

CHAPTER 404

PROPERTY

HOUSE BILL 07-1157

BY REPRESENTATIVE(S) Garcia, Carroll T., Casso, Hodge, Massey, Merrifield, Peniston, Pommer, Todd, Buescher, and Frangas;
also SENATOR(S) Veiga, Boyd, Groff, Harvey, Kopp, Mitchell S., Shaffer, Tochtrop, and Tupa.

AN ACT**CONCERNING REAL ESTATE FORECLOSURES.**

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

SECTION 1. 13-40-111 (3), Colorado Revised Statutes, is amended to read:

13-40-111. Issuance and return of summons. (3) For actions commenced pursuant to section 13-40-104 (1) (f) and (1) (g) only, if no answer to the complaint is filed as provided in subsection (1) of this section, the court shall examine the complaint and if satisfied that venue is proper and the plaintiff is entitled to possession of the premises, the court shall dispense with ~~further~~ appearances by the plaintiff or ~~further~~ A hearing and shall forthwith enter a judgment for possession, present or future damages, and costs.

SECTION 2. Article 37 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-37-100.5. Definitions. THE DEFINITIONS IN SECTION 38-38-100.3 APPLY TO THIS ARTICLE UNLESS THE CONTEXT OTHERWISE REQUIRES.

SECTION 3. 38-37-103, Colorado Revised Statutes, is amended to read:

38-37-103. Deputy trustee - successor in office. Each public trustee may appoint deputies who shall have the same power in all respects as the public trustee. ALL ACTS OF A DEPUTY PUBLIC TRUSTEE SHALL HAVE THE SAME EFFECT AS THOUGH PERFORMED BY THE PUBLIC TRUSTEE. If ~~any~~ A public trustee dies, resigns, or is removed from office, or if ~~any~~ A public trustee's term of office expires after selling any property under the term of ~~any~~ A deed of trust and before executing a certificate

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

of redemption or deed for the ~~same, such~~ PROPERTY, THE public trustee's successor in office shall execute ~~such~~ THE certificate or deed in the same manner that the public trustee making such sale might have done.

SECTION 4. 38-37-104 (1) (b) (VII) and (1) (b) (VIII), Colorado Revised Statutes, as they will become effective ~~July 1, 2007~~ January 1, 2008, are amended, and the said 38-37-104 (1) (b), as it will become effective ~~July 1, 2007~~ January 1, 2008, is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS, 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:

(b) For performing a foreclosure under article 38 of this title, the following sums, which shall be cumulative:

(VII) For recommending the foreclosure after reinstatement where a sale was held in violation of the automatic stay provisions of the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, pursuant to ~~section 38-38-109 (2)~~ ~~(d) (f)~~ SECTION 38-38-109 (2) (c) (II), the sum of fifty dollars;

(VIII) For recommending the foreclosure after bankruptcy where publication was not completed pursuant to ~~section 38-38-109 (2) (a) (H)~~ SECTION 38-38-109 (2) (b) (I), the sum of seventy-five dollars;

(XI) FOR PROCESSING A RESCISSION OF SALE PURSUANT TO SECTION 38-38-113, THE SUM OF ONE HUNDRED DOLLARS; AND

(XII) FOR RESCHEDULING A SALE AFTER A RESCISSION OF SALE PURSUANT TO SECTION 38-38-113 (4), THE ADDITIONAL SUM OF FIFTY DOLLARS.

SECTION 5. The introductory portion to 38-38-100.3, the introductory portion to 38-38-100.3 (10), and 38-38-100.3 (18) and (19), Colorado Revised Statutes, as they will become effective ~~July 1, 2007~~ January 1, 2008, are amended, and the said 38-38-100.3, as it will become effective ~~July 1, 2007~~ January 1, 2008, is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

38-38-100.3. Definitions. As used in ~~this article~~ ARTICLES 37 TO 39 OF THIS TITLE, unless the context otherwise requires:

(5.3) "CONSENSUAL LIEN" MEANS A CONVEYANCE OF AN INTEREST IN REAL PROPERTY, GRANTED BY THE OWNER OF THE PROPERTY AFTER THE RECORDING OF A NOTICE OF ELECTION AND DEMAND, THAT IS NOT AN ABSOLUTE CONVEYANCE OF FEE TITLE TO THE PROPERTY. "CONSENSUAL LIEN" INCLUDES BUT IS NOT LIMITED TO A DEED OF TRUST, MORTGAGE OR OTHER ASSIGNMENT, ENCUMBRANCE, OPTION, LEASE, EASEMENT, CONTRACT, INCLUDING AN INSTRUMENT SPECIFIED IN SECTION 38-38-305, OR CONVEYANCE AS SECURITY FOR THE PERFORMANCE OF THE GRANTOR.

"CONSENSUAL LIEN" DOES NOT INCLUDE A LIEN DESCRIBED IN SECTION 38-38-306 OR 38-33.3-316.

(5.7) "CORPORATE SURETY BOND" MEANS A BOND ISSUED BY A PERSON AUTHORIZED TO ISSUE BONDS IN THE STATE OF COLORADO WITH THE PUBLIC TRUSTEE AS OBLIGEE, CONDITIONED AGAINST THE DELIVERY OF AN ORIGINAL EVIDENCE OF DEBT TO THE DAMAGE OF THE PUBLIC TRUSTEE.

(10) "Holder of AN evidence of debt" means the person in actual possession of or otherwise entitled to enforce an evidence of debt; except that "holder of AN evidence of debt" does not include a person acting as a nominee solely for the purpose of holding the evidence of debt or deed of trust as an electronic registry without any authority to enforce the evidence of debt or deed of trust. For the purposes of articles 37 to 40 of this title, the following persons are presumed to be the holder of AN evidence of debt:

(12.5) "LIENOR" INCLUDES WITHOUT LIMITATION THE HOLDER OF A CERTIFICATE OF PURCHASE OR CERTIFICATE OF REDEMPTION FOR PROPERTY, ISSUED UPON THE FORECLOSURE OF A DEED OF TRUST OR OTHER LIEN ON THE PROPERTY.

(18) "Property" means the portion of the property encumbered by a deed of trust or other lien that is being foreclosed under this article OR THE PORTION OF THE PROPERTY BEING RELEASED FROM A DEED OF TRUST OR OTHER LIEN UNDER ARTICLE 39 OF THIS TITLE.

(19) "Publish", "publication", "republish", or "republication" means the placement by or on behalf of an officer of an advertisement containing a combined notice that complies with the requirements of section 24-70-109, C.R.S., in a newspaper of general circulation in the county or counties where the property to be sold is located. UNLESS OTHERWISE SPECIFIED BY THE ATTORNEY FOR THE HOLDER, THE OFFICER SHALL SELECT THE NEWSPAPER.

