

CHAPTER 252

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 97-213

BY SENATOR Alexander;
also REPRESENTATIVES McPherson and George.**AN ACT**CONCERNING THE INDEMNIFICATION OF PUBLIC TRUSTEES WHEN ORIGINAL EVIDENCE OF DEBT IS NOT
PROVIDED IN CERTAIN TRANSACTIONS.*Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. 38-39-102 (1) (a), (2), (6), and (7), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended, and the said 38-39-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

38-39-102. When liens of deeds of trust shall be released. (1) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3.5) OF THIS SECTION, liens of deeds of trust to the public trustee, upon compliance with the provisions of such deeds of trust, shall be released by the public trustee upon the:

(I) Receipt of a written request of the owner of the evidence of debt secured by such deed of trust, or the agent or attorney thereof, or a title insurance company providing an indemnification agreement and affidavit described in paragraph (c) of subsection (3) of this section, which request shall be duly executed and acknowledged;

(II) Production of the original cancelled evidence of debt such as a note or bond as evidence that the indebtedness secured by such deed of trust has been paid; EXCEPT THAT SUCH PRODUCTION MAY BE OMITTED IN THE CIRCUMSTANCES CONTEMPLATED IN SUBSECTION (3.5) OF THIS SECTION; and

(III) Receipt by the public trustee of the fee prescribed by section 38-37-104 (1)

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

(a) and the fee for recording the release.

(2) If the purpose of the deed of trust has been fully or partially satisfied and the indebtedness secured by such deed of trust has not been paid, the public trustee shall release the lien of the deed of trust as to all or portions of the property encumbered by the deed of trust pursuant to the provisions of subsection (1) of this section if the ~~original evidence of debt is exhibited and the request to release states~~ CERTIFIES that the purpose of the deed of trust has been fully or partially satisfied AND IF EITHER THE ORIGINAL EVIDENCE OF DEBT IS EXHIBITED OR THE OWNER IS AN ENTITY DESCRIBED IN PARAGRAPH (b) OF SUBSECTION (3.5) OF THIS SECTION THAT HAS MADE, IN THE OWNER'S REQUEST FOR RELEASE OR PARTIAL RELEASE, THE CERTIFICATION CONTEMPLATED IN PARAGRAPH (a) OF SUBSECTION (3.5) OF THIS SECTION.

(3.5) (a) IF THE OWNER OF THE EVIDENCE OF DEBT IS A FINANCIAL INSTITUTION DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (3.5), THE PUBLIC TRUSTEE MAY ACCEPT, IN LIEU OF PRODUCTION OR EXHIBITION OF THE ORIGINAL EVIDENCE OF DEBT REQUIRED BY SUBSECTION (1) OR (2) OF THIS SECTION, A CERTIFICATION MADE IN THE OWNER'S REQUEST FOR RELEASE OR PARTIAL RELEASE CERTIFYING THAT THE OWNER IS A FINANCIAL INSTITUTION DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (3.5), THAT THE ORIGINAL EVIDENCE OF DEBT IS NOT BEING EXHIBITED OR PRODUCED, AND THAT THE OWNER AGREES THAT THE OWNER IS OBLIGATED TO INDEMNIFY THE PUBLIC TRUSTEE PURSUANT TO THIS PARAGRAPH (a). WHETHER SUCH AGREEMENT IS CONTAINED IN THE CERTIFICATION, THE OWNER, BY REQUESTING RELEASE OR PARTIAL RELEASE WITHOUT PRODUCTION OR EXHIBITION OF THE EVIDENCE OF INDEBTEDNESS, SHALL BE DEEMED TO HAVE AGREED TO INDEMNIFY THE PUBLIC TRUSTEE FOR ANY AND ALL DAMAGES, COSTS, LIABILITIES, AND REASONABLE ATTORNEY FEES INCURRED AS A RESULT OF THE ACTION OF THE PUBLIC TRUSTEE TAKEN IN ACCORDANCE WITH SUCH REQUEST, AND NO SEPARATE INDEMNIFICATION AGREEMENT SHALL BE NECESSARY FOR THE AGREEMENT TO INDEMNIFY TO BE EFFECTIVE. VENUE FOR ANY ACTION BASED UPON SUCH INDEMNIFICATION AGREEMENT SHALL BE PROPER ONLY IN THE COUNTY IN WHICH THE PUBLIC TRUSTEE RECEIVING THE CERTIFICATION IS LOCATED.

