

CHAPTER 165

GOVERNMENT - COUNTY

HOUSE BILL 08-1195

BY REPRESENTATIVE(S) Mitchell V., Butcher, Frangas, Gardner B., Kerr J., King, Looper, Massey, McNulty, Merrifield, Roberts, Rose, Summers, and Garza-Hicks;
also SENATOR(S) Taylor, Isgar, and Kester.

AN ACT**CONCERNING THE RETURN OF A RELEASE OF A DEED OF TRUST AFTER RECORDING.**

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

SECTION 1. 38-39-102 (1) (a), (2), and (3), Colorado Revised Statutes, are amended, and the said 38-39-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

38-39-102. When deed of trust shall be released - definitions. (1) (a) Except as otherwise provided in paragraph (a) of subsection (3) of this section, a deed of trust to the public trustee, upon compliance with the provisions of the deed of trust, shall be released by the public trustee upon the:

(I) Receipt of a written request from the holder of the evidence of debt secured by the deed of trust, the holder's agent or attorney, 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) 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; AND

(IV) RECEIPT BY THE PUBLIC TRUSTEE OF A CURRENT ADDRESS FOR THE ORIGINAL

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

GRANTOR, ASSUMING PARTY, OR CURRENT OWNER OR EITHER A NOTATION ON THE REQUEST FOR RELEASE OF THE DEED OF TRUST OR A WRITTEN STATEMENT FROM THE HOLDER OF THE EVIDENCE OF DEBT SECURED BY THE DEED OF TRUST, THE TITLE INSURANCE COMPANY LICENSED AND QUALIFIED IN COLORADO, OR THE HOLDER OF THE ORIGINAL EVIDENCE OF DEBT THAT IS A QUALIFIED HOLDER, AS DEFINED IN SECTION 38-38-100.3 (20), THAT THEY HAVE NO RECORD OF A CURRENT ADDRESS THAT IS DIFFERENT FROM THE ADDRESS OF THE PROPERTY ENCUMBERED BY THE DEED OF TRUST BEING RELEASED; EXCEPT THAT IT SHALL BE WITHIN THE PUBLIC TRUSTEE'S DISCRETION TO RELEASE A DEED OF TRUST, UPON COMPLIANCE WITH THE PROVISIONS OF THE DEED OF TRUST, IF THE PUBLIC TRUSTEE HAS NOT RECEIVED THE INFORMATION REQUIRED PURSUANT TO THIS SUBPARAGRAPH (IV).

(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 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 holder of the evidence of debt is a qualified holder. ~~that has made, in the qualified holder's request for release or partial release, the certification contemplated in paragraph (a) of subsection (3) of this section.~~

(3) (a) (I) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), with respect to either subsection (1) or (2) of this section, 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.

(II) A HOLDER OF THE ORIGINAL EVIDENCE OF DEBT THAT IS A QUALIFIED HOLDER, AS DEFINED IN SECTION 38-38-100.3 (20), SHALL PROVIDE THE PUBLIC TRUSTEE WITH A CURRENT ADDRESS FOR THE ORIGINAL GRANTOR, ASSUMING PARTY, OR CURRENT OWNER WHEN REQUESTING A RELEASE OF A DEED OF TRUST PURSUANT TO THIS PARAGRAPH (a).

(b) (I) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (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 in an amount equal to one and one-half times the original principal

amount recited in the deed of trust, which corporate surety bond shall remain in full force and effect for the period described in subsection (7) of this section. σ

(II) A HOLDER OF THE EVIDENCE OF DEBT SHALL PROVIDE THE PUBLIC TRUSTEE WITH A CURRENT ADDRESS FOR THE ORIGINAL GRANTOR, ASSUMING PARTY, OR CURRENT OWNER WHEN REQUESTING A RELEASE OF A DEED OF TRUST PURSUANT TO THIS PARAGRAPH (b).

(c) (I) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (c), with respect to either subsection (1) or (2) of this section, a title insurance company licensed and qualified in Colorado 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 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 company stating that the 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.