SECTION 6. 38-38-101 (1) (b) (I), Colorado Revised Statutes, as it will become effective ~~July 1, 2007~~ January 1, 2008, is amended to read:

38-38-101. Holder of evidence of debt may elect to foreclose. (1) **Documents required.** Whenever a holder of an evidence of debt declares a violation of a covenant of a deed of trust and elects to publish all or a portion of the property therein described for sale, the holder or the attorney for the holder shall file the following with the public trustee of the county where the property is located:

(b) The original evidence of debt, together with the original indorsement or assignment thereof, if any, to the holder of the evidence of debt or other proper indorsement or assignment in accordance with subsection (6) of this section or, in lieu of the original evidence of debt, one of the following:

(I) A corporate surety bond ~~issued by a company authorized to issue such bonds in the state of Colorado~~ in the amount of one and one-half times the face amount of such original evidence of debt; or

SECTION 7. The introductory portion to 38-38-103 (1) (a) (II) and 38-38-103

(2), (4) (a) (III), and (5) (a), Colorado Revised Statutes, as they will become effective ~~July 1, 2007~~ January 1, 2008, are amended to read:

38-38-103. Combined notice - publication - providing information.

(1) (a) The public trustee shall mail a combined notice as described in subsection (4) of this section to the following persons as set forth in the initial mailing list as follows:

(II) No more than sixty calendar days nor less than forty-five calendar days prior to the first scheduled date of sale, to the following persons as set forth in the supplemental OR AMENDED mailing list:

(2) (a) The holder of the evidence of debt or the attorney for the holder may deliver an amended mailing list to the officer from time to time, but no less than sixty-five calendar days prior to the ACTUAL date of sale. The officer shall send the notice pursuant to subsection (4) of this section to the persons on the amended mailing list no less than ~~sixty~~ FORTY-FIVE calendar days prior to the ACTUAL date of sale.

~~(b) At any time after the first publication of the combined notice under paragraph (a) of subsection (5) of this section and prior to the date of sale, the holder of the evidence of debt or the attorney for the holder may deliver an amended mailing list to the officer, and the officer shall mail the amended combined notice, republish, and continue the sale pursuant to section 38-38-109 (1) (b).~~

(4) (a) The combined notices required to be mailed pursuant to subsections (1), (2), and (3) of this section shall contain the following:

(III) The statement: A notice of intent to redeem filed pursuant to section 38-38-302 shall be filed with the officer no later than ~~ten~~ EIGHT business days after the sale;

(5) (a) No more than sixty calendar days nor less than forty-five calendar days prior to the first scheduled date of sale, unless a longer period of publication is specified in the deed of trust or other lien being foreclosed, a deed of trust or other lien being foreclosed shall be deemed to require the officer to publish the combined notice, omitting the copies of the statutes under paragraph (b) of subsection (4) of this section AND ADDING THE FIRST AND LAST PUBLICATION DATES IF NOT ALREADY SPECIFIED IN THE COMBINED NOTICE, for four weeks, which means publication once each week for five consecutive weeks.

SECTION 8. The introductory portion to 38-38-104 (1) and 38-38-104 (5), Colorado Revised Statutes, as they will become effective ~~July 1, 2007~~ January 1, 2008, are amended to read:

38-38-104. Right to cure when default is nonpayment - right to cure for certain technical defaults. (1) ~~Whenever the only alleged~~ UNLESS THE ORDER AUTHORIZING THE SALE DESCRIBED IN SECTION 38-38-105 CONTAINS A DETERMINATION THAT THERE IS A REASONABLE PROBABILITY THAT A default in the terms of the evidence of debt, deed of trust, or other lien being foreclosed ~~is~~ OTHER THAN nonpayment of sums due thereunder HAS OCCURRED, any of the following

persons is entitled to cure the default if the person files with the officer, no later than fifteen calendar days prior to the date of sale, a written notice of intent to cure together with evidence of the person's right to cure to the satisfaction of the officer:

(5) A cure statement pursuant to paragraph (a) of subsection (2) of this section shall state the period for which it is effective. The cure statement shall be effective for at least ten calendar days after the date of the cure statement or until the last day to cure under paragraph (b) of subsection (2) of this section, whichever occurs first. The cure statement shall be effective for no more than thirty calendar days after the date of the cure statement or until the last day to cure under paragraph (b) of subsection (2) of this section, whichever occurs first. The use of good faith estimates in the cure statement with respect to interest and fees and costs is specifically authorized by this article, so long as the cure statement states that it is a good faith estimate effective through the last day to cure as indicated in the cure statement. THE USE OF A GOOD FAITH ESTIMATE SHALL NOT CHANGE OR EXTEND THE PERIOD OR EFFECTIVE DATE OF A CURE STATEMENT.

SECTION 9. 38-38-105, Colorado Revised Statutes, is amended to read:

38-38-105. Court order authorizing sale mandatory - repeal.

(1) (a) Whenever a public trustee forecloses upon a deed of trust under this article, the holder of the evidence of debt or the attorney for the holder shall obtain an order authorizing sale from a court of competent jurisdiction to issue the same pursuant to rule 120 of the Colorado rules of civil procedure. The order shall recite the date the hearing was scheduled if no ~~response was filed~~ HEARING WAS HELD, or the date the hearing was completed if a response was filed, which date in either case must be no later than the day prior to the last day on which an effective notice of intent to cure may be filed with the public trustee under section 38-38-104. The holder or the attorney for the holder shall cause a copy of the order to be provided to the public trustee no later than 12 noon on the ~~second~~ FIRST business day prior to the date of sale. A sale held ~~in violation of this section~~ WITHOUT AN ORDER AUTHORIZING SALE shall be invalid.

(b) THIS SUBSECTION (1) IS REPEALED, EFFECTIVE JANUARY 1, 2008.

(2) ON AND AFTER JANUARY 1, 2008, WHENEVER A PUBLIC TRUSTEE FORECLOSES UPON A DEED OF TRUST UNDER THIS ARTICLE, THE HOLDER OF THE EVIDENCE OF DEBT OR THE ATTORNEY FOR THE HOLDER SHALL OBTAIN AN ORDER AUTHORIZING SALE FROM A COURT OF COMPETENT JURISDICTION TO ISSUE THE SAME PURSUANT TO RULE 120 OF THE COLORADO RULES OF CIVIL PROCEDURE. THE ORDER SHALL RECITE THE DATE THE HEARING WAS SCHEDULED IF NO HEARING WAS HELD, OR THE DATE THE HEARING WAS COMPLETED IF A RESPONSE WAS FILED, WHICH DATE IN EITHER CASE MUST BE NO LATER THAN THE DAY PRIOR TO THE LAST DAY ON WHICH AN EFFECTIVE NOTICE OF INTENT TO CURE MAY BE FILED WITH THE PUBLIC TRUSTEE UNDER SECTION 38-38-104. THE HOLDER OR THE ATTORNEY FOR THE HOLDER SHALL CAUSE A COPY OF THE ORDER TO BE PROVIDED TO THE PUBLIC TRUSTEE NO LATER THAN 12 NOON ON THE SECOND BUSINESS DAY PRIOR TO THE DATE OF SALE. A SALE HELD WITHOUT AN ORDER AUTHORIZING SALE SHALL BE INVALID.

