

CHAPTER 275

GOVERNMENT - COUNTY

HOUSE BILL 96-1369

BY REPRESENTATIVES Schwarz, Epps, and Schauer;
also SENATORS Schroeder and Weddig.

AN ACT

CONCERNING PROPERTY RECORDS REQUIRED BY LAW TO BE MAINTAINED IN THE OFFICE OF THE COUNTY CLERK AND RECORDER.

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

SECTION 1. 38-35-109 (1), (3), and (4), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended to read:

38-35-109. Instrument may be recorded - validity of unrecorded instruments - liability for fraudulent documents. (1) All deeds, powers of attorney, agreements, or other instruments in writing conveying, encumbering, or affecting the title to real property, certificates, and certified copies of orders, judgments, and decrees of courts of record may be recorded in the office of the county clerk and recorder of the county where such real property is situated. No such unrecorded instrument or document shall be valid ~~as~~ against any ~~class of persons~~ PERSON with any kind of rights IN OR TO SUCH REAL PROPERTY who first records AND THOSE HOLDING RIGHTS UNDER SUCH PERSON, except between the parties thereto and ~~such as have~~ AGAINST THOSE HAVING notice thereof PRIOR TO ACQUISITION OF SUCH RIGHTS. This is a race-notice recording statute. In all cases where by law an instrument may be filed ~~with~~ IN THE OFFICE OF a county clerk and recorder, the filing thereof ~~with~~ IN such ~~county clerk and recorder~~ OFFICE shall be equivalent to the recording thereof, and the recording thereof in the office of such county clerk and recorder shall be equivalent to the filing thereof.

(3) Any person who offers to have recorded or filed in the office of the county clerk and recorder any document purporting to CONVEY, ENCUMBER, create a lien against, OR OTHERWISE AFFECT THE TITLE TO real property, knowing or having a reason to know that such document is forged or groundless, contains a material

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

misstatement or false claim, or is otherwise invalid, shall be liable to the owner of such real property for the sum of not less than one thousand dollars or for actual damages caused thereby, whichever is greater, together with reasonable attorney fees. Any grantee or other person purportedly benefited by a recorded document ~~which creates~~ THAT PURPORTS TO CONVEY, ENCUMBER, CREATE a lien against, OR OTHERWISE AFFECT THE TITLE TO real property and is forged or groundless, contains a material misstatement or false claim, or is otherwise invalid who willfully refuses to release such document of record upon request of the owner of the real property affected shall be liable to such owner for the damages and attorney fees provided for in this subsection (3).

(4) Anyone who violates the RECORDING OR filing limitations of subsection (3) of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. ~~1973~~.

SECTION 2. 30-1-103 (1), (2) (m), and (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 30-1-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

30-1-103. Fees of county clerk and recorders. (1) Fees collected by county clerk and recorders shall be as follows: For filing or recording each ~~paper~~ DOCUMENT for which a fee is not specifically provided, except tax schedules and claims against the county, for which no fee shall be allowed, in cities and counties and in counties of every class, said clerk shall receive five dollars per page. ~~Additional revenues generated by this fee increase shall revert to the county general fund for the sole purpose of offsetting the property tax mill levy required to support the county general fund budget.~~

(2) In cities and counties and in every county, the following fees shall apply:

(m) ~~(H)~~ For recording all certificates, affidavits, deeds, or other documents containing the name of one or more mining claims and for indexing the same under the name of each such mining claim, five dollars per page, plus twenty-five cents for each mining claim named therein. ~~and, in addition thereto, for recording an affidavit of annual labor pursuant to section 34-43-114, C.R.S., a fee of five dollars for each mining claim named in such affidavit. The county clerk and recorder shall, on a monthly basis, deposit all fees collected for recording affidavits of annual labor with the county treasurer of his respective county, along with an itemized statement of all such fees collected. The county treasurer shall credit all such fees paid over to him to the general fund of his respective county.~~

~~(H) The authority for a county clerk and recorder to charge a fee of five dollars for each mining claim named in an affidavit of labor pursuant to this paragraph (m) is repealed, effective July 1, 1995.~~

(3) County governments shall be exempt from all fees authorized to be collected under the provisions of this section WHENEVER THE COUNTY OR ANY AGENCY THEREOF IS THE GRANTOR OR GRANTEE OF THE DOCUMENT BEING RECORDED.

