

CHAPTER 203

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 93-1288

BY REPRESENTATIVES Tanner, Chlouber, Entz, Lyle, Thiebaut, and Williams;
also SENATORS Groff, Cassidy, Mutzebaugh, Peterson, L. Powers, and R. Powers.

AN ACT

CONCERNING THE PROCEDURE FOR SECURING A BAIL BOND WITH REAL PROPERTY, AND, IN CONNECTION THEREWITH, SPECIFYING THE PROCEDURE FOR RELEASING THE LIEN AGAINST SUCH PROPERTY.

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

SECTION 1. 16-4-104 (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-4-104. Bail bond - alternatives. (3) (a) (I) IF THE BOND IS TO BE SECURED BY REAL ESTATE, THE PROFESSIONAL BONDING AGENT SHALL PROVIDE THE PROPERTY OWNER WITH A WRITTEN DISCLOSURE STATEMENT IN THE FOLLOWING FORM AT THE TIME AN INITIAL APPLICATION IS FILED:

"DISCLOSURE OF LIEN AGAINST REAL PROPERTY

DO NOT SIGN THIS DOCUMENT UNTIL YOU READ AND UNDERSTAND IT!

THIS BAIL BOND WILL BE SECURED BY REAL PROPERTY YOU OWN OR IN WHICH YOU HAVE AN INTEREST. FAILURE TO PAY THE BAIL BOND PREMIUMS WHEN DUE OR THE DEFENDANT'S FAILURE TO COMPLY WITH THE CONDITIONS OF BAIL COULD RESULT IN THE LOSS OF YOUR PROPERTY!"

(II) THE DISCLOSURE REQUIRED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) SHALL BE PRINTED IN FOURTEEN-POINT BOLD-FACE TYPE EITHER:

(A) ON A SEPARATE AND SPECIFIC DOCUMENT ATTACHED TO OR ACCOMPANYING THE APPLICATION; OR

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(B) IN A CLEAR AND CONSPICUOUS STATEMENT ON THE FACE OF THE APPLICATION.

(III) BEFORE A PROPERTY OWNER EXECUTES ANY INSTRUMENT CREATING A LIEN AGAINST REAL PROPERTY, THE PROFESSIONAL BONDING AGENT SHALL PROVIDE THE PROPERTY OWNER WITH A COMPLETED COPY OF THE INSTRUMENT CREATING THE LIEN AGAINST REAL PROPERTY AND THE DISCLOSURE STATEMENT DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a). IF A PROFESSIONAL BONDING AGENT FAILS TO COMPLY FULLY WITH THE REQUIREMENTS OF SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH (a) AND THIS SUBPARAGRAPH (III), ANY INSTRUMENT CREATING A LIEN AGAINST REAL PROPERTY SHALL BE VOIDABLE.

(IV) THE BONDING AGENT SHALL DELIVER TO THE PROPERTY OWNER A FULLY EXECUTED AND NOTARIZED RECONVEYANCE OF TITLE, A CERTIFICATE OF DISCHARGE, OR A FULL RELEASE OF ANY LIEN AGAINST REAL PROPERTY THAT SECURES PERFORMANCE OF THE CONDITIONS OF A BAIL BOND WITHIN THIRTY DAYS AFTER RECEIVING NOTICE THAT THE TIME FOR APPEALING AN ORDER THAT EXONERATED THE BAIL BOND HAS EXPIRED. THE BONDING AGENT SHALL ALSO DELIVER TO THE PROPERTY OWNER THE ORIGINAL CANCELLED NOTE AS EVIDENCE THAT THE INDEBTEDNESS SECURED BY ANY LIEN INSTRUMENT HAS BEEN PAID OR THAT THE PURPOSES OF SAID INSTRUMENT HAVE BEEN FULLY SATISFIED AND THE ORIGINAL DEED OF TRUST, SECURITY AGREEMENT, OR OTHER INSTRUMENT WHICH SECURED THE BAIL BOND OBLIGATION. IF A TIMELY NOTICE OF APPEAL IS FILED, THE THIRTY-DAY PERIOD SHALL BEGIN ON THE DAY THE APPELLATE COURT'S AFFIRMATION OF THE ORDER BECOMES FINAL. IF THE BONDING AGENT FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SUBPARAGRAPH (IV), THE PROPERTY OWNER MAY PETITION THE DISTRICT COURT TO ISSUE AN ORDER DIRECTING THE CLERK OF SUCH COURT TO EXECUTE A FULL RECONVEYANCE OF TITLE, A CERTIFICATE OF DISCHARGE, OR A FULL RELEASE OF ANY LIEN AGAINST REAL PROPERTY CREATED TO SECURE PERFORMANCE OF THE CONDITIONS OF THE BAIL BOND. THE PETITION SHALL BE VERIFIED AND SHALL ALLEGE FACTS SHOWING THAT THE BONDING AGENT HAS FAILED TO COMPLY WITH THE PROVISIONS OF THIS SUBPARAGRAPH (IV).

