed of trust as follows:

- ! Eliminates the authority of the attorney for a holder of an evidence of debt (holder) to specify the newspaper used to publish foreclosure notices;
- ! Allows an amended combined notice to be omitted in a

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

SENATE
3rd Reading Unamended
March 29, 2018

SENATE
Amended 2nd Reading
March 28, 2018

HOUSE
3rd Reading Unamended
March 16, 2018

HOUSE
Amended 2nd Reading
March 15, 2018

- specified circumstances when the notice is provided by the sheriff or public trustee conducting the foreclosure (officer);
- ! Modifies the amount of the deposit required for the fees and costs of the public trustee;
- ! Omits a statement notifying borrowers of their ability to file a complaint if they believe a lender or servicer has violated certain requirements from the portions of a combined notice that must be published;
- ! Makes changes to the bid form used by holders;
- ! Clarifies the amount to be paid to the officer if the holder bids an amount that exceeds the amount due to the holder;
- ! Prorates the amount of insurance premiums that may be claimed as costs;
- ! Further specifies and modifies the procedures for restarting a foreclosure proceeding when a property is subject to a federal bankruptcy case or if a sale has been enjoined or set aside by a court;
- ! Specifies the interest and other amounts that may be charged by the holder of a certificate of purchase when property is redeemed; and
- ! Clarifies the procedure for junior subsequent lienors to redeem a property.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-38-100.3, **amend**
 3 the introductory portion and (19) as follows:

4 **38-38-100.3. Definitions.** As used in articles 37 to 39 of this ~~title~~
 5 TITLE 38, unless the context otherwise requires:

6 (19) "Publish", "publication", "republish", or "republication"
 7 means the placement by an officer of a legal notice that meets the
 8 requirements set forth in section 24-70-103 ~~C.R.S.~~, containing a
 9 combined notice that complies with the requirements of section
 10 24-70-109 ~~C.R.S.~~, in a newspaper in the county or counties where the
 11 property to be sold is located. ~~Unless otherwise specified by the attorney~~
 12 ~~for the holder,~~ The officer shall select the newspaper.

1 **SECTION 2.** In Colorado Revised Statutes, 38-38-101, **amend**
2 (1)(d), (9), and (10)(a) as follows:

3 **38-38-101. Holder of evidence of debt may elect to foreclose.**

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

9 (d) A combined notice pursuant to section 38-38-103; except that
10 the combined notice may be omitted with the prior approval of the ~~officer~~
11 ~~because the officer will supply the combined notice~~ PUBLIC TRUSTEE;

12 (9) **Partial release from deed of trust.** At any time after the
13 recording of the notice of election and demand but prior to the sale, a
14 portion of the property may be released from the deed of trust being
15 foreclosed pursuant to section 38-39-102 or as otherwise provided by
16 order of a court of competent jurisdiction recorded in the county where
17 the property being released is located. Upon recording of the release or
18 court order, the holder of the evidence of debt or the attorney for the
19 holder shall pay the fee described in section 38-37-104 (1)(b)(IX), amend
20 the combined notice, and, in the case of a public trustee foreclosure,
21 amend the notice of election and demand to describe the property that
22 continues to be secured by the deed of trust or other lien being foreclosed
23 as of the effective date of the release or court order; EXCEPT THAT THE
24 AMENDED COMBINED NOTICE MAY BE OMITTED WITH THE PRIOR APPROVAL
25 OF THE PUBLIC TRUSTEE. The public trustee shall record the amended
26 notice of election and demand upon receipt. Upon receipt of the amended
27 combined notice, IF PROVIDED BY THE HOLDER OR THE ATTORNEY FOR THE

1 HOLDER, the public trustee shall republish and mail the amended
2 combined notice in the manner set forth in section 38-38-109 (1)(b). IF
3 THE AMENDED COMBINED NOTICE WAS OMITTED PURSUANT TO THIS
4 SUBSECTION (9), UPON RECORDATION OF THE AMENDED NOTICE OF
5 ELECTION AND DEMAND, THE PUBLIC TRUSTEE SHALL SUPPLY AN AMENDED
6 COMBINED NOTICE AND SHALL THEN REPUBLISH AND MAIL THE AMENDED
7 COMBINED NOTICE IN THE MANNER SET FORTH IN SECTION 38-38-109
8 (1)(b).