SECTION 10. 38-38-106 (5), Colorado Revised Statutes, as it will become effective ~~July 1, 2007~~ January 1, 2008, is amended to read:

38-38-106. Bid required - form of bid. (5) Bids submitted pursuant to this section may be amended by the holder of the evidence of debt or the attorney for the holder in writing or electronically, as determined by the officer pursuant to section 38-38-112, no later than 12 noon the day prior to the sale, or orally at the time of sale IF THE PERSON AMENDING THE BID IS PHYSICALLY PRESENT AT THE SALE. ~~If A bid is SUBMITTED PURSUANT TO THIS SECTION MAY BE modified orally at the time of sale IF the person making the bid shall immediately note the modification on the itemization~~ MODIFIES and ~~reexecute~~ REEXECUTES the bid AT THE SALE.

SECTION 11. 38-38-108 (2) (a) (I) (C), Colorado Revised Statutes, as it will become effective ~~July 1, 2007~~ January 1, 2008, is amended to read:

38-38-108. Date of sale. (2) (a) (I) If it is not evident from the legal description contained in the deed of trust or other lien being foreclosed whether the property described therein is agricultural property, the officer shall make that determination no less than ten calendar days nor more than twenty calendar days after the recording of the notice of election and demand and shall accept the following as evidence that the property is not agricultural property:

(C) A written statement by the assessor of the county where the property is located, dated no more than six months prior to the date of filing of the notice of election and demand or lis pendens with the officer, that ~~neither the property nor any portion thereof~~ OF THE PROPERTY was valued and assessed as OTHER THAN agricultural property after the date of the recording of the deed of trust or as of the date of the statement.

SECTION 12. 38-38-109 (1) (a), (1) (b), (1) (c) (I) (B), and (2), Colorado Revised Statutes, as they will become effective ~~July 1, 2007~~ January 1, 2008, are amended to read:

38-38-109. Continuance of sale - effect of bankruptcy - withdrawal of sale.

(1) **Continuance.** (a) For any reason deemed by the officer to be good cause or upon written request by the holder of the evidence of debt or by the attorney for the holder, at any time before commencement of the sale, the officer may continue the sale 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 to which the sale is continued. Except as provided in ~~subparagraph (H) of paragraph (a)~~ SUBPARAGRAPH (I) OF PARAGRAPH (b) of subsection (2) of this section, a sale that is not held on the then-scheduled date of sale and is not continued from the then-scheduled date of sale pursuant to this paragraph (a) shall be deemed to have been continued for a period of one week, and from week to week thereafter in like manner, until the sale is held or otherwise continued pursuant to this paragraph (a). No sale shall be continued to a date later than ~~nine~~ TWELVE months from the originally designated date in the combined notice, except as provided in subsection (2) of this section.

(b) At the request of the holder of the evidence of debt or the attorney for the holder, the officer shall correct any errors in ~~the~~ A published combined notice ~~or accept an amended mailing list pursuant to section 38-38-103(2)~~ and shall continue the ~~initial~~ THEN-SCHEDULED date of sale to a future date within the period of

continuance allowed by paragraph (a) of this subsection (1) to permit a corrected combined notice to be published or the original combined notice to be republished pursuant to section 38-38-103 (5). The future date of sale shall be no later than thirty calendar days after the fifth publication of the corrected combined notice or republished combined notice. The officer shall mail a copy of the combined notice, or corrected combined notice if the original combined notice was erroneous, to the persons and addresses on the SUPPLEMENTAL OR amended mailing list no later than ten calendar days after the first correct publication or republication AND NO LESS THAN FORTY-FIVE CALENDAR DAYS PRIOR TO THE ACTUAL DATE OF SALE in the same manner as set forth in section 38-38-103.

~~(c) (I) (B) If the holder of the evidence of debt or the attorney for the holder receives a request for a cure statement under section 38-38-104 (2) (a) more than thirty calendar days before the date of sale and does not file a cure statement with the public trustee within ten calendar BUSINESS days after receipt of the request, the public trustee shall assess a fine of one hundred fifty dollars or one thirty-second of one percent of the outstanding principal balance of the secured indebtedness, whichever is greater, against the holder, which shall be credited to the county general fund; except that the fine shall be assessed only if the cure is made. If the cure statement is not filed with the public trustee by 12 noon on the seventh calendar day before the date of sale, the officer shall continue the sale week to week until the statement is filed as required by this paragraph (c) but not beyond the period of continuance allowed by paragraph (a) of this subsection (1).~~

(2) Effect of bankruptcy proceedings. (a) ~~(†)~~ If all publications of the combined notice prescribed by section 38-38-103 (5) or 13-56-201 (1), C.R.S., have been completed before a bankruptcy petition has been filed that automatically stays the officer from conducting the sale, the officer shall announce, post, or provide notice of that fact on the then-scheduled date of sale, take no action at the then-scheduled sale, and allow the sale to be automatically continued from week to week in accordance with paragraph (a) of subsection (1) of this section unless otherwise requested in writing prior to any such date of sale by the holder of the evidence of debt or the attorney for the holder.

~~(†)~~ (b) (I) If all publications of the combined notice prescribed by section 38-38-103 (5) or 13-56-201 (1), C.R.S., have not been completed before a bankruptcy petition has been filed that automatically stays the officer from conducting the sale, the officer shall immediately cancel any remaining publications of the combined notice and, on the date set for the sale, announce, post, or provide a notice 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. The sale shall not be continued under paragraph (a) of subsection (1) of this section.

~~(b) (†)~~ (II) When the property is to be sold by the public trustee, upon the termination of any injunction or upon the entry of a bankruptcy court order dismissing the bankruptcy case, abandoning the property being foreclosed, closing the bankruptcy case, or granting relief from the automatic stay provisions of the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, the public trustee shall forthwith rerecord the notice of election and demand and proceed with all additional foreclosure procedures provided by this article as though

the foreclosure had just been commenced.

~~(H)~~ (III) When the property is to be sold by the sheriff under any statutory or judicial foreclosure or upon execution and levy made pursuant to any court order or decree, upon the termination of any injunction or upon the entry of a bankruptcy court order dismissing the bankruptcy case, abandoning the property being foreclosed, closing the bankruptcy case, or granting relief from the automatic stay provisions of the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, the sheriff shall forthwith establish a new date of sale and republish a new combined notice pursuant to section 13-56-201 (1), C.R.S.

