

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 09-1207

BY REPRESENTATIVE(S) Gardner C., Baumgardner, Gardner B., Middleton, Murray, Nikkel, Priola, Stephens, Todd, Apuan;
also SENATOR(S) Veiga.

CONCERNING PROCEDURES TO ENFORCE A LIEN RELATED TO REAL PROPERTY.

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

SECTION 1. The introductory portion to 38-38-100.3 (10) and 38-38-100.3 (11), (14), and (19), Colorado Revised Statutes, are amended, and the said 38-38-100.3 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

38-38-100.3. Definitions. As used in articles 37 to 39 of this title, unless the context otherwise requires:

(1.5) "AMENDED MAILING LIST" MEANS THE AMENDED MAILING LIST IN ACCORDANCE WITH SECTION 38-38-103 (2) CONTAINING THE NAMES AND ADDRESSES IN THE MAILING LIST AS DEFINED IN SECTION 38-38-100.3 (14) AND THE NAMES AND ADDRESSES OF THE FOLLOWING PERSONS:

(a) THE OWNER OF THE PROPERTY, IF DIFFERENT THAN THE GRANTOR OF THE DEED OF TRUST, AS OF THE DATE AND TIME OF THE RECORDING OF

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

THE NOTICE OF ELECTION AND DEMAND OR LIS PENDENS AS SHOWN IN THE RECORDS AT THE ADDRESS INDICATED IN SUCH RECORDED INSTRUMENT; AND

(b) EACH PERSON, EXCEPT THE PUBLIC TRUSTEE, WHO APPEARS TO HAVE AN INTEREST IN THE PROPERTY DESCRIBED IN THE COMBINED NOTICE BY AN INSTRUMENT RECORDED PRIOR TO THE DATE AND TIME OF THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND OR LIS PENDENS WITH THE CLERK AND RECORDER OF THE COUNTY WHERE THE PROPERTY OR ANY PORTION THEREOF IS LOCATED AT THE ADDRESS OF THE PERSON INDICATED ON THE INSTRUMENT, IF THE PERSON'S INTEREST IN THE PROPERTY MAY BE EXTINGUISHED BY THE FORECLOSURE.

(10) "Holder of an evidence of debt" means the person in actual possession of or ~~otherwise~~ PERSON 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:

(11) "Junior lien" means a deed of trust or other lien or encumbrance upon the property FOR WHICH THE AMOUNT DUE AND OWING THEREUNDER IS subordinate to the deed of trust or other lien being foreclosed.

(14) "Mailing list" means the ~~initial~~ mailing list in accordance with section 38-38-101 (1) (e) ~~the supplemental mailing list in accordance with section 38-38-101 (1) (f), or the amended mailing list in accordance with section 38-38-103 (2)~~; provided to the officer by the holder of the evidence of debt or the attorney for the holder CONTAINING THE NAMES AND ADDRESSES OF THE FOLLOWING PERSONS:

(a) THE ORIGINAL GRANTOR OF THE DEED OF TRUST OR OBLIGOR UNDER ANY OTHER LIEN BEING FORECLOSED AT THE ADDRESS SHOWN IN THE RECORDED DEED OF TRUST OR OTHER LIEN BEING FORECLOSED AND, IF DIFFERENT, THE LAST ADDRESS, IF ANY, SHOWN IN THE RECORDS OF THE HOLDER OF THE EVIDENCE OF DEBT;

(b) ANY PERSON KNOWN OR BELIEVED BY THE HOLDER OF THE EVIDENCE OF DEBT TO BE PERSONALLY LIABLE UNDER THE EVIDENCE OF

DEBT SECURED BY THE DEED OF TRUST OR OTHER LIEN BEING FORECLOSED AT THE LAST ADDRESS, IF ANY, SHOWN IN THE RECORDS OF THE HOLDER;

(c) THE OCCUPANT OF THE PROPERTY, ADDRESSED TO "OCCUPANT" AT THE ADDRESS OF THE PROPERTY; AND

(d) WITH RESPECT TO A PUBLIC TRUSTEE SALE, A LESSEE WITH AN UNRECORDED POSSESSORY INTEREST IN THE PROPERTY AT THE ADDRESS OF THE PREMISES OF THE LESSEE AND, IF DIFFERENT, THE ADDRESS OF THE PROPERTY, TO THE EXTENT THAT THE HOLDER OF THE EVIDENCE OF DEBT DESIRES TO TERMINATE THE POSSESSORY INTEREST WITH THE FORECLOSURE.