9 (10) **Deposit.** (a) The public trustee may require the holder or
10 servicer to make a deposit of up to ~~six hundred fifty~~ FIVE HUNDRED
11 dollars ~~or~~ PLUS the amount of the fee permitted pursuant to section
12 38-37-104 (1)(b)(I), ~~whichever is greater~~, at the time the notice of
13 election and demand is filed, to be applied against the fees and costs of
14 the public trustee.

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

17 **38-38-103. Combined notice - publication - providing**
18 **information.** (5) (a) No more than sixty calendar days nor less than
19 forty-five calendar days prior to the first scheduled date of sale, unless a
20 longer period of publication is specified in the deed of trust or other lien
21 being foreclosed, a deed of trust or other lien being foreclosed ~~shall be~~ IS
22 deemed to require the officer to commence publication of the combined
23 notice, omitting both the statements under ~~subparagraphs (II) and (III) of~~
24 ~~paragraph (a) of subsection (4)~~ SUBSECTIONS (4)(a)(II), (4)(a)(III), AND
25 (4)(a)(IX) of this section and the copies of the statutes under ~~paragraph~~
26 ~~(b) of subsection (4)~~ SUBSECTION (4)(b) of this section and adding the
27 first and last publication dates if not already specified in the combined

1 notice, for four weeks, which means publication once each week for five
2 consecutive weeks.

3 **SECTION 4.** In Colorado Revised Statutes, 38-38-106, **amend**
4 (2) and (7)(a) as follows:

5 **38-38-106. Bid required - form of bid.** (2) The holder of the
6 evidence of debt shall submit a signed and acknowledged bid, or the
7 attorney for the holder shall submit a signed bid, which ~~shall~~ MUST
8 specify the following amounts, itemized in substantially the following
9 categories and in substantially the following form:

10 **BID**

11 To: _____
12 Public Trustee (or Sheriff) of the County (or City and County) of _____,
13 State of Colorado (hereinafter the "officer").

14 Date: _____
15 _____, whose mailing address is _____, bids the
16 sum of \$ ____ in your Sale No. ____ to be held on the ____ day of ____ ,
17 20__ .

18 The following is an itemization of all amounts due the holder of the
19 evidence of debt secured by the deed of trust or other lien being
20 foreclosed.

21 Street address of property being
22 foreclosed, if known: _____
23 Regular [] / default [] rate of interest as of the date of
24 sale: _____

25 (Inapplicable items may be omitted):

26 Amounts due under the evidence of debt:
27 Principal \$ _____

1	Interest	_____	
2	Late charges	_____	
3	Allowable prepayment penalties		
4	or premiums	_____	
5	Other amounts due under the evidence of debt		
6	(specify)	_____	_____
7		_____	_____
8	Category subtotal:		\$ _____
9	Other fees and costs advanced by the holder of evidence of debt:		
10	Property, general liability, and		
11	casualty insurance	_____	
12	Property inspections	_____	
13	Appraisals	_____	
14	Taxes and assessments	_____	
15	Utility charges owed or		
16	incurred	_____	
17	Owner association		
18	assessment paid	_____	
19	Permitted amounts paid on		
20	prior liens	_____	
21	Permitted lease payments	_____	
22	Less impound/escrow		
23	account credit	_____	
24	Plus impound/escrow		
25	account deficiency	_____	
26	Other (describe)	_____	
27	Category subtotal:		\$ _____