(c) (I) ~~In the event that~~ If a sale is held in violation of the automatic stay provisions of the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, and an order is subsequently entered by a bankruptcy court of competent jurisdiction dismissing the bankruptcy, abandoning the property being foreclosed, or closing the bankruptcy case, or an order is subsequently entered granting relief from the automatic stay provided by the federal bankruptcy code, then the evidence of debt, deed of trust, or other lien being foreclosed shall immediately be deemed reinstated, and the deed of trust or other lien shall have the same priority as if the sale had not occurred. ~~Such~~ THE reinstatement shall be confirmed by the officer's indorsement on the original evidence of debt and deed of trust or other lien, if deposited with the officer, or on the copy thereof if one has been submitted pursuant to section 38-38-101 (1), although the failure to so indorse shall not affect the validity of the reinstatement. Immediately upon reinstatement, the power of sale provided therein, if any, shall be deemed revived. The indorsement shall be in substantially the following form:

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

Date: _____

Signature
(Public Trustee) (Sheriff)

For the _____,

County of _____,

State of Colorado.

~~(d)~~ (II) If the holder of the evidence of debt, deed of trust, or other lien reinstated pursuant to paragraph (c) of this subsection (2) or the attorney for the holder notifies the officer in writing of the entry of an order dismissing the bankruptcy case, abandoning the property being foreclosed, closing the bankruptcy case, or granting relief from the automatic stay provided by the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, within sixty calendar days of the date on which the foreclosed property is no longer subject to the

automatic stay, the officer shall set a new date of sale at least twenty-four calendar days but not more than forty-nine calendar days after the date on which the official receives such notice. No later than ten business days after receiving such notice, the officer shall mail an amended combined notice containing the date of the rescheduled sale to each person appearing on the most recent mailing list. No later than twenty calendar days after receiving such notice, but no less than ten calendar days prior to the new date of sale, the officer shall publish the amended combined notice, omitting the copies of the statutes, ~~under paragraph (b) of subsection (4) of this section,~~ one time only in a newspaper of general circulation in the county where the property is located.

(H) (III) All fees and costs of providing and publishing the amended combined notice and publication shall be part of the foreclosure costs.

(E) (d) If a sale is enjoined by court order, the same procedures as set forth in paragraphs (a) and (b) of this subsection (2) shall apply unless the court order specifies otherwise.

(F) (e) The periods for which a sale may be continued under this subsection (2) shall be in addition to the ~~nine-month~~ TWELVE-MONTH period of continuance provided by subsection (1) of this section.

SECTION 13. 38-38-110 (2), Colorado Revised Statutes, as it will become effective ~~July 1, 2007~~ January 1, 2008, is amended to read:

38-38-110. Sales by officer - location - announcement - records. (2) At a ~~public trustee~~ sale, the ~~public trustee~~ OFFICER shall read only the public trustee's sale number FOR A SALE BY THE PUBLIC TRUSTEE OR THE COURT CASE NUMBER FOR A SALE BY THE SHERIFF, the name of the original grantor, the street address or, if none, the legal description of the property, the name of the holder of the evidence of debt, the date of sale, the first and last publication dates of the combined notice, and, in accordance with section 38-38-106 (4), the amount of the bid and the name of the person that submitted the bid. In lieu of reading the information listed above, the ~~public trustee~~ OFFICER may post the information or provide a written copy of the information to all persons present at the sale.

SECTION 14. 38-38-111 (2), Colorado Revised Statutes, as it will become effective ~~July 1, 2007~~ January 1, 2008, is amended, and the said 38-38-111, as it will become effective ~~July 1, 2007~~ January 1, 2008, is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

38-38-111. Treatment of excess proceeds. (2) Upon the expiration of all redemption periods provided in section 38-38-302, the excess proceeds shall be paid in order of recording priority, first to the holder of the evidence of debt to the extent of any deficiency as indicated in the holder's bid, SUBJECT TO SUBSECTION (4) OF THIS SECTION, and second to junior lienors, determined as of the recording date of the notice of election and demand or lis pendens according to the records, who have duly filed a notice of intent to redeem and whose liens have not been redeemed in full pursuant to section 38-38-302, in each case up to the unpaid amount of each such lienor's lien plus fees and costs. A lienor holding a lien that is not entitled to redeem by virtue of being recorded after the notice of election and demand or a

lienor that has not timely filed a notice of intent to redeem pursuant to section 38-38-302 shall not have any claim to any portion of the excess proceeds. After payment to all lienors and the holder entitled to receive excess proceeds pursuant to this section, any remaining excess proceeds shall be paid to the owner of the property as of the date and time of the recording of the notice of election and demand or lis pendens.

(4) A LIENOR WHO ACCEPTS A REDEMPTION AMOUNT LESS THAN THE FULL AMOUNT OF A LIEN OR A HOLDER OF AN EVIDENCE OF DEBT WHO ACCEPTS A REDEMPTION AMOUNT LESS THAN THE AMOUNT BID AT A SALE PRIOR TO THE EXPIRATION OF ALL APPLICABLE REDEMPTION PERIODS UNDER THIS ARTICLE SHALL NOT BE ENTITLED TO RECEIVE A PORTION OF ANY EXCESS PROCEEDS PURSUANT TO THIS SECTION.

SECTION 15. 38-38-112 (1) (a) and (2) (a), Colorado Revised Statutes, are amended to read:

38-38-112. Use of electronic documents authorized - repeal.

(1) (a) Consistent with the provisions of the "Uniform Electronic Transactions Act", article 71.3 of title 24, C.R.S., any document or record 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. NO LATER THAN JULY 1, 2007, the public trustee or sheriff shall establish ~~and uniformly apply~~ WRITTEN policies FOR determining whether and the extent to which the public trustee or sheriff shall accept documents or records in electronic form; except that the public trustee or sheriff shall not require the use of an electronic format for any purpose under this article. THE PUBLIC TRUSTEE OR SHERIFF SHALL UNIFORMLY APPLY THE POLICIES ESTABLISHED PURSUANT TO THIS PARAGRAPH (a).

(2) (a) Consistent with the provisions of the "Uniform Electronic Transactions Act", article 71.3 of title 24, C.R.S., any document or record related to a foreclosure may be accepted by the officer in an electronic format or may be made available to the public by the officer in an electronic format. The officer shall establish and uniformly apply WRITTEN policies FOR determining whether and the extent to which the officer shall accept documents or records in electronic form; except that the officer shall not require the use of an electronic format for any purpose under this article.

