

CHAPTER 119

PROPERTY

HOUSE BILL 05-1168

BY REPRESENTATIVE(S) Garcia, Buescher, Massey, and McGihon;
also SENATOR(S) Kester.

AN ACT**CONCERNING ADMINISTRATIVE MATTERS RELATED TO A FORECLOSURE PROCEEDING.**

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

SECTION 1. 24-71.3-103 (3) (b) (II), Colorado Revised Statutes, is amended to read:

24-71.3-103. Scope. (3) Additional exceptions. This article shall not apply to:

(b) Any notice of:

(II) Default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual, PROVIDED THAT NOTHING IN THIS SUBPARAGRAPH (II) SHALL PROHIBIT ANY RECORD RELATED TO A FORECLOSURE FROM BEING SENT OR RECEIVED IN ELECTRONIC FORM OR BY ELECTRONIC MEANS BETWEEN THE OWNER OF AN EVIDENCE OF DEBT OR THE ATTORNEY FOR SUCH OWNER AND THE OFFICE OF A PUBLIC TRUSTEE OR SHERIFF, NOR SHALL ANYTHING IN THIS SUBPARAGRAPH (II) PROHIBIT THE OFFICE OF A PUBLIC TRUSTEE OR SHERIFF FROM RECEIVING OR STORING ANY RECORD RELATED TO A FORECLOSURE IN ELECTRONIC FORM OR BY ELECTRONIC MEANS;

SECTION 2. 38-37-104 (1) (b), Colorado Revised Statutes, is amended to read:

38-37-104. Duties of public trustees - fees, expenses, and salaries - reports.

(1) The public trustees of each county of this state shall perform the functions and exercise the powers conferred upon them by statute. They shall be entitled to receive as fees for such services the following sums and no other fees or perquisites whatever:

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) For opening and administering a foreclosure under the powers conferred upon them by a deed of trust where the original principal amount of the indebtedness secured by such deed of trust does not exceed four hundred EIGHTY thousand dollars, a fee of one hundred fifty dollars, and, where such amount exceeds four hundred EIGHTY thousand dollars, a fee of one thirty-second of one percent of such original principal amount or the outstanding principal balance, whichever is less, but in no case less than one hundred fifty dollars;

SECTION 3. 38-38-102, Colorado Revised Statutes, is amended to read:

38-38-102. Announcement at public trustee's sale. At any foreclosure sale by a public trustee, the public trustee shall be required to read only the public trustee's number of the proceeding for the sale, the name of the grantor, the street address, if known, and legal description of the property, the name of the owner of the evidence of debt, the date of the sale, the date on which the notice was issued, and the first and last publication dates of the notice. In lieu of reading the ~~legal description~~ ITEMS LISTED ABOVE, the public trustee may display ~~the legal description~~ OR PROVIDE A WRITTEN COPY OF THE REQUIRED INFORMATION to those present at the sale.

SECTION 4. 38-38-107 (2), Colorado Revised Statutes, is amended to read:

38-38-107. Fees charged against grantor. (2) The public trustee or sheriff may require that the owner of the evidence of debt secured by the deed of trust, mortgage, or other lien to be foreclosed deposit with the public trustee or sheriff at the time the notice of election and demand for sale is filed with the public trustee or the time the order of foreclosure is delivered to the sheriff a deposit of ~~three~~ UP TO FIVE hundred dollars, which shall be applied against the fee and expenses of the public trustee or sheriff described in this section. THE PUBLIC TRUSTEE OR SHERIFF MAY ALLOW THE OWNER OF THE EVIDENCE OF DEBT SECURED BY THE DEED OF TRUST, MORTGAGE, OR OTHER LIEN TO BE FORECLOSED OR THE ATTORNEY FOR SUCH OWNER TO ESTABLISH AN ACCOUNT WITH THE PUBLIC TRUSTEE OR SHERIFF THAT THE PUBLIC TRUSTEE OR SHERIFF SHALL USE TO PAY THE FEES AND EXPENSES OF THE PUBLIC TRUSTEE OR SHERIFF IN ANY OR ALL FORECLOSURES FILED BY THE OWNER OR ATTORNEY.