1 Attorney fees and advances:
 2 Attorney fees _____
 3 Title commitments and insurances or abstractor
 4 charges _____
 5 Court docketing _____
 6 Statutory notice _____
 7 Postage _____
 8 Electronic transmissions _____
 9 Photocopies _____
 10 Telephone _____
 11 Other (describe) _____
 12 Category subtotal: \$ _____
 13 Officer fees and costs:
 14 Officer statutory fee _____
 15 Publication charges _____
 16 CERTIFICATE OF PURCHASE
 17 RECORDING FEE _____
 18 Confirmation deed fee _____
 19 Confirmation deed
 20 recording fee _____
 21 Other (describe) _____
 22 Category subtotal: \$ _____
 23 Total due holder of the
 24 evidence of debt _____
 25 Initial Bid \$ _____
 26 Deficiency \$ _____
 27 **Maximum Bid**

1 (applies to
2 electronic
3 bids only) \$ _____

4 I enclose herewith the following:

- 5 1. Order authorizing sale.
- 6 2. Check (if applicable) to your order in the sum of \$ _____ covering
7 the balance of your fees and costs.
- 8 3. Other: _____.

9 Please send us the following:


- 10 1. Promissory note with the deficiency, if any, noted thereon
- 11 2. Refund for overpayment of officer's fees and costs, if any
- 12 3. Other: _____.

13 Name of the holder of the evidence of debt
14 and the attorney for the holder:
15 Holder: _____
16 Attorney: _____
17 By: _____
18 Attorney registration number: _____
19 Attorney address: _____
20 Attorney business telephone: _____

21 (7) (a) (I) Other than a bid by the holder of the evidence of debt
22 not exceeding the total amount due shown on the bid pursuant to
23 subsection (2) of this section, the payment of any bid amount at sale must
24 be received by the officer no later than the date and time of the sale, or at
25 an alternative time after the sale and on the day of the sale, as specified
26 in writing by the officer. The payment ~~shall~~ MUST be in the form specified
27 in section 38-37-108. If the officer has not received full payment of the

1 bid amount from the highest bidder at the sale pursuant to this subsection
2 (7), the next highest bidder who has timely tendered the full amount of
3 the bid under this subsection (7) ~~shall be~~ IS deemed the successful bidder
4 at the sale.

5 (II) IF THE HOLDER OF THE EVIDENCE OF DEBT IS THE HIGHEST
6 BIDDER WITH A BID THAT EXCEEDS THE TOTAL AMOUNT DUE SHOWN ON
7 THE BID PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE HOLDER OF
8 THE EVIDENCE OF DEBT IS ONLY REQUIRED TO PAY THE EXCESS OF THE
9 AMOUNT BID OVER THE AMOUNT DUE THE HOLDER OF THE EVIDENCE OF
10 DEBT, AS SHOWN ON THE BID SUBMITTED PURSUANT TO SUBSECTION (2) OF
11 THIS SECTION.

12 
13 **SECTION 5.** In Colorado Revised Statutes, 38-38-109, **amend**
14 (2)(b)(II), (2)(c), and (2)(d) as follows:

15 **38-38-109. Continuance of sale - effect of bankruptcy -**
16 **withdrawal of sale. (2) Effect of bankruptcy proceedings.**
17 (b) (II) (A) ~~When the property is to be sold by the public trustee, the~~
18 ~~public trustee shall rerecord the notice of election and demand and~~
19 ~~proceed with all additional foreclosure procedures provided by this~~
20 ~~article, as though the foreclosure had just been commenced, upon:~~ UPON
21 THE TERMINATION OF ANY INJUNCTION OR UPON THE ENTRY OF A
22 BANKRUPTCY COURT ORDER DISMISSING THE BANKRUPTCY CASE,
23 ABANDONING THE PROPERTY BEING FORECLOSED, CLOSING THE
24 BANKRUPTCY CASE, OR GRANTING RELIEF FROM THE AUTOMATIC STAY
25 PROVISIONS OF THE FEDERAL BANKRUPTCY CODE OF 1978, TITLE 11 OF THE
26 UNITED STATES CODE, AS AMENDED, AND UPON RECEIPT OF A REQUEST
27 FROM THE HOLDER OF THE EVIDENCE OF DEBT OR THE ATTORNEY FOR THE