SECTION 16. Part 1 of article 38 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

38-38-113. Rescission of public trustee sale. (1) IF THE SUCCESSFUL BIDDER AT A FORECLOSURE SALE IS THE HOLDER OF THE EVIDENCE OF DEBT FORECLOSING THE DEED OF TRUST OR OTHER LIEN, THEN SUCH SUCCESSFUL BIDDER, THE BIDDER'S ATTORNEY, THE ASSIGNEE OF THE SUCCESSFUL BIDDER PURSUANT TO SECTION 38-38-403, OR THE ASSIGNEE'S ATTORNEY MAY RESCIND THE SALE WITHOUT OBTAINING A COURT ORDER BY FILING WITH THE PUBLIC TRUSTEE NO LATER THAN EIGHT BUSINESS DAYS AFTER THE DATE OF THE SALE A NOTICE OF RESCISSION OF SALE STATING THAT THE SALE IS BEING RESCINDED, THE NUMBER AND DATE OF THE SALE, THE NAME OF THE PERSON TO WHOM THE CERTIFICATE OF PURCHASE WAS ISSUED, THE NAME OF THE ASSIGNEE, IF ANY, THE RECEPTION NUMBER OR BOOK AND

PAGE NUMBER FOR THE RECORDED CERTIFICATE OF PURCHASE, AND THE LEGAL DESCRIPTION OF THE PROPERTY FORECLOSED. THE NOTICE SHALL BE SIGNED AND PROPERLY ACKNOWLEDGED BY THE SUCCESSFUL BIDDER OR ASSIGNEE, OR SIGNED BY THE BIDDER OR ASSIGNEE'S ATTORNEY. UPON RECEIPT OF THE NOTICE OF RESCISSION OF SALE, THE ORIGINAL CERTIFICATE OF PURCHASE, ANY ASSIGNMENT OF THE CERTIFICATE OF PURCHASE, THE PUBLIC TRUSTEE'S FEE FOR THE RESCISSION SPECIFIED IN SECTION 38-37-104, AND THE COSTS OF RECORDING THE NOTICE OF RESCISSION OF THE SALE, THE PUBLIC TRUSTEE SHALL RECORD THE NOTICE OF RESCISSION OF SALE IN THE COUNTY RECORDS.

(2) UPON RECORDING OF THE NOTICE OF RESCISSION OF SALE BY THE PUBLIC TRUSTEE, THE CERTIFICATE OF PURCHASE SHALL BE DEEMED CANCELED AS IF THE SALE HAD NOT OCCURRED, AND THE EVIDENCE OF DEBT AND DEED OF TRUST SHALL BE DEEMED FULLY REINSTATED WITH THE SAME LIEN PRIORITY AS IF THE SALE HAD NOT OCCURRED. THE PUBLIC TRUSTEE SHALL CONFIRM THE REINSTATEMENT BY INDORSEMENT ON THE EVIDENCE OF DEBT AND DEED OF TRUST OR COPY THEREOF SUBMITTED PURSUANT TO SECTION 38-38-101.

(3) WITHIN TEN CALENDAR DAYS AFTER RECEIPT OF ALL DOCUMENTS AND FEES AND COSTS SPECIFIED IN SUBSECTION (1) OF THIS SECTION, THE PUBLIC TRUSTEE SHALL MAIL A COPY OF THE NOTICE OF RESCISSION OF SALE TO EACH PERSON WHO WAS ENTITLED TO RECEIVE THE COMBINED NOTICE PURSUANT TO SECTION 38-38-103. THE PERSON RESCINDING THE SALE SHALL PROVIDE ADDRESSED AND STAMPED ENVELOPES TO THE PUBLIC TRUSTEE FOR MAILING THE COPIES.

(4) (a) AFTER THE RECORDING OF THE NOTICE OF RESCISSION OF SALE, THE HOLDER OF THE EVIDENCE OF DEBT OR THE HOLDER'S ASSIGNEE, OR THE ATTORNEY FOR THE HOLDER OR THE ASSIGNEE, MAY NOTIFY THE PUBLIC TRUSTEE IN WRITING TO RESCHEDULE THE SALE. THE PUBLIC TRUSTEE SHALL SET A NEW DATE OF SALE AT LEAST THIRTY CALENDAR DAYS BUT NOT MORE THAN FORTY-FIVE CALENDAR DAYS AFTER THE DATE ON WHICH THE PUBLIC TRUSTEE RECEIVES NOTICE TO SCHEDULE A NEW DATE OF SALE, SUBJECT TO THE REQUIREMENTS OF SECTION 38-38-109 (2).

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

(c) NO LATER THAN TWENTY CALENDAR DAYS AFTER RECEIVING NOTICE TO SCHEDULE A NEW DATE OF SALE, BUT NO LESS THAN TEN CALENDAR DAYS PRIOR TO THE NEW DATE OF SALE, THE PUBLIC TRUSTEE SHALL PUBLISH THE SALE ONE TIME ONLY.

(d) ALL FEES AND COSTS OF THE PUBLIC TRUSTEE FOR ACTIONS PERFORMED UNDER THIS SECTION AND THE COST OF RECORDING THE NOTICE OF RESCISSION OF SALE SHALL BE PART OF THE FORECLOSURE COSTS.

(e) AFTER A SALE HAS BEEN RESCINDED AND RESCHEDULED PURSUANT TO THIS SUBSECTION (4), THE SALE MAY BE CONTINUED IN ACCORDANCE WITH SECTION 38-38-109 (1) (a).

(5) NOTHING IN THIS SECTION SHALL PREVENT ANY PERSON FROM SEEKING A RESCISSION OF A SALE THROUGH A COURT OF COMPETENT JURISDICTION.

(6) CLAIMS FOR DAMAGES BY ANY PERSON ARISING OUT OF A RESCISSION OF A SALE PURSUANT TO THIS SECTION SHALL BE LIMITED TO THE REASONABLE ACTUAL EXPENSES OF THE PERSON AND SHALL NOT INCLUDE ANY SPECULATIVE OR EXPECTATION DAMAGES, AWARDS, OR CLAIMS OF ANY KIND, WHETHER LEGAL OR EQUITABLE.

(7) THE INDORSEMENT OF THE PUBLIC TRUSTEE PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL BE IN SUBSTANTIALLY THE FOLLOWING FORM:

THE UNDERSIGNED, AS PUBLIC TRUSTEE FOR THE COUNTY OF _____, STATE OF COLORADO, BY THIS INDORSEMENT, HEREBY CONFIRMS THE REINSTATEMENT OF THIS (EVIDENCE OF DEBT) (DEED OF TRUST) (LIEN) IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 38-38-113, COLORADO REVISED STATUTES.

DATE: _____

SIGNATURE:
PUBLIC TRUSTEE

FOR THE COUNTY OF _____,

STATE OF COLORADO.