(4) DOCUMENTS CONTAINING MULTIPLE GRANTS, NOTICES, ASSIGNMENTS, OR RELEASES OF LEASES, DEEDS OF TRUST, MORTGAGES, OR LIENS, OR OTHER

INSTRUMENTS THAT REQUIRE MULTIPLE ENTRIES IN THE GRANTOR OR GRANTEE INDEX, SHALL INCUR AN ADDITIONAL FEE OF FIVE DOLLARS FOR EACH SUCH ENTRY IN EXCESS OF ONE PER DOCUMENT.

SECTION 3. 30-10-101 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 30-10-101 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

30-10-101. Offices - inspection of records - failure to comply - penalty.

(2) SUBJECT TO THE PROVISIONS OF SUBSECTION (2.5) OF THIS SECTION, any person or corporation and their employees engaged in making abstracts or abstract books OR IN THE BUSINESS OF TITLE INSURANCE, AS DEFINED IN SECTION 10-11-102 (3), C.R.S., shall have the right, during usual business hours and subject to such rules and regulations as the officer having the custody of such records may prescribe, to inspect and make memoranda, copies, or photographs of the contents of all such books and papers for the purpose of their business; but any such officer may make reasonable and general regulations concerning the inspection of such books and papers by the public OR BY SUCH ABSTRACTORS OR TITLE INSURANCE PERSONNEL. If, for the purpose of making such ~~photographs~~ COPIES, it becomes necessary to remove such records from the room where they are usually kept to some other room in the courthouse where such ~~photographic~~ COPYING apparatus may be installed for such purpose, the county clerk and recorder, in his OR HER discretion, may charge to the person or corporation making such ~~photographic reproductions~~ COPIES a fee of ten dollars per hour for the service of the deputy who has charge of such records while they are being so ~~photographed~~ COPIED; but such fees shall not be charged to one person or corporation unless the same fee is likewise charged to every person or corporation ~~photographing~~ COPYING such records.

(2.5) (a) IN LIEU OF AFFORDING THE RIGHT OF INSPECTION AND COPYING SET FORTH IN SUBSECTION (2) OF THIS SECTION, ANY CLERK AND RECORDER MAY MAKE AVAILABLE TO ABSTRACTORS, TITLE INSURANCE PERSONNEL, AND OTHERS, BY ANNUAL SUBSCRIPTION AND ON SUCH MEDIUM AS THE CLERK AND RECORDER SHALL DETERMINE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 30-10-407, A DAILY COPY IN BULK OF ALL DOCUMENTS RECORDED AND FILED IN SUCH OFFICE OR LESS THAN ALL IF THE CLERK AND RECORDER DETERMINES IT TO BE FEASIBLE TO SORT THE BULK AS REQUESTED. SUCH BULK COPY SHALL BE AVAILABLE TO THE SUBSCRIBER NO LATER THAN THE THIRD BUSINESS DAY FOLLOWING THE DATE OF RECORDING OR FILING. THE FEE TO BE CHARGED BY THE CLERK AND RECORDER FOR BULK COPIES SUPPLIED IN ACCORDANCE WITH THIS SUBSECTION (2.5) SHALL BE SUFFICIENT TO COVER THE DIRECT AND INDIRECT COSTS OF PRODUCTION INCURRED BY THE CLERK AND RECORDER.

(b) UPON TENDER OF THE APPROPRIATE FEE AS PROVIDED IN SECTION 30-1-103 (2) (j), THE CLERK AND RECORDER SHALL FURNISH SINGLE COPIES OF DOCUMENTS UPON DEMAND.

(c) THE CLERK AND RECORDER SHALL NOT BE REQUIRED TO CONDUCT A SEARCH OF THE REAL ESTATE RECORDS IN ORDER TO LOCATE ANY DOCUMENT FOR COPYING OR FOR ANY OTHER PURPOSE.