1 HOLDER TO RESTART THE ACTION, THE PUBLIC TRUSTEE SHALL RERECORD
2 THE NOTICE OF ELECTION AND DEMAND AND PROCEED WITH ALL
3 ADDITIONAL FORECLOSURE PROCEDURES PROVIDED BY THIS ARTICLE 38 AS
4 THOUGH THE FORECLOSURE HAD JUST BEEN COMMENCED.

5 ~~(A) The termination of any injunction or upon the entry of a~~
6 ~~bankruptcy court order dismissing the bankruptcy case, abandoning the~~
7 ~~property being foreclosed, closing the bankruptcy case, or granting relief~~
8 ~~from the automatic stay provisions of the federal bankruptcy code of~~
9 ~~1978, title 11 of the United States Code, as amended; and~~

10 (B) Receipt of a request from the holder of the evidence of debt
11 or the attorney for the holder to restart the action. The public trustee shall
12 rerecord the notice within ten business days of the request IF THE
13 REQUEST IS NOT RECEIVED BY THE PUBLIC TRUSTEE WITHIN ONE YEAR
14 FROM THE DATE OF THE TERMINATION OF ANY INJUNCTION OR THE ENTRY
15 OF A BANKRUPTCY COURT ORDER DISMISSING THE BANKRUPTCY CASE,
16 ABANDONING THE PROPERTY BEING FORECLOSED, CLOSING THE
17 BANKRUPTCY CASE, OR GRANTING RELIEF FROM THE AUTOMATIC STAY,
18 THE FORECLOSURE SHALL BE WITHDRAWN ACCORDING TO SUBSECTION
19 (3)(b) OF THIS SECTION.

20 (c) (I) If a sale is held in violation of the automatic stay provisions
21 of the federal bankruptcy code of 1978, title 11 of the United States Code,
22 as amended, and an order is subsequently entered by a bankruptcy court
23 of competent jurisdiction dismissing the bankruptcy, abandoning the
24 property being foreclosed, or closing the bankruptcy case, or an order is
25 subsequently entered granting relief from the automatic stay provided by
26 the federal bankruptcy code, then the evidence of debt, deed of trust, or
27 other lien being foreclosed shall immediately be deemed reinstated, and

1 the deed of trust or other lien shall have the same priority as if the sale
2 had not occurred. The reinstatement shall be confirmed by the officer's
3 indorsement on the original evidence of debt and deed of trust or other
4 lien, if deposited with the officer, or on the copy thereof if one has been
5 submitted pursuant to section 38-38-101 (1), although the failure to so
6 indorse shall not affect the validity of the reinstatement. Immediately
7 upon reinstatement, the power of sale provided therein, if any, shall be
8 deemed revived. The indorsement shall be in substantially the following
9 form:

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

15 Date:

16 _____
Signature
17 _____
(Public Trustee) (Sheriff)
18 For the _____,
19 County of _____,
20 State of Colorado.

21 (II) If the holder of the evidence of debt, deed of trust, or other
22 lien reinstated pursuant to this paragraph (c) SUBSECTION (2)(c) or the
23 attorney for the holder notifies the officer in writing of the entry of an
24 order dismissing the bankruptcy case, abandoning the property being
25 foreclosed, closing the bankruptcy case, or granting relief from the
26 automatic stay provided by the federal bankruptcy code of 1978, title 11
27 of the United States Code, as amended, within sixty calendar days of the