SECTION 5. 38-38-109 (1), (2), and (3) (a), Colorado Revised Statutes, are amended to read:

38-38-109. Continuance of sale. (1) Whenever property is advertised to be sold by a public trustee or under any statutory or judicial foreclosure or upon execution and levy made pursuant to any court order or decree, the public trustee or sheriff conducting the sale, for any reason deemed by said official for good cause or upon written request by the person, or his OR HER attorney, on whose behalf the sale is being conducted, at any time before commencement of the sale, may continue it to a later date by making, at the time and place designated for the sale, an oral announcement of the time and place of such continuance, OR BY POSTING OR PROVIDING A NOTICE OF THE CONTINUANCE AT THE TIME AND PLACE DESIGNATED FOR THE SALE, WHICH SHALL INCLUDE THE TIME AND PLACE OF THE CONTINUANCE. In a similar manner, the sale may be further continued from time to time, but no sale held pursuant to any such advertisement shall be held later than six months from the date originally designated in the notice of sale, except as provided in subsection (5) of this

section and in section 38-38-104 (2).

(2) If all publications of the notice of sale prescribed by section 38-38-101 (6) or by section 13-56-201 (1), C.R.S., have been completed, before a court having jurisdiction over the public trustee or sheriff enjoins or stays such official from conducting a sale or before a bankruptcy petition has been filed ~~which~~ THAT automatically stays such official from conducting the foreclosure sale, such official shall continue the sale for one week, or such longer period, not to exceed one month, as may be requested by the person, or such person's attorney, on whose behalf the sale is being conducted, ~~by making an oral announcement of such continuance at the time and place designated for the sale~~ IN THE MANNER ESTABLISHED IN SUBSECTION (1) OF THIS SECTION. Thereafter, so long as such injunction or automatic stay is in effect, such sale shall be further continued as provided in the preceding sentence.

(3) (a) If all publications of the notice of sale prescribed by section 38-38-101 (6) or by section 13-56-201 (1), C.R.S., have not been completed before a court having jurisdiction over the public trustee or sheriff enjoins such official from conducting a sale or before a bankruptcy petition has been filed ~~which~~ THAT automatically stays such official from conducting the foreclosure sale, the public trustee or sheriff shall immediately cancel any remaining publications of the notice of sale and, on the date fixed for the foreclosure sale, shall announce OR POST OR PROVIDE A NOTICE OF THE CONTINUANCE AT THE TIME AND PLACE DESIGNATED FOR THE SALE that the sale has been enjoined or has been stayed by the automatic stay provisions of the federal bankruptcy code of 1978, Title 11 of the United States Code, as amended.

SECTION 6. Part 1 of article 38 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-38-112. Use of electronic documents authorized. CONSISTENT WITH THE PROVISIONS OF THE "UNIFORM ELECTRONIC TRANSACTIONS ACT", ARTICLE 71.3 OF TITLE 24, C.R.S., ANY DOCUMENT RELATED TO A FORECLOSURE MAY BE ACCEPTED BY THE PUBLIC TRUSTEE OR SHERIFF IN AN ELECTRONIC FORMAT OR MAY BE MADE AVAILABLE TO THE PUBLIC BY THE PUBLIC TRUSTEE OR SHERIFF IN AN ELECTRONIC FORMAT.

SECTION 7. 38-38-403, Colorado Revised Statutes, is amended to read:

38-38-403. Certificates assignable. Every certificate of purchase or certificate of redemption ~~which~~ THAT is issued to any person under the provisions of this article, except for a certificate of redemption issued pursuant to section 38-38-302 (2), shall be assignable by endorsement thereon OR BY SEPARATE ASSIGNMENT, and such assignee shall be treated for all purposes as the original holder of such certificate.

SECTION 8. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of 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 (August 10, 2005, if adjournment sine

die is on May 11, 2005); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, 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: April 27, 2005