SECTION 4. 30-10-406, Colorado Revised Statutes, 1986 Repl. Vol., is amended

to read:

30-10-406. County recorder - duties. (1) The county clerk shall be ex officio recorder of deeds and shall have custody of and safely keep and preserve all the ~~books, records, deeds, maps, and papers deposited or kept~~ DOCUMENTS RECEIVED FOR RECORDING OR FILING in his OR HER office. ~~He~~ DURING THE HOURS THE OFFICE IS OPEN FOR BUSINESS, THE CLERK AND RECORDER shall also record or cause to be recorded in print or in a plain and distinct handwriting, in suitable books to be provided and kept in ~~his~~ THE CLERK AND RECORDER'S office, all ~~deeds, mortgages, maps, instruments, and writings,~~ DOCUMENTS authorized by law to be recorded in his OR HER office ~~and left with him for that purpose,~~ and shall perform all other duties required ~~of him~~ by law.

(2) Upon recording any ~~instrument in writing or deed~~ DOCUMENT to which a documentary fee applies, the ~~county~~ clerk AND RECORDER shall forward a clear, complete, and accurate copy of such ~~instrument or deed~~ DOCUMENT to the office of the county assessor.

SECTION 5. 30-10-408, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

30-10-408. Grantor and grantee indices to be kept by county clerk and recorder. (1) (a) Every county clerk and recorder shall keep a ~~general~~ GRANTOR INDEX AND A GRANTEE index ~~direct and inverted~~ in ~~his~~ THE CLERK AND RECORDER'S office. The ~~general~~ GRANTOR index ~~direct~~ may be divided into seven columns, with heads to the respective columns as follows:

Time of Reception	Names of Grantors	Names of Grantees	Nature Instrument	TYPE of DOCUMENT
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Volume and Page Where Recorded	Remarks	Description of Tract
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(b) ~~He~~ THE CLERK AND RECORDER shall make correct entries in ~~such general~~ THE GRANTOR index of every ~~instrument~~ DOCUMENT filed or recorded, as required by law, concerning or affecting real estate, under the appropriate headings, entering the names of the grantors in alphabetical ~~form~~ ORDER.

(2) (a) The ~~general~~ GRANTEE index ~~inverted~~ may be divided into seven columns,

WITH HEADS TO THE RESPECTIVE COLUMNS as follows:

Time of Reception	Names of Grantees	Names of Grantors	Nature of Instrument	TYPE DOCUMENT
Volume and Page Where Recorded	Remarks	Description of Tract		

(b) ~~He~~ THE CLERK AND RECORDER shall make CORRECT ENTRIES in ~~such general~~ THE GRANTEE index ~~correct entries~~ of every ~~instrument~~ DOCUMENT FILED OR RECORDED, AS required by law, ~~to be entered in the general index direct~~ CONCERNING OR AFFECTING REAL ESTATE UNDER THE APPROPRIATE HEADING, entering the names of the grantees in alphabetical order. ~~and when any mortgage, deed of trust, or other instrument has been released or discharged from the record by recording a deed of release, the county clerk and recorder shall immediately note in the general index direct, at the appropriate entry, that such instrument has been satisfied.~~

(3) (a) In counties with the capability, the county clerk and recorder may substitute printouts, microfiches, aperture cards, or other legible photographic or computerized processes for the books and indices required by subsections (1) and (2) of this section. The security and public inspection provisions of section 30-10-407 shall apply to all such printouts, microfiches, aperture cards, or other photographic or computerized records. Both the ~~direct~~ GRANTOR and ~~inverted~~ GRANTEE indices may be combined in one alphabetical listing with proper coding to indicate grantor and grantee, with both the grantor and grantee appearing in proper alphabetical order.

(b) ~~In lieu of the posting of releases required by paragraph (b) of subsection (2) of this section,~~ A general index of releases may be maintained on printouts, microfiches, OR aperture cards, ~~or~~ BY OTHER LEGIBLE PHOTOGRAPHIC OR COMPUTERIZED PROCESS, OR IN a separate book of releases containing a space to enter new index numbers of releases on a numerical listing of the original recording information of the ~~instrument~~ DOCUMENT being released.

(c) Records kept under the provisions of this subsection (3) may substitute reception or index numbers for volume, film, or page numbers, and any computer records may contain indices for as many years as the county clerk and recorder may deem useful for public inspection.