(II) A TITLE INSURANCE COMPANY LICENSED AND QUALIFIED IN COLORADO SHALL PROVIDE THE PUBLIC TRUSTEE WITH A CURRENT ADDRESS FOR THE ORIGINAL GRANTOR, ASSUMING PARTY, OR CURRENT OWNER WHEN REQUESTING A RELEASE OF A DEED OF TRUST PURSUANT TO THIS PARAGRAPH (c).

(9) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ASSUMING PARTY" MEANS A PERSON OTHER THAN THE ORIGINAL GRANTOR WHO PAID OFF THE INDEBTEDNESS ON BEHALF OF THE ORIGINAL GRANTOR.

(b) "CURRENT ADDRESS" MEANS THE MOST RECENT ADDRESS REFLECTED IN THE RECORDS OF A HOLDER OF THE EVIDENCE OF DEBT, A TITLE INSURANCE COMPANY LICENSED AND QUALIFIED IN COLORADO, OR A HOLDER OF THE ORIGINAL EVIDENCE OF DEBT THAT IS A QUALIFIED HOLDER, AS DEFINED IN SECTION 38-38-100.3 (20). IF A HOLDER OF THE EVIDENCE OF DEBT, A TITLE INSURANCE COMPANY LICENSED AND QUALIFIED IN COLORADO, OR A HOLDER OF THE ORIGINAL EVIDENCE OF DEBT THAT IS A QUALIFIED HOLDER, AS DEFINED IN SECTION 38-38-100.3 (20), HAS NO RECORD OF A CURRENT ADDRESS, ANY REQUIREMENT THAT A CURRENT ADDRESS BE PROVIDED SHALL BE DEEMED SATISFIED BY INDICATING THAT FACT.

(c) "CURRENT OWNER" MEANS A PERSON OTHER THAN THE ORIGINAL GRANTOR WHO CURRENTLY OWNS THE PROPERTY AND HAS EITHER PAID OFF OR TAKEN OVER THE INDEBTEDNESS ON BEHALF OF THE ORIGINAL GRANTOR.

SECTION 2. 38-39-107, Colorado Revised Statutes, is amended to read:

38-39-107. Form of written request for release of a deed of trust with production of the evidence of debt. A written request to a public trustee made pursuant to section 38-39-102 (1) (a) to release a deed of trust with production of the original canceled evidence of debt may be in substantially the following form:

Original Note and Deed of Trust Returned to:

When recorded return to:

Prepared/Received by:

REQUEST FOR FULL / PARTIAL
RELEASE OF DEED OF TRUST AND RELEASE
BY OWNER OF INDEBTEDNESS WITH
PRODUCTION OF EVIDENCE OF DEBT PURSUANT
TO § 38-39-102 (1) (a), COLORADO REVISED STATUTES

_____ Date
_____ Original Grantor (Borrower)

_____ CURRENT ADDRESS OF
_____ ORIGINAL GRANTOR, ASSUMING
_____ PARTY, OR CURRENT OWNER

CHECK HERE IF CURRENT ADDRESS IS UNKNOWN.
_____ Original Beneficiary (Lender)

_____ Date of Deed of Trust
_____ Date of Recording and/or
_____ Re-Recording of Deed of Trust
_____ Recording Information

County Rcpt. No. and/or Film No. and/or Book/Page No. and/or Torrens Reg. No.

TO THE PUBLIC TRUSTEE OF _____ COUNTY
(The County of the Public Trustee who is the appropriate grantee to whom the above Deed of Trust should grant an interest in the property described in the Deed of Trust)

PLEASE EXECUTE AND RECORD A RELEASE OF THE DEED OF TRUST DESCRIBED ABOVE. The indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied in regard to the property encumbered by the Deed of Trust as described therein as to a full release or, in the event of a partial release, only that portion of the real property described as:

(IF NO LEGAL DESCRIPTION IS LISTED THIS WILL BE DEEMED A FULL RELEASE.)