1 ~~date on which the foreclosed property is no longer subject to the~~
2 ~~automatic stay~~ NO LATER THAN FIFTY CALENDAR DAYS PRIOR TO THE LAST
3 POSSIBLE SALE DATE PURSUANT TO SUBSECTIONS (1)(a) AND (2)(e) OF THIS
4 SECTION, the officer shall set a new date of sale at least twenty-four
5 calendar days but not more than forty-nine calendar days after the date on
6 which the official receives such notice. No later than ten business days
7 after receiving such notice, the officer shall mail an amended combined
8 notice containing the date of the rescheduled sale to each person
9 appearing on the most recent mailing list. No later than twenty calendar
10 days after receiving such notice, but no less than ten calendar days prior
11 to the new date of sale, the officer shall publish the amended combined
12 notice, omitting the copies of the statutes, one time only in a newspaper
13 of general circulation in the county where the property is located.

14 (III) IF THE HOLDER OF THE EVIDENCE OF DEBT, DEED OF TRUST, OR
15 OTHER LIEN REINSTATED PURSUANT THIS SUBSECTION (2)(c) OR THE
16 ATTORNEY FOR THE HOLDER DOES NOT NOTIFY THE OFFICER IN WRITING OF
17 THE ENTRY OF AN ORDER DISMISSING THE BANKRUPTCY CASE,
18 ABANDONING THE PROPERTY BEING FORECLOSED, CLOSING THE
19 BANKRUPTCY CASE, OR GRANTING RELIEF FROM THE AUTOMATIC STAY
20 PROVIDED BY THE FEDERAL BANKRUPTCY CODE OF 1978, TITLE 11 OF THE
21 UNITED STATES CODE, AS AMENDED, WITHIN ~~THE TIME ALLOWED~~
22 UNDER SUBSECTION (2)(c)(II) OF THIS SECTION, THE OFFICER SHALL
23 ADMINISTRATIVELY WITHDRAW THE SALE PURSUANT TO SUBSECTION
24 (3)(b) OF THIS SECTION UPON RECEIPT OF THE ORDER DISMISSING THE
25 BANKRUPTCY CASE, ABANDONING THE PROPERTY BEING FORECLOSED,
26 CLOSING THE BANKRUPTCY CASE, OR GRANTING RELIEF FROM THE
27 AUTOMATIC STAY PROVIDED BY THE FEDERAL BANKRUPTCY CODE OF

1 1978, TITLE 11 OF THE UNITED STATES CODE, AS AMENDED.

2 (HH) (IV) All fees and costs of providing and publishing the
3 amended combined notice and publication shall be part of the foreclosure
4 costs.

5 (d) If a sale is ~~enjoined or~~ set aside by court order, UNLESS THE
6 COURT ORDER SPECIFIES OTHERWISE, the ~~same~~ FOLLOWING procedures as
7 set forth in paragraphs (a), (b), and (c) of this subsection (2) shall apply
8 unless the court order specifies otherwise. The fees prescribed in section
9 38-37-104 (1)(b)(VII) and (1)(b)(VIII) shall apply to the procedures
10 described in this subsection (2) APPLY:

11 (I) UPON RECEIPT OF THE COURT ORDER, THE PUBLIC TRUSTEE'S
12 FEE SPECIFIED IN SECTION 38-37-104 (1)(b)(XI), AND THE COSTS OF
13 RECORDING THE COURT ORDER AS SPECIFIED IN THIS SUBSECTION (2)(d),
14 THE PUBLIC TRUSTEE SHALL ATTACH TO THE ORDER A COPY OF THE
15 CERTIFICATE OF PURCHASE, ANY ASSIGNMENTS THEREOF, AND, IF
16 APPLICABLE, THE CONFIRMATION DEED, EACH MARKED "NULL AND VOID",
17 AND RECORD THE ORDER TOGETHER WITH THESE DOCUMENTS.

18 (II) UPON RECORDATION OF THE COURT ORDER, THE CERTIFICATE
19 OF PURCHASE SHALL BE DEEMED CANCELED AS IF THE SALE HAD NOT
20 OCCURRED, AND THE EVIDENCE OF DEBT AND DEED OF TRUST ARE DEEMED
21 FULLY REINSTATED WITH THE SAME LIEN PRIORITY AS IF THE SALE HAD
22 NOT OCCURRED.