SECTION 6. 30-10-409, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

30-10-409. Reception book - form - contents. (1) The county clerk and recorder shall also keep a ~~receiving~~ RECEPTION book, each page of which shall be divided into

five columns, WITH HEADS TO THE RESPECTIVE COLUMNS as follows:

Time of Reception	Names of Grantors	Names of Grantees	To Whom Delivered	Fees Received
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(2) When any ~~instrument~~ DOCUMENT has been ~~received~~ ACCEPTED by ~~him~~ THE CLERK AND RECORDER for ~~record~~, ~~he~~ RECORDING OR FILING AND THE PROPER FEE HAS BEEN PAID, SUCH DOCUMENT SHALL BE DEEMED TO BE RECORDED FOR ALL PURPOSES. THE CLERK AND RECORDER shall immediately endorse upon such ~~instrument~~ ~~his~~ DOCUMENT A certificate, noting the day, hour, and minute of its reception, THE INDEX OR RECEPTION NUMBER, the volume, ~~and~~ FILM OR page where recorded, IF SUCH ARE USED, and the ~~fees~~ FEE received for recording the same ~~the date of record of such instrument shall be from the date of filing.~~ When any instrument has been filed, the ~~recorder~~ AND shall immediately make an entry of the same in ~~his~~ ~~receiving~~ THE RECEPTION book, under the appropriate heading, with the amount paid as fee for recording the same. ~~and~~ After such ~~instrument~~ DOCUMENT has been ~~recorded~~, ~~he~~ PROCESSED FOR RECORDING, THE CLERK AND RECORDER, WITHOUT ADDITIONAL FEE OR CHARGE shall deliver it BY REGULAR MAIL OR PERSONAL DELIVERY to the person authorized to receive the same, writing the name of the person to whom it is delivered in an appropriate column.

(3) In counties with the capability, the county clerk and recorder may substitute printouts, microfiches, aperture cards, or other legible photographic or computerized processes for the ~~receiving~~ RECEPTION book required by this section; except that proper audit controls of cash receipts shall be maintained in compliance with governmental audit procedures.

(4) NO CLERK AND RECORDER SHALL BE BOUND TO PERFORM ANY OF THE DUTIES REQUIRED TO BE PERFORMED FOR WHICH A FEE IS REQUIRED UNLESS SUCH FEE HAS BEEN PAID OR TENDERED.

SECTION 7. 30-10-410, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

30-10-410. File of plats or maps - index - names. ~~He shall also keep a large, well-bound book, in which shall be platted all maps of cities, towns, villages, or additions to the same, within his county, together with the description, acknowledgment, or other writing thereon.~~ THE CLERK AND RECORDER SHALL MAINTAIN A FILE OF ALL SUBDIVISION PLATS PRESENTED FOR RECORDING IN ACCORDANCE WITH LAW AND ALL COMMON INTEREST COMMUNITY PLATS OR MAPS PRESENTED FOR RECORDING IN ACCORDANCE WITH SECTION 38-33.3-201, C.R.S. SUBDIVISION PLATS SHALL BE INDEXED IN THE GRANTOR INDEX UNDER THE NAME OF THE PERSON THAT SIGNS AND ACKNOWLEDGES THE PLAT AS THE OWNER AND DEDICATOR AND IN THE GRANTEE INDEX UNDER THE NAME OF THE PLAT SHOWN THEREON. ~~He~~ THE CLERK AND RECORDER shall ALSO keep an ALPHABETICAL index ~~to~~ OF such ~~book~~ OF SUBDIVISION plats ~~which index shall contain the name of the proprietor of such city, town, village, or addition, and BY the name of the city, town,~~

~~village, or addition PLAT. No recorder of deeds shall be bound to perform any of the duties required to be performed, for which a fee is allowed, unless such fee has been paid or tendered.~~ COMMON INTEREST COMMUNITY PLATS OR MAPS SHALL BE INDEXED IN THE SAME MANNER AS THE DECLARATION FOR SUCH COMMUNITY, AS PROVIDED IN SECTION 38-33.3-201, C.R.S.