(17.5) "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION OR AGENCY, BUSINESS TRUST, ESTATE, TRUST, LIMITED LIABILITY COMPANY, PARTNERSHIP, ASSOCIATION, OR OTHER LEGAL ENTITY.

(19) "Publish", "publication", "republish", or "republication" means the placement by ~~or on behalf of~~ an officer of ~~an advertisement~~ A LEGAL NOTICE THAT MEETS THE REQUIREMENTS SET FORTH IN SECTION 24-70-103, C.R.S., 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 2. 38-38-101 (1), (4) (g), (4) (j), (6), (9), and (10), Colorado Revised Statutes, are amended, and the said 38-38-101 (4) is further amended BY THE ADDITION OF A NEW PARAGRAPH, 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:

(a) A notice of election and demand signed and acknowledged by the holder of the evidence of debt or signed by the attorney for the holder;

(b) The original evidence of debt, INCLUDING ANY MODIFICATIONS TO 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 in the amount of one and one-half times the face amount of the original evidence of debt; or

(II) A copy of the evidence of debt and a certification signed and properly acknowledged by a holder of an evidence of debt acting for itself or as agent, nominee, or trustee under subsection (2) of this section or a statement signed by the attorney for such holder, citing the paragraph of section 38-38-100.3 (20) under which the holder claims to be a qualified holder and certifying or stating that the copy of the evidence of debt is true and correct and that the use of the copy is subject to the conditions described in paragraph (a) of subsection (2) of this section; OR

(III) A CERTIFIED COPY OF A MONETARY JUDGMENT ENTERED BY A COURT OF COMPETENT JURISDICTION.

(c) The original recorded deed of trust securing the evidence of debt AND ANY ORIGINAL RECORDED MODIFICATIONS OF THE DEED OF TRUST OR ANY RECORDED PARTIAL RELEASES OF THE DEED OF TRUST, or in lieu thereof, one of the following:

(I) ~~A Certified copy~~ COPIES of the recorded deed of trust AND ANY RECORDED MODIFICATIONS OF THE DEED OF TRUST OR RECORDED PARTIAL RELEASES OF THE DEED OF TRUST; or

(II) ~~A copy~~ COPIES of the recorded deed of trust AND ANY RECORDED MODIFICATIONS OF THE DEED OF TRUST OR RECORDED PARTIAL RELEASES OF THE DEED OF TRUST and a certification signed and properly acknowledged by a holder of an evidence of debt acting for itself or as an agent, nominee, or trustee under subsection (2) of this section or a signed statement by the attorney for such holder, citing the paragraph of section 38-38-100.3 (20) under which the holder claims to be a qualified holder and certifying or stating that the ~~copy~~ COPIES of the recorded deed of trust ~~is~~ AND ANY RECORDED MODIFICATIONS OF THE DEED OF TRUST OR RECORDED PARTIAL RELEASES OF THE DEED OF TRUST ARE true and correct and that the use of the

~~copy~~ COPIES is subject to the conditions described in paragraph (a) of subsection (2) of this section;

(d) A combined notice pursuant to section 38-38-103; EXCEPT THAT THE COMBINED NOTICE MAY BE OMITTED WITH THE PRIOR APPROVAL OF THE OFFICER BECAUSE THE OFFICER WILL SUPPLY THE COMBINED NOTICE;

(e) ~~An initial~~ A mailing list; ~~containing the names and addresses of the persons listed in section 38-38-103 (1) (a) (I); and~~