23 (III) WITHIN TEN CALENDAR DAYS AFTER RECEIPT OF ALL
24 DOCUMENTS, FEES, AND COSTS SPECIFIED IN SUBSECTION (2)(d) OF THIS
25 SECTION, THE PUBLIC TRUSTEE SHALL MAIL A COPY OF THE COURT ORDER
26 TO EACH PERSON ENTITLED TO RECEIVE THE COMBINED NOTICE PURSUANT
27 TO SECTION 38-38-103.

1 (IV) (A) AFTER THE RECORDING OF THE COURT ORDER, THE
2 HOLDER OF THE EVIDENCE OF DEBT OR THE HOLDER'S ASSIGNEE OR THE
3 ATTORNEY FOR THE HOLDER OR THE ATTORNEY FOR THE ASSIGNEE MAY
4 NOTIFY THE PUBLIC TRUSTEE IN WRITING TO RESCHEDULE THE SALE
5 WITHIN ONE YEAR OF THE ISSUANCE OF THE ORDER. THE PUBLIC TRUSTEE
6 SHALL SET A NEW DATE OF SALE AT LEAST THIRTY CALENDAR DAYS BUT
7 NOT MORE THAN FORTY-FIVE CALENDAR DAYS AFTER THE DATE ON WHICH
8 THE PUBLIC TRUSTEE RECEIVES NOTICE TO SCHEDULE A NEW DATE OF SALE
9 SUBJECT TO THE REQUIREMENTS OF SUBSECTIONS (1)(a) AND (2)(e) OF
10 THIS SECTION, BUT NOT EARLIER THAN THE SCHEDULED SALE DATE AS OF
11 THE DATE OF THE COURT ORDER.

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

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

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

26 (E) AFTER A SALE HAS BEEN SET ASIDE AND SUBSEQUENTLY
27 RESCHEDULED PURSUANT TO THIS SUBSECTION (2)(d)(IV), THE SALE MAY

1 BE CONTINUED IN ACCORDANCE WITH SUBSECTIONS (1)(a) AND (2)(e) OF
2 THIS SECTION.

3 (F) IF A WRITTEN REQUEST TO RESCHEDULE THE SALE IS NOT
4 RECEIVED BY THE PUBLIC TRUSTEE WITHIN ONE YEAR OF THE ISSUANCE OF
5 THE ORDER, THE FORECLOSURE MUST BE WITHDRAWN ACCORDING TO
6 SUBSECTION (3)(b) OF THIS SECTION.

7 (V) NOTHING IN THIS SECTION PREVENTS THE FORECLOSING
8 LENDER FROM SEEKING A RESCISSION OF SALE PURSUANT TO SECTION
9 38-38-113 IF THE REQUIREMENTS WITHIN SECTION 38-38-113 (1) ARE MET.

10 [REDACTED]

11 **SECTION 6.** In Colorado Revised Statutes, 38-38-111, **amend**
12 (3) as follows:

13 **38-38-111. Treatment of an overbid - agreements to assist in**
14 **recovery of overbid prohibited - penalty - definition.** (3) (a) (I) When
15 the property is sold by the sheriff, all of the sale proceeds must be
16 deposited into the registry of the court.