SECTION 8. 30-10-411, Colorado Revised Statutes, 1986 Repl. Vol., is repealed as follows:

30-10-411. Index of records - grantors - grantees. ~~He shall also keep an index of each volume of record kept in his office, showing on one page the grantors' names in alphabetical order and on the other page the names of the grantees in alphabetical order.~~

SECTION 9. 30-10-412, Colorado Revised Statutes, 1986 Repl. Vol., is repealed as follows:

30-10-412. Recording of papers in bankruptcy. ~~Certified copies of any document, paper, decree, or order, entered or on file in any bankruptcy matter, pending or completed in any court of the United States, may be recorded in the office of the county clerk and recorder of any county of the state of Colorado. Any such documents, papers, or orders shall be considered recorded from the time the same are deposited for recording with such county clerk and recorder.~~

SECTION 10. 30-10-413, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

30-10-413. Certified copies prima facie evidence. Copies of all papers DOCUMENTS RECORDED OR filed in the office of the CLERK AND recorder of deeds, and transcripts from the books of records kept therein, certified by ~~him~~ THE CLERK AND RECORDER under the seal of his OR HER office, shall be prima facie evidence in all cases.

SECTION 11. 30-10-415, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

30-10-415. Tax sales excepted. ~~(1) In addition to the entries now required by law to be made by county clerks and recorders in the receiving books and general index kept by them, the county clerk and recorder shall also enter therein all homesteads and satisfaction of mortgages or trust deeds affecting or concerning real estate. Nothing in this section ARTICLE shall be construed to require the record RECORDING of CERTIFICATES OF sale OR REDEMPTION of land for taxes. to be entered in the receiver's book or general index.~~

~~(2) For making required entries county clerks and recorders shall be entitled to the same fees as are allowed by law for similar services.~~

SECTION 12. 30-10-419, Colorado Revised Statutes, 1986 Repl. Vol., is repealed as follows:

30-10-419. Writs of attachment recorded. ~~It is the duty of the county clerk and~~

~~recorder to record writs of attachment and descriptions of attached property, subject to the inspection of all persons, in a book to be kept for that purpose and to index the same in the records. The county clerk and recorder shall receive a fee for recording as is prescribed by law, to be paid by the plaintiff in the action and taxed and allowed to him as other costs and disbursements in the action.~~

SECTION 13. 38-30-139, Colorado Revised Statutes, 1982 Repl. Vol., is repealed as follows:

~~**38-30-139. Photographic copies deemed recording.** Whenever the statutes require court records, deeds, patents, plats, charters of corporations, certificates of decrease of capital stock or other instruments, papers, or documents to be recorded by any city, county, or state officer, the making and recording of photographic copies of such instruments, papers, or documents shall be deemed recording. Such photographic copies may be bound, paged, and indexed whenever it is so provided for instruments, papers, or documents recorded by hand, and such photographic copies when bound together shall be deemed record books. This section shall be supplemental to existing statutes.~~

SECTION 14. The introductory portion to 11-38-109 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-38-109. Disclosure - total loan cost. (1) Any lender making reverse mortgage loans shall provide to a borrower prior to closing on such a loan a written statement of the projected total loan cost rate for all reverse mortgage loans except federal housing administration reverse mortgage loans subject to federal housing and urban development FOR REVERSE MORTGAGE LOANS SUBJECT TO FEDERAL "TRUTH IN LENDING ACT", AS AMENDED, TOTAL ANNUAL LOAN COST disclosure requirements. As used in this section, "total loan cost rate" means the total of all loan costs including, but not limited to, any origination fee, closing costs, servicing fee, insurance premium contingent interest based on appreciation, and the annual interest rate charged on the reverse mortgage balance which is expressed as a single annual average rate of interest. Such statement shall include:

SECTION 15. 18-8-114 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

18-8-114. Abuse of public records. (1) A person commits a class 1 misdemeanor if:

(a) ~~He~~ THE PERSON knowingly makes a false entry in or falsely alters any public record; or

(b) Knowing ~~he~~ THE PERSON lacks the authority to do so, ~~he~~ THE PERSON knowingly destroys, mutilates, conceals, removes, or impairs the availability of any public record; ~~or~~

(c) Knowing ~~he~~ THE PERSON lacks the authority to retain the record, ~~he~~ THE PERSON refuses to deliver up a public record in ~~his~~ THE PERSON'S possession upon proper request of any person lawfully entitled to receive such record; OR

(d) KNOWING THE PERSON HAS NOT BEEN AUTHORIZED BY THE CUSTODIAN OF THE PUBLIC RECORD TO DO SO, THE PERSON KNOWINGLY ALTERS ANY PUBLIC RECORD.

SECTION 16. Effective date - applicability. This act shall take effect July 1, 1996, and shall apply to offenses committed on or after said date.

SECTION 17. 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: June 1, 1996