(V) ANY PROFESSIONAL BONDING AGENT WHO VIOLATES THIS PARAGRAPH (a) SHALL BE LIABLE TO THE PROPERTY OWNER FOR ALL DAMAGES WHICH MAY BE SUSTAINED BY REASON OF THE VIOLATION, PLUS STATUTORY DAMAGES IN THE SUM OF THREE HUNDRED DOLLARS. THE PROPERTY OWNER SHALL BE ENTITLED TO RECOVER COURT COSTS AND REASONABLE ATTORNEY FEES, AS DETERMINED BY THE COURT, UPON PREVAILING IN ANY ACTION BROUGHT TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH (a).

~~(a)~~ (b) If the bond is secured by real estate, the amount of the owner's unencumbered equity shall be determined by deducting the amount of all encumbrances listed in the owner and encumbrances certificate from the actual value of such real estate as shown on the current notice of valuation. The owner of the real estate shall file with the bond the following, which shall constitute a material part of the bond:

(I) The current notice of valuation for such real estate prepared by the county assessor pursuant to section 39-5-121, C.R.S.; and

(II) ~~An owner and encumbrances certificate~~ EVIDENCE OF TITLE issued by a title insurance company or agent licensed pursuant to article 11 of title 10, C.R.S., within thirty days of the date upon which the bond is filed; and

(III) A sworn statement by the owner of the real estate that the real estate is security for the compliance by the accused with the primary condition of the bond; and

(IV) A deed of trust to the public trustee of the county in which such real estate is located which shall be executed and acknowledged by all record owners of such real estate which shall name as beneficiary the clerk of the court approving such bond and which shall secure an amount equal to one and one-half times the amount of the bond.

~~(b)~~ (c) (I) If the bond is secured by real estate, such bond shall not be accepted by the clerk of the court unless the record owner of such property has presented to the clerk of such court the original deed of trust as set forth in subparagraph (IV) of paragraph (a) of this subsection (3) and the applicable recording fee. Upon receipt of such deed of trust and fee, the clerk of the court shall cause the deed of trust to be recorded with the clerk and recorder for the county in which the property is located.

(II) Upon satisfaction of the terms of the bond, the clerk of the court shall, within ten days of such satisfaction, execute a release of the deed of trust and an affidavit which states that the obligation for which the deed of trust had been recorded has been satisfied, either fully or partially, and that the release of such deed of trust may be recorded at the expense of the record owner of the property described in such deed of trust.

(III) If there is a forfeiture of the bond pursuant to sections 16-4-103 and 16-4-109, and if the forfeiture is not set aside pursuant to section 16-4-109 (3), the deed of trust may be foreclosed as provided by law.

(IV) If there is a forfeiture of the bond pursuant to sections 16-4-103 and 16-4-109, but the forfeiture is set aside pursuant to section 16-4-109 (3), the clerk of the court shall execute a release of the deed of trust and an affidavit which states that the obligation for which the deed of trust had been recorded has been satisfied, either fully or partially, and that the release of such deed of trust may be recorded at the expense of the record owner of the real estate described in such deed of trust.

SECTION 2. 16-4-104 (1) (b) (III), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

16-4-104. Bail bond - alternatives. (1) (b) (III) By sureties worth at least one and one-half the amount of bail set in the bond or by a ~~corporate surety company authorized to do business in this state.~~ PROFESSIONAL BONDING AGENT AS DEFINED IN SECTION 12-7-101 (4) C.R.S.

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

Approved: May 28, 1993