38-38-114. Unclaimed refunds - disposition under "Unclaimed Property Act". MONEYS PAYABLE AS A REFUND FOR OVERPAYMENT OF A CURE OF DEFAULT PURSUANT TO SECTION 38-38-104 OR FOR OVERPAYMENT OF A REDEMPTION PURSUANT TO PART 3 OF THIS ARTICLE THAT REMAIN UNCLAIMED BY THE OWNER ONE YEAR AFTER THE MONEYS BECAME PAYABLE ARE PRESUMED ABANDONED AND SHALL BE REPORTED AND PAID TO THE STATE TREASURER IN ACCORDANCE WITH SECTIONS 38-13-110 AND 38-13-112.

SECTION 17. The introductory portion to 38-38-302 (1) (d) and 38-38-302 (1) (e), (3), (4) (a), (4) (c), and (4) (d), Colorado Revised Statutes, as they will become effective ~~July 1, 2007~~ January 1, 2008, are amended to read:

38-38-302. Redemption by lienor - procedure. (1) Requirements for redemption. A lienor or assignee of a lien is entitled to redeem if:

(d) The lienor has, within ~~ten~~ EIGHT business days after the sale, filed a notice with the officer of the lienor's intent to redeem. A lienor may file a notice of intent to redeem more than ~~ten~~ EIGHT business days after sale if:

(e) The lienor has attached to the notice of intent to redeem the original INSTRUMENT OR A CERTIFIED COPY THEREOF, or ~~copies~~ IN THE CASE OF A QUALIFIED HOLDER, A COPY of the ~~recorded instruments~~ INSTRUMENT evidencing the lien and any assignment of the lien TO THE PERSON ATTEMPTING TO REDEEM. If THE original ~~instruments are~~ INSTRUMENT IS delivered to the officer, ~~they shall be returned to the~~

~~lienor, and a copy shall be retained by~~ the officer SHALL RETURN THE INSTRUMENT TO THE LIENOR AND RETAIN A COPY.

(3) **Statement of redemption.** (a) Upon receipt of notice that an intent to redeem was filed, the holder of a certificate of purchase shall submit a signed and acknowledged statement, or the attorney for the holder shall submit a signed statement, to the officer, no later than ~~fourteen~~ THIRTEEN business days following the sale, specifying all sums necessary to redeem as of the date of the statement, the amount of per diem interest accruing thereafter, and the interest rate on which the amount is based. The holder or the attorney for the holder may amend the statement from time to time to reflect additional sums advanced as allowed by law, but the statement shall not be amended later than two business days prior to the commencement of the redemption period pursuant to paragraph (a) of subsection (4) of this section or each subsequent redemption period pursuant to paragraph (b) of subsection (4) of this section.

(b) If the holder of the certificate of purchase or the attorney for the holder fails to submit the initial written statement to the officer within ~~fifteen~~ THIRTEEN business days after the sale, the officer may calculate the amount necessary to redeem by adding to the successful bid the accrued interest from the sale through the redemption date. The accrued interest shall be calculated by multiplying the amount of the bid by the regular rate of annual interest specified in the evidence of debt, deed of trust, or other lien being foreclosed, divided by three hundred sixty-five and then multiplied by the number of days from the date of sale through the redemption date. The officer shall transmit by mail, facsimile, or other electronic means to the party filing the notice of intent to redeem, promptly upon receipt, the statement filed by the holder, or if no such statement is filed, the officer's estimate of the redemption figure, which shall be transmitted no later than the commencement of the redemption period pursuant to paragraph (a) of subsection (4) of this section or each subsequent redemption period pursuant to paragraph (b) of subsection (4) of this section.

(4) **Redemption period.** (a) No sooner than fifteen business days nor later than ~~twenty~~ NINETEEN business days after a sale under this article, the junior lienor having the most senior recorded lien on the sold property or any portion thereof, according to the records, having first complied with the requirements of subsection (1) of this section, may redeem the property sold by paying to the officer, no later than 12 noon on the last day of the lienor's redemption period, in the form specified in section 38-37-108, the amount for which the property was sold with interest from the date of sale, together with all sums allowed under section 38-38-301. Interest on the amount for which the property was sold shall be charged at the default rate specified in the evidence of debt, deed of trust, or other lien being foreclosed or, if not so specified, at the regular rate specified in the evidence of debt, deed of trust, or other lien being foreclosed. IF DIFFERENT INTEREST RATES ARE SPECIFIED IN THE EVIDENCE OF DEBT, DEED OF TRUST, OR OTHER LIEN BEING FORECLOSED, THE INTEREST RATE SPECIFIED IN THE EVIDENCE OF DEBT SHALL PREVAIL. IF THE EVIDENCE OF DEBT DOES NOT SPECIFY AN INTEREST RATE, INCLUDING A DEFAULT INTEREST RATE, APPLICABLE INTEREST RATE AS SPECIFIED IN THE DEED OF TRUST OR OTHER LIEN BEING FORECLOSED SHALL APPLY.

(c) If the statement described in paragraph (f) of subsection (1) of this section so

states, or upon other written authorization from the holder of the certificate of purchase or the then-current holder of the certificate of redemption or the attorney for either such holder, the officer may accept as a full redemption ~~any lesser~~ AN amount LESS than the amount specified in paragraph (a) of subsection (3) of this section. Notwithstanding the first sentence of this paragraph (c), the amount bid at sale shall determine the amount and extent of any deficiency remaining on the debt represented by the evidence of debt that is the subject of the foreclosure as stated in the bid pursuant to section 38-38-106 (2). Any redemption under this section shall constitute a full redemption and shall be deemed to be payment of all sums to which the holder of the certificate of purchase is entitled.

(d) On the ~~eleventh~~ NINTH business day after the date of sale, the officer shall set the dates of the redemption period of each lienor in accordance with this subsection (4). The redemption period of a lienor shall not be shortened or altered by the fact that a prior lienor redeemed before the expiration of his or her redemption period.

SECTION 18. 38-38-401 (1), Colorado Revised Statutes, as it will become effective ~~July 1, 2007~~ January 1, 2008, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

38-38-401. Certificate of purchase - issuance. (1) No later than five business days after the sale, the officer shall execute and record in each county where the property or a portion thereof is located a certificate of purchase containing:

(h) AN ATTACHED EXHIBIT CONTAINING A COPY OF THE EXECUTED ORDER AUTHORIZING THE SALE THAT BEARS THE PUBLIC TRUSTEE SALE NUMBER OR CIVIL DOCKET NUMBER IN THE CASE OF A JUDICIAL FORECLOSURE; AND

(i) AN ATTACHED EXHIBIT CONTAINING A COPY OF THE INITIAL MAILING LIST AND ANY SUPPLEMENTAL OR AMENDED MAILING LIST THAT BEARS THE PUBLIC TRUSTEE SALE NUMBER OR CIVIL DOCKET NUMBER IN THE CASE OF A JUDICIAL FORECLOSURE.