17 (II) WHEN THE PROPERTY IS SOLD BY THE PUBLIC TRUSTEE, any
18 unclaimed remaining overbid from a foreclosure sale ~~held prior to~~
19 ~~September 1, 2012, shall be transferred by the officer to the county~~
20 ~~treasurer within ninety calendar days after the expiration of all~~
21 ~~redemption periods as provided in section 38-38-302 and held in escrow,~~
22 ~~and any unclaimed remaining overbid from a foreclosure sale held on or~~
23 ~~after September 1, 2012, shall be held by the officer~~ PUBLIC TRUSTEE in
24 escrow. ~~In either case,~~ The remaining overbid shall be held for six months
25 from the date of the sale. The ~~county treasurer or officer, whomever holds~~
26 ~~the remaining overbid in escrow, shall be~~ PUBLIC TRUSTEE IS answerable
27 for the funds without interest at any time within the six-month period to

1 any person legally entitled to the funds. Any interest earned on the
2 escrowed funds ~~shall~~ MUST be paid to the county at least annually.
3 Unclaimed remaining overbids that are less than twenty-five dollars and
4 that are not claimed within six months from the date of sale ~~shall~~ MUST
5 be paid to the general fund of the county, and such ~~moneys~~ MONEY paid
6 to the general fund of the county ~~become~~ BECOMES the property of the
7 county. Unclaimed remaining overbids that are equal to or greater than
8 twenty-five dollars and that are not claimed within six months from the
9 date of the sale are unclaimed property for purposes of the "Unclaimed
10 Property Act", article 13 of this ~~title~~ TITLE 38, and ~~shall~~ MUST be
11 transferred to the administrator in accordance with ~~that article~~ ARTICLE
12 13. After the unclaimed remaining overbids are transferred to the
13 administrator or to the general fund of the county, the ~~county treasurer~~
14 ~~and officer are~~ PUBLIC TRUSTEE IS discharged from any further liability or
15 responsibility for the ~~moneys~~ MONEY.

16 (b) If the unclaimed remaining overbids exceed five hundred
17 dollars and have not been claimed by any person entitled thereto within
18 sixty calendar days after the expiration of all redemption periods as
19 provided by section 38-38-302, the ~~county treasurer or officer~~ PUBLIC
20 TRUSTEE shall, within ninety calendar days after the expiration of all
21 redemption periods, commence publication of a notice for four weeks,
22 which means publication once each week for five successive weeks, in a
23 newspaper of general circulation in the county where the subject property
24 is located. ~~The county treasurer is responsible for the notice of an overbid~~
25 ~~from a foreclosure sale held prior to September 1, 2012, and the officer~~
26 ~~is responsible for the notice of an overbid from a foreclosure sale held on~~
27 ~~or after September 1, 2012.~~ The notice must contain the name of the

1 owner, the owner's address as given in the recorded instrument
2 evidencing the owner's interest, and the legal description and street
3 address, if any, of the property sold at the sale and must state that an
4 overbid was realized from the sale and that, unless the funds are claimed
5 by the owner or other person entitled thereto within six months after the
6 date of sale, the funds shall be transferred to the state treasurer as part of
7 the "Unclaimed Property Act". ~~The county treasurer or officer, whomever~~
8 ~~holds the remaining overbid in escrow,~~ PUBLIC TRUSTEE shall also mail
9 a copy of the notice to the owner at the best available address.

10 (c) The fees and costs of publication and mailing required
11 pursuant to this subsection (3) ~~shall~~ MUST be paid from the ~~moneys~~
12 MONEY escrowed by the ~~county treasurer or officer, whomever holds the~~
13 ~~remaining overbid in escrow~~ PUBLIC TRUSTEE.

14 **SECTION 7.** In Colorado Revised Statutes, 38-38-113, **amend**
15 (3); and **add** (4)(f) as follows:

16 **38-38-113. Rescission of public trustee sale.** (3) Within ten
17 calendar days after receipt of all documents and fees and costs specified
18 in subsection (1) of this section, the public trustee shall mail a copy of the
19 notice of rescission of sale to each person who was entitled to receive the
20 combined notice pursuant to section 38-38-103. ~~The person rescinding the~~
21 ~~sale shall provide addressed and stamped envelopes to the public trustee~~
22 ~~for mailing the copies.~~

23 (4) (f) IF A WRITTEN REQUEST TO RESCHEDULE THE SALE IS NOT
24 RECEIVED BY THE PUBLIC TRUSTEE WITHIN ONE YEAR OF THE RECORDING
25 OF THE NOTICE OF RESCISSION, THE FORECLOSURE MUST BE WITHDRAWN
26 ACCORDING TO SECTION 38-38-109 (3) (b).