(b) ONLY THE FOLLOWING FINANCIAL INSTITUTIONS SHALL BE ENTITLED TO SUBMIT A CERTIFICATION PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3.5):

(I) A BANK, AS DEFINED IN SECTION 11-1-102 (2), C.R.S.;

(II) AN INDUSTRIAL BANK, AS DEFINED IN SECTION 11-22-101 (1), C.R.S.;

(III) A SAVINGS AND LOAN ASSOCIATION LICENSED TO DO BUSINESS IN COLORADO;

(IV) A SUPERVISED LENDER, AS DEFINED IN SECTION 5-3-501 (2), C.R.S., THAT IS LICENSED TO MAKE SUPERVISED LOANS PURSUANT TO SECTION 5-3-503, C.R.S., AND THAT IS EITHER:

(A) A PUBLIC ENTITY, AS DEFINED IN PARAGRAPH (c) OF THIS SUBSECTION (3.5);
OR

(B) AN ENTITY IN WHICH ALL OF THE OUTSTANDING VOTING SECURITIES ARE HELD, DIRECTLY OR INDIRECTLY, BY A PUBLIC ENTITY;

(V) AN ENTITY IN WHICH ALL OF THE OUTSTANDING VOTING SECURITIES ARE HELD, DIRECTLY OR INDIRECTLY, BY A PUBLIC ENTITY ALSO OWNING, DIRECTLY OR INDIRECTLY, ALL OF THE VOTING SECURITIES OF A SUPERVISED LENDER, AS DEFINED IN SECTION 5-3-501 (2), C.R.S., THAT IS LICENSED TO MAKE SUPERVISED LOANS PURSUANT TO SECTION 5-3-503, C.R.S.;

(VI) A FEDERAL HOUSING ADMINISTRATION APPROVED MORTGAGEE;

(VII) A FEDERALLY CHARTERED CREDIT UNION DOING BUSINESS IN COLORADO OR A STATE CHARTERED CREDIT UNION, AS DEFINED IN SECTION 11-30-101, C.R.S.;

(VIII) AN AGENCY OF THE FEDERAL GOVERNMENT; OR

(IX) A FEDERALLY CREATED CORPORATION THAT ORIGINATES, GUARANTEES, OR PURCHASES LOANS.

(c) FOR PURPOSES OF THIS SUBSECTION (3.5), "PUBLIC ENTITY" MEANS AN ENTITY THAT HAS ISSUED VOTING SECURITIES THAT ARE LISTED ON A NATIONAL SECURITIES EXCHANGE REGISTERED UNDER THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934".

(6) The public trustee shall have no liability to any person, and no action may be commenced against the public trustee, as a result of issuing a release or partial release of a deed of trust under subsection (3) of this section, unless such action is commenced within six years from the date of the recording of such release or partial release or within the period of time prescribed by any statute of limitation of this state in which a suit to enforce payment of the indebtedness or performance of the obligation secured by said deed of trust may be commenced, whichever is less. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO WAIVE IMMUNITY OF A PUBLIC TRUSTEE THAT IS PROVIDED IN SECTIONS 24-10-101 TO 24-10-120, C.R.S.

(7) ~~Either~~ The indemnification agreements or the corporate surety bond described in ~~subsection (3) of this section which may be accepted by the public trustee in lieu of the production of the original evidence of debt~~ shall, in each case, remain effective for the time period described in subsection (6) of this section or until such time as any claim made against the public trustee within such time period has been finally resolved, whichever is longer.

SECTION 2. Effective date. This act shall take effect September 1, 1997; except that, if a referendum petition is filed against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: June 3, 1997