(f) ~~No less than sixty calendar days prior to the first scheduled sale date a supplemental mailing list containing the names and addresses of the persons listed in section 38-38-103 (1) (a) (H)~~ ANY AFFIDAVIT RECORDED PURSUANT TO SECTION 38-35-109 (5) AFFECTING THE DEED OF TRUST DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (1), WHICH AFFIDAVIT SHALL BE ACCEPTED BY THE PUBLIC TRUSTEE AS MODIFYING THE DEED OF TRUST FOR ALL PURPOSES UNDER THIS ARTICLE 38 ONLY IF THE AFFIDAVIT IS FILED WITH THE PUBLIC TRUSTEE AT THE SAME TIME AS THE OTHER DOCUMENTS REQUIRED UNDER THIS SUBSECTION (1); AND

(g) A STATEMENT EXECUTED BY THE HOLDER OF AN EVIDENCE OF DEBT, OR THE ATTORNEY FOR SUCH HOLDER, IDENTIFYING, TO THE BEST KNOWLEDGE OF THE PERSON EXECUTING SUCH STATEMENT, THE NAME AND ADDRESS OF THE CURRENT OWNER OF THE PROPERTY DESCRIBED IN THE NOTICE OF ELECTION AND DEMAND.

(4) **Notice of election and demand.** A notice of election and demand filed with the public trustee pursuant to this section shall contain the following:

(g) A LEGAL description of the property TO BE FORECLOSED AS SET FORTH IN THE DOCUMENTS TO BE PROVIDED TO THE PUBLIC TRUSTEE PURSUANT TO PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION;

(j) The name, address, BUSINESS TELEPHONE NUMBER, and bar registration number of the attorney for the holder of the evidence of debt, which may be indicated in the signature block of the notice of election and demand; AND

(k) A DESCRIPTION OF ANY CHANGES TO THE DEED OF TRUST

DESCRIBED IN THE NOTICE OF ELECTION AND DEMAND THAT ARE BASED ON AN AFFIDAVIT FILED WITH THE PUBLIC TRUSTEE UNDER PARAGRAPH (f) OF SUBSECTION (1) OF THIS SECTION, TOGETHER WITH THE RECORDING DATE AND RECEPTION NUMBER OR BOOK AND PAGE NUMBER OF THE RECORDING OF THAT AFFIDAVIT IN THE RECORDS.

(6) Indorsement or assignment. (a) PROPER INDORSEMENT OR ASSIGNMENT OF AN EVIDENCE OF DEBT SHALL INCLUDE THE ORIGINAL INDORSEMENT OR ASSIGNMENT OR A CERTIFIED COPY OF AN INDORSEMENT OR ASSIGNMENT RECORDED IN THE COUNTY WHERE THE PROPERTY BEING FORECLOSED IS LOCATED.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (6), the original evidence of debt or a copy thereof without proper indorsement or assignment shall be deemed to be properly indorsed or assigned if a qualified holder presents the original evidence of debt or a copy thereof to the officer together with a statement in the certification of the qualified holder or in the statement of the attorney for the qualified holder pursuant to subparagraph (II) of paragraph (b) of subsection (1) of this section that the party on whose behalf the foreclosure was commenced is the holder of the evidence of debt. ~~Proper indorsement or assignment of an evidence of debt shall also include, in addition to the original indorsement or assignment, a certified copy of an indorsement or assignment recorded in the county where the property being foreclosed is located.~~

(9) Partial release from deed of trust. At any time AFTER THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND BUT prior to the sale, a portion of the property may be released from the deed of trust being foreclosed pursuant to section 38-39-102 or as otherwise provided by order of a court of competent jurisdiction recorded in the county where the property being released is located. Upon recording of the release OR COURT ORDER, the holder of the evidence of debt or the attorney for the holder shall pay the fee described in section 38-37-104 (1) (b) (IX), amend the combined notice, and, in the case of a public trustee foreclosure, amend the notice of election and demand to describe the property that continues to be secured by the deed of trust or other lien being foreclosed as of the effective date of the release OR COURT ORDER. The public trustee shall record the amended notice of election and demand upon receipt. Upon receipt of the amended combined notice, the public trustee shall republish and mail the

amended combined notice in the manner set forth in section 38-38-109 (1) (b).