SECTION 19. 38-38-403, Colorado Revised Statutes, is amended to read:

38-38-403. Certificates assignable. (1) Every certificate of purchase or certificate of redemption that is issued to any person under this part 4 shall be assignable by indorsement thereon or by separate assignment, and the assignee shall be treated for all purposes as the original holder of the certificate of purchase or certificate of redemption. A separate assignment of a certificate of ~~redemption~~ PURCHASE or a certificate of ~~purchase~~ REDEMPTION shall contain: ~~at least the information required in the certificate assigned and the name and address of the assignor and the assignee.~~

(a) THE NAME AND ADDRESS OF THE ASSIGNEE;

(b) THE NAME AND ADDRESS OF THE ASSIGNOR;

(c) A DESCRIPTION OF THE PROPERTY;

(d) THE NAME OF THE FORECLOSING HOLDER OF THE EVIDENCE OF DEBT; AND

(e) THE NUMBER OF THE FORECLOSURE SALE HELD BY THE PUBLIC TRUSTEE OR THE CASE NUMBER OF THE JUDICIAL FORECLOSURE.

SECTION 20. Part 4 of article 38 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-38-401.5. Certificate - priority of lien. THE LIEN REPRESENTED BY A CERTIFICATE OF PURCHASE SHALL HAVE THE SAME PRIORITY AS THE DEED OF TRUST OR OTHER LIEN FORECLOSED.

SECTION 21. 38-38-501, Colorado Revised Statutes, as it will become effective ~~July 1, 2007~~ January 1, 2008, is amended to read:

38-38-501. Title vests upon expiration of redemption periods - confirmation deed. Upon the expiration of all redemption periods allowed to all lienors entitled to redeem under part 3 of this article or, if there are no redemption periods, upon the close of the officer's business day ~~ten~~ EIGHT business days after the sale, title to the property sold shall vest in the holder of the certificate of purchase or in the holder of the last certificate of redemption in the case of redemption. Subject to the provisions of sections 38-38-506 and 38-41-212 (2), such title shall be free and clear of all liens and encumbrances junior to the lien foreclosed. No less than fifteen business days after the date of sale or, if later, the expiration of all redemption periods and the receipt of all statutory fees and costs, the officer shall execute and record a confirmation deed pursuant to section 38-38-502 or 38-38-503 to the holder of the certificate of purchase or, in the case of redemption, to the holder of the last certificate of redemption confirming the transfer of title to the property. Failure of the officer to execute and record such deed or to record the deed within the time specified shall not affect the validity of the deed or the vesting of title.

SECTION 22. 38-38-502, Colorado Revised Statutes, as it will become effective ~~July 1, 2007~~ January 1, 2008, is amended to read:

38-38-502. Form of confirmation deed for public trustee's sale. The confirmation deed executed by the public trustee in a foreclosure sale may be in substantially the following form:

THIS DEED is made _____, 20__, between _____ as the public trustee of the _____ County of _____, Colorado, and _____, grantee, (the holder of the certificate of purchase) (the holder of the certificate of redemption issued to the lienor last redeeming), whose legal address is _____.

WHEREAS, _____ did, by deed of trust dated _____, 20__, and recorded in the office of the clerk and recorder of the _____ County of _____, Colorado, on _____, 20__, in Book __, Page __, (Film no. __, Reception no. __) convey to the public trustee, in trust, the property hereinafter described to secure the payment of the indebtedness provided in said deed of trust; and

WHEREAS, a violation was made in certain of the terms and

covenants of said deed of trust as shown by the notice of election and demand for sale filed with the public trustee; ~~(a duplicate of which was recorded in the office of said county clerk and recorder);~~ the said property was advertised for public sale at the place and in the manner provided by law and by said deed of trust; combined notice of sale and right to cure and redeem was given as required by law; said property was sold according to said combined notice; and a certificate of purchase thereof was made and recorded in the office of said county clerk and recorder; and

WHEREAS, all periods of redemption have expired.

NOW, THEREFORE, the public trustee, pursuant to the power and authority vested by law and by the said deed of trust, confirms the foreclosure sale and sells and conveys to grantee the following described property located in the _____ County of _____, State of Colorado, to-wit:

(describe property)

also known by street and number as _____ to have and to hold the same, with all appurtenances, forever.

SECTION 23. 38-38-504, Colorado Revised Statutes, is amended to read:

38-38-504. Deed evidence of compliance. Any deed executed by ~~the public trustee or sheriff,~~ AN OFFICER or other official under this article shall be prima facie evidence of compliance with all statutory requirements for the sale and execution of the deed and evidence of the truth of the recitals contained in ~~such~~ THE deed.

SECTION 24. Part 1 of article 39 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-39-100.5. Definitions. THE DEFINITIONS IN SECTION 38-38-100.3 APPLY TO THIS ARTICLE UNLESS THE CONTEXT OTHERWISE REQUIRES.

SECTION 25. 38-39-102 (1), (2), (3), and (3.5) and the introductory portion to 38-39-102 (5), Colorado Revised Statutes, are amended to read:

38-39-102. When deed of trust shall be released. (1) (a) Except as otherwise provided in ~~subsection (3.5)~~ PARAGRAPH (a) OF SUBSECTION (3) of this section, ~~liens of deeds~~ A DEED of trust to the public trustee, upon compliance with the provisions of ~~such deeds~~ THE DEED of trust, shall be released by the public trustee upon the:

- (I) Receipt of a written request ~~of~~ FROM the ~~owner~~ HOLDER of the evidence of debt secured by ~~such~~ THE deed of trust, ~~or~~ the HOLDER'S 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)~~ (3) of this section; and

(III) Receipt by the public trustee of the fee prescribed by section 38-37-104 (1) (a) and the fee for recording the release.

(b) Immediately upon execution of the release of the ~~lien of~~ deed of trust by the public trustee, the public trustee shall cause ~~such~~ THE release to be recorded in the ~~office~~ RECORDS of the county clerk and recorder. ~~of the county in which the property described in such release is located.~~

(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 request to release 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~~ HOLDER OF THE EVIDENCE OF DEBT is ~~an entity described in paragraph (b) of subsection (3.5) of this section~~ A QUALIFIED HOLDER that has made, in the ~~owner's~~ QUALIFIED HOLDER'S request for release or partial release, the certification contemplated in paragraph (a) of ~~subsection (3.5)~~ SUBSECTION (3) of this section.