27 **SECTION 8.** In Colorado Revised Statutes, 38-38-302, **amend**

1 (3)(a) as follows:

2 **38-38-302. Redemption by lienor - procedure. (3) Statement**
3 **of redemption.** (a) Upon receipt of notice that an intent to redeem was
4 filed, the holder of a certificate of purchase shall submit a signed and
5 acknowledged statement, or the attorney for the holder shall submit a
6 signed statement, to the officer, no later than thirteen business days
7 following the sale, specifying ~~all sums necessary to redeem as of the date~~
8 ~~of the statement, the amount of per diem interest accruing thereafter, and~~
9 ~~the interest rate on which the amount is based~~ INTEREST CALCULATED
10 THROUGH THE DATE OF THE SALE, THE AMOUNT OF PER DIEM INTEREST
11 ACCRUING THEREAFTER, THE INTEREST RATE ON WHICH THE AMOUNT IS
12 BASED, AND ALL OTHER SUMS NECESSARY TO REDEEM AS OF THE DATE OF
13 THE STATEMENT. INTEREST ON THE AMOUNT FOR WHICH THE PROPERTY
14 WAS SOLD MUST BE CHARGED AT THE DEFAULT RATE SPECIFIED IN THE
15 EVIDENCE OF DEBT, DEED OF TRUST, OR OTHER LIEN BEING FORECLOSED
16 OR, IF NOT SO SPECIFIED, AT THE REGULAR RATE SPECIFIED IN THE
17 EVIDENCE OF DEBT, DEED OF TRUST, OR OTHER LIEN BEING FORECLOSED.
18 IF DIFFERENT INTEREST RATES ARE SPECIFIED IN THE EVIDENCE OF DEBT,
19 DEED OF TRUST, OR OTHER LIEN BEING FORECLOSED, THE INTEREST RATE
20 SPECIFIED IN THE EVIDENCE OF DEBT PREVAILS. IF THE EVIDENCE OF DEBT
21 DOES NOT SPECIFY AN INTEREST RATE, INCLUDING A DEFAULT INTEREST
22 RATE, THE APPLICABLE INTEREST RATE AS SPECIFIED IN THE DEED OF
23 TRUST OR OTHER LIEN BEING FORECLOSED APPLIES. A holder of the
24 certificate of purchase that is not a qualified holder, or the attorney for the
25 holder, shall also submit to the officer receipts, invoices, evidence of
26 electronic account-to-account transfers, or copies of loan servicing
27 computer screens evidencing the fees and costs and verifying that the fees

1 and costs were actually incurred as of the date of the statement, along
2 with the per diem amounts that accrue after the date of sale. The holder
3 or the attorney for the holder may amend the statement from time to time
4 to reflect additional sums advanced as allowed by law, but the statement
5 shall not be amended later than two business days prior to the
6 commencement of the redemption period pursuant to ~~paragraph (a) of~~
7 ~~subsection (4)~~ SUBSECTION (4)(a) of this section or each subsequent
8 redemption period pursuant to ~~paragraph (b) of subsection (4)~~
9 SUBSECTION (4)(b) of this section.

10



11 **SECTION 9. Act subject to petition - effective date.** This act
12 takes effect at 12:01 a.m. on the day following the expiration of the
13 ninety-day period after final adjournment of the general assembly (August
14 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
15 referendum petition is filed pursuant to section 1 (3) of article V of the
16 state constitution against this act or an item, section, or part of this act
17 within such period, then the act, item, section, or part will not take effect
18 unless approved by the people at the general election to be held in
19 November 2018 and, in such case, will take effect on the date of the
20 official declaration of the vote thereon by the governor.