Name and address of current owner and holder of the indebtedness secured by deed

38-39-108. Form of written request for release of a deed of trust without production of the evidence of debt. A written request to a public trustee made pursuant to ~~section 38-39-102 (1) (a) and (3.5)~~ SECTION 38-39-102 (1) (a) AND (3) to release a deed of trust without production of the original canceled evidence of debt may be in substantially the following form:

Original Note and Deed of Trust Returned to:

When recorded return to:

Prepared/Received by:

REQUEST FOR FULL / PARTIAL
RELEASE OF DEED OF TRUST AND RELEASE
BY OWNER OF INDEBTEDNESS WITHOUT
PRODUCTION OF EVIDENCE OF DEBT PURSUANT TO
~~§ 38-39-102 (1) (a) and (3.5)~~ § 38-39-102 (1) (a) AND (3),
COLORADO REVISED STATUTES

_____ Date
_____ Original Grantor (Borrower)

_____ CURRENT ADDRESS OF
_____ ORIGINAL GRANTOR, ASSUMING
_____ PARTY, OR CURRENT OWNER
 CHECK HERE IF CURRENT ADDRESS IS UNKNOWN.
_____ Original Beneficiary (Lender)

_____ Date of Deed of Trust
_____ Date of Recording and/or
_____ Re-Recording of Deed of Trust
_____ Recording Information

County Rcpt. No. and/or Film No. and/or Book/Page No. and/or Torrens Reg. No.

TO THE PUBLIC TRUSTEE OF _____ COUNTY
(The County of the Public Trustee who is the appropriate grantee to whom the above Deed of Trust should grant an interest in the property described in the Deed of Trust)

PLEASE EXECUTE AND RECORD A RELEASE OF THE DEED OF TRUST DESCRIBED ABOVE. The indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied in regard to the property encumbered by the Deed of Trust as described therein as to a full release or, in the event of a partial release, only that portion of the real property described as:

(IF NO LEGAL DESCRIPTION IS LISTED THIS WILL BE DEEMED A FULL RELEASE.)

Pursuant to ~~§ 38-39-102 (3.5)~~ § 38-39-102 (3), Colorado Revised Statutes, in

support of this Request for Release of Deed of Trust, the undersigned, as the owner of the evidence of debt secured by the Deed of Trust described above, OR AS A TITLE INSURANCE COMPANY AUTHORIZED TO REQUEST THE RELEASE OF A DEED OF TRUST PURSUANT TO § 38-39-102 (3) (c), COLORADO REVISED STATUTES, in lieu of the production or exhibition of the original evidence of debt with this Request for Release, certifies as follows:

- 1. The purpose of the Deed of Trust has been fully or partially satisfied.
- 2. The original evidence of debt is not being exhibited or produced herewith.
- 3. ~~The owner of the evidence of debt agrees that it is obligated to indemnify the Public Trustee pursuant to § 38-39-102 (3.5) (a), Colorado Revised Statutes, 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 this Request for Release.~~
- 4. ~~It is one of the entities described in § 38-39-102 (3.5) (b), Colorado Revised Statutes:~~ IT IS ONE OF THE FOLLOWING ENTITIES (CHECK APPLICABLE BOX):
 - a. THE HOLDER OF THE ORIGINAL EVIDENCE OF DEBT THAT IS A QUALIFIED HOLDER, AS SPECIFIED IN § 38-39-102 (3) (a), COLORADO REVISED STATUTES, THAT AGREES THAT IT IS OBLIGATED 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 THIS REQUEST FOR RELEASE;
 - b. THE HOLDER OF THE EVIDENCE OF DEBT REQUESTING THE RELEASE OF A DEED OF TRUST WITHOUT PRODUCING OR EXHIBITING THE ORIGINAL EVIDENCE OF DEBT THAT DELIVERS TO THE PUBLIC TRUSTEE A CORPORATE SURETY BOND AS SPECIFIED IN § 38-39-102 (3) (b), COLORADO REVISED STATUTES; OR
 - c. A TITLE INSURANCE COMPANY LICENSED AND QUALIFIED IN COLORADO, AS SPECIFIED IN § 38-39-102 (3) (c), COLORADO REVISED STATUTES, THAT AGREES THAT IT IS OBLIGATED 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 THIS REQUEST FOR RELEASE.