(3) (a) With respect to either subsection (1) or (2) of this section, ~~if such original evidence of debt cannot be produced, the public trustee may accept one of the following in lieu thereof:~~

~~(a) An indemnification agreement accompanied by a certified copy of an authorizing resolution passed by the board of directors of a bank, as defined in section 11-101-401 (5), C.R.S., an industrial bank, as provided for in article 108 of title 11, C.R.S., a savings and loan association licensed to do business in Colorado, a federal housing administration approved mortgagee, or a federally chartered credit union operating in Colorado or a state-chartered credit union, as defined in section 11-30-101, C.R.S., or an indemnification agreement that has been duly authorized by any agency of the federal government or by any federally created corporation that originates, guarantees, or purchases loans indemnifying the public trustee against claims for issuing a release under this subsection (3) made within the time period described in subsection (7) of this section, which indemnification agreement is satisfactory to the public trustee;~~ A HOLDER OF THE ORIGINAL EVIDENCE OF DEBT THAT IS A QUALIFIED HOLDER, AS DEFINED IN SECTION 38-38-100.3 (20), MAY REQUEST THE RELEASE OF A DEED OF TRUST WITHOUT PRODUCING OR EXHIBITING THE ORIGINAL EVIDENCE OF DEBT. A HOLDER THAT REQUESTS THE RELEASE OF A DEED OF TRUST PURSUANT TO THIS PARAGRAPH (a) SHALL BE DEEMED TO HAVE AGREED TO INDEMNIFY AND DEFEND THE PUBLIC TRUSTEE AGAINST ANY CLAIM MADE WITHIN THE PERIOD DESCRIBED IN SUBSECTION (7) OF THIS SECTION FOR DAMAGES RESULTING FROM THE ACTION OF THE PUBLIC TRUSTEE TAKEN IN ACCORDANCE WITH THE REQUEST. THE INDEMNITY GRANTED BY THIS PARAGRAPH (a) IS LIMITED TO ACTUAL ECONOMIC LOSS SUFFERED AND ANY COURT COSTS AND REASONABLE ATTORNEY FEES AND COSTS INCURRED IN DEFENDING A CLAIM BROUGHT AS A DIRECT AND PROXIMATE RESULT OF THE FAILURE TO PRODUCE THE

ORIGINAL EVIDENCE OF DEBT, BUT THE INDEMNITY DOES NOT INCLUDE AND NO CLAIMANT IS ENTITLED TO ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXPECTATION, OR PUNITIVE DAMAGES. NO SEPARATE INDEMNIFICATION AGREEMENT SHALL BE NECESSARY FOR THE AGREEMENT TO INDEMNIFY TO BE EFFECTIVE.

(b) ~~★ WITH RESPECT TO EITHER SUBSECTION (1) OR (2) OF THIS SECTION, THE HOLDER OF THE EVIDENCE OF DEBT MAY REQUEST THE RELEASE OF A DEED OF TRUST WITHOUT PRODUCING OR EXHIBITING THE ORIGINAL EVIDENCE OF DEBT. A HOLDER THAT REQUESTS THE RELEASE OF A DEED OF TRUST PURSUANT TO THIS PARAGRAPH (b) SHALL DELIVER TO THE PUBLIC TRUSTEE A corporate surety bond issued by a company authorized to issue such bonds in the state of Colorado with the public trustee as obligee, conditioned against the delivery of any such original evidence of debt to the damage of the public trustee and in a sum~~ IN AN AMOUNT equal to ONE AND ONE-HALF TIMES the original principal amount recited in ~~such~~ THE deed of trust, which corporate surety bond shall remain in full force and effect for the ~~time~~ period described in subsection (7) of this section; or

(c) ~~An indemnification agreement from~~ WITH RESPECT TO EITHER SUBSECTION (1) OR (2) OF THIS SECTION, a title insurance company licensed and qualified in Colorado ~~in a form acceptable to the public trustee indemnifying the public trustee from any and all~~ MAY REQUEST THE RELEASE OF A DEED OF TRUST WITHOUT PRODUCING OR EXHIBITING THE ORIGINAL EVIDENCE OF DEBT. A COMPANY THAT REQUESTS THE RELEASE OF A DEED OF TRUST PURSUANT TO THIS PARAGRAPH (c) SHALL BE DEEMED TO HAVE AGREED TO INDEMNIFY AND DEFEND THE PUBLIC TRUSTEE AGAINST ANY CLAIM MADE WITHIN THE PERIOD DESCRIBED IN SUBSECTION (7) OF THIS SECTION FOR damages ~~as the result of issuing such release, accompanied by~~ RESULTING FROM THE ACTION TAKEN BY THE PUBLIC TRUSTEE IN ACCORDANCE WITH THE REQUEST. THE INDEMNITY GRANTED BY THIS PARAGRAPH (c) IS LIMITED TO ACTUAL ECONOMIC LOSS SUFFERED AND ANY COURT COSTS AND REASONABLE ATTORNEY FEES AND COSTS INCURRED IN DEFENDING A CLAIM BROUGHT AS A DIRECT AND PROXIMATE RESULT OF THE FAILURE TO PRODUCE THE ORIGINAL EVIDENCE OF DEBT, BUT THE INDEMNITY DOES NOT INCLUDE AND NO CLAIMANT IS ENTITLED TO ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXPECTATION, OR PUNITIVE DAMAGES. NO SEPARATE INDEMNIFICATION AGREEMENT SHALL BE NECESSARY FOR THE AGREEMENT TO INDEMNIFY TO BE EFFECTIVE; HOWEVER, THE COMPANY SHALL PROVIDE TO THE PUBLIC TRUSTEE an affidavit executed by an officer of the ~~title insurance~~ company stating that the ~~title insurance~~ company has caused the indebtedness secured by the deed of trust to be satisfied in full or, in the case of a partial release, to the extent required by the holder of the indebtedness.

(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~~ THE indemnification agreement SPECIFIED IN PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION 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 11-101-401 (5), C.R.S.;~~

~~(II) An industrial bank, as defined in section 11-108-101 (1), C.R.S.;~~

~~(III) A savings and loan association licensed to do business in Colorado;~~

~~(IV) A supervised lender, as defined in section 5-1-301 (46), C.R.S., that is licensed to make supervised loans pursuant to section 5-2-302, 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 5-1-301 (46), C.R.S., that is licensed to make supervised loans pursuant to section 5-2-302, 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".~~

(5) The lien ~~of any~~ REPRESENTED BY A deed of trust to the public trustee ~~which~~ THAT secures an obligation other than an evidence of debt shall be released by the public trustee pursuant to the provisions of subsection (1) of this section as to all or portions of the property encumbered by the deed of trust upon the:

SECTION 26. Repeal. 38-38-305 (4), Colorado Revised Statutes, is repealed.

SECTION 27. Section 41 (1) of chapter 305, Session Laws of Colorado 2006, is amended to read:

Section 41. **Effective date - applicability.** (1) Sections 2, 3, 4, 11, 18, 26, 33, 34, 35, 39, 41, and 42 of this act shall take effect July 1, 2006, and the remainder of this act shall take effect ~~July 1, 2007~~, JANUARY 1, 2008, except as otherwise provided in subsection (2) of this section.

SECTION 28. Effective date. This act shall take effect January 1, 2008; except that sections 3, 9, 15, 27, 28, and 29 of this act shall take effect upon passage.

SECTION 29. 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, 2007