Name and address of ~~current owner and~~ THE holder of the ~~indebtedness~~ EVIDENCE OF DEBT secured by Deed of Trust (lender) OR NAME AND ADDRESS OF THE TITLE INSURANCE COMPANY AUTHORIZED TO REQUEST THE RELEASE OF A DEED OF TRUST.

Name, title, and address of officer, agent, or attorney of ~~current owner and~~ THE holder OF THE EVIDENCE OF DEBT SECURED BY DEED OF TRUST (LENDER).

Signature Signature
State of , County of

The foregoing Request for Release was acknowledged before me on

(Date) by*

(Notary Seal)

Date Commission Expires

*If applicable, insert title of officer and name of current owner and holder

Notary Public

Witness my hand and official seal

RELEASE OF DEED OF TRUST

WHEREAS, the Grantor(s) named above, by Deed of Trust, granted certain real property described in the Deed of Trust to the Public Trustee of the County referenced above, in the State of Colorado, to be held in trust to secure the payment of the indebtedness referred to therein; and

WHEREAS, the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied according to the written request of the ~~current owner and~~ holder of the ~~indebtedness~~ EVIDENCE OF DEBT OR TITLE INSURANCE COMPANY AUTHORIZED TO REQUEST THE RELEASE OF THE DEED OF TRUST;

NOW THEREFORE, in consideration of the premises and the payment of the statutory sum, receipt of which is hereby acknowledged, I, as the Public Trustee in the County named above, do hereby fully and absolutely release, cancel and forever discharge the Deed of Trust or that portion of the real property described above in the Deed of Trust, together with all privileges and appurtenances thereto belonging.

Public Trustee

Deputy Public Trustee

(Public Trustee use only; use appropriate label)

(Public Trustee's seal)

(If applicable: Notary Seal)

(If applicable, name and address of person creating new legal description as required by § 38-35-106.5, Colorado Revised Statutes.)

SECTION 4. Part 1 of article 39 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-39-109. When release of deed of trust is recorded. (1) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1), WHEN A RELEASE OF A DEED OF TRUST IS PRESENTED TO THE COUNTY CLERK AND RECORDER FOR RECORDING, THE COUNTY CLERK AND RECORDER SHALL RETURN THE ORIGINAL RELEASE OF A DEED OF TRUST TO THE ORIGINAL GRANTOR, ASSUMING PARTY, OR CURRENT OWNER USING THE CURRENT ADDRESS FOR THE ORIGINAL GRANTOR, ASSUMING PARTY, OR CURRENT OWNER PROVIDED TO THE PUBLIC TRUSTEE PURSUANT TO SECTION 38-39-102 (1) (a) (IV), (3) (a) (II), (3) (b) (II), (3) (c) (II), OR (5) (d).

(b) THE COUNTY CLERK AND RECORDER SHALL NOT BE REQUIRED TO RETURN THE ORIGINAL RELEASE OF A DEED OF TRUST AS SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (1) IF THE PUBLIC TRUSTEE, IN HIS OR HER DISCRETION, HAS RELEASED THE DEED OF TRUST AS SPECIFIED IN SECTION 38-39-102 (1) (a) (IV) OR IF A CURRENT ADDRESS IS NOT PROVIDED AS SPECIFIED IN SECTION 38-39-102 (9) (b).

(2) IF THE ORIGINAL RELEASE IS RETURNED TO THE COUNTY CLERK AND RECORDER AS UNDELIVERABLE OR UNABLE TO FORWARD, THE COUNTY CLERK AND RECORDER SHALL MAINTAIN THE ORIGINAL RELEASE PURSUANT TO THE POLICY OF THE OFFICE OF THE CLERK AND RECORDER.

(3) ANY ORIGINAL GRANTOR, ASSUMING PARTY, OR CURRENT OWNER SEEKING A COPY OF A RELEASE OF A DEED OF TRUST AFTER RECORDING SHALL BE SUBJECT TO APPROPRIATE COPY FEES PURSUANT TO SECTION 30-1-103, C.R.S.

SECTION 5. Applicability. This act shall apply to any requests for a release of deed of trust by the public trustee made on or after the effective date of this act.

SECTION 6. 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: April 21, 2008