(10) **Deposit.** The public trustee may require a deposit of up to ~~five~~ SIX hundred FIFTY dollars OR THE AMOUNT OF THE FEE PERMITTED PURSUANT TO SECTION 38-37-104 (1) (b) (I), WHICHEVER IS GREATER, at the time the notice of election and demand is filed, to be applied against the fees and costs of the public trustee. The public trustee may allow the attorney for the holder of the evidence of debt to establish one or more accounts with the public trustee, which the public trustee may use to pay the fees and costs of the public trustee in any foreclosure filed by the holder or the attorney for the holder, or through which the public trustee may transmit refunds or cures, excess proceeds, or redemption proceeds.

SECTION 3. 38-38-101 (8), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

38-38-101. Holder of evidence of debt may elect to foreclose. (8) **Assignment or transfer of debt during foreclosure.** (c) IF AN ASSIGNMENT OR TRANSFER IS MADE TO A HOLDER OF AN EVIDENCE OF DEBT OTHER THAN A QUALIFIED HOLDER, THE HOLDER MUST FILE WITH THE OFFICER THE ORIGINAL EVIDENCE OF DEBT AND THE ORIGINAL RECORDED DEED OF TRUST OR, IN LIEU THEREOF, THE DOCUMENTS REQUIRED IN PARAGRAPHS (b) AND (c) OF SUBSECTION (1) OF THIS SECTION. AN ASSIGNEE OR TRANSFEREE SHALL BE PRESUMED TO NOT BE A QUALIFIED HOLDER, AND AS SUCH, SHALL BE SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH (c), UNLESS A SIGNED STATEMENT BY THE ATTORNEY FOR SUCH ASSIGNEE OR TRANSFEREE THAT CITES THE PARAGRAPH OF SECTION 38-38-100.3 (20) UNDER WHICH THE ASSIGNEE OR TRANSFEREE CLAIMS TO BE A QUALIFIED HOLDER IS FILED WITH THE OFFICER.

SECTION 4. 38-38-102 (1), Colorado Revised Statutes, is amended to read:

38-38-102. Recording notice of election and demand - record of sale. (1) No later than ten business days following the receipt of the notice of election and demand, the public trustee shall REVIEW THE DOCUMENTS FILED PURSUANT TO SECTION 38-38-101 (1) AND, IF THE FILING IS COMPLETE, cause the notice to be recorded in the office of the county clerk and recorder of the county where the property described in the notice is located.

SECTION 5. 38-38-102.5 (2) and (3), Colorado Revised Statutes, are amended to read:

38-38-102.5. Notice prior to residential foreclosure - hotline.

(2) At least thirty days before filing a notice of election and demand and at least thirty days after default, the holder shall mail a notice addressed to the ~~debtor~~ ORIGINAL GRANTOR OF THE DEED OF TRUST AT THE ADDRESS IN THE RECORDED DEED OF TRUST OR OTHER LIEN BEING FORECLOSED AND, IF DIFFERENT, at the LAST address shown ~~on its~~ IN THE HOLDER'S records, containing the telephone number of the Colorado foreclosure hotline and the direct telephone number of the holder's loss mitigation representative or department.

(3) (a) This section shall apply only to a default consisting solely of the ~~debtor's~~ failure OF THE ORIGINAL GRANTOR OF THE DEED OF TRUST to make one or more required payments.

(b) With respect to defaults on the same obligation, after the holder has once given the ~~debtor~~ ORIGINAL GRANTOR OF THE DEED OF TRUST a notice as specified in subsection (2) of this section, this section imposes no limitation on the holder's right to foreclose with respect to any subsequent default that occurs within twelve months after such notice.

SECTION 6. 38-38-103 (1) (a), (1) (b), (2) (a), (3), (4) (a) (IV), (4) (b), (5) (a), and (5) (b), Colorado Revised Statutes, are amended to read:

38-38-103. Combined notice - publication - providing information. (1) (a) NO MORE THAN TWENTY CALENDAR DAYS AFTER THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND, 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:~~

~~(1) No more than twenty calendar days after the recording of the notice of election and demand, to:~~

~~(A) The original grantor of the deed of trust or obligor under any other lien being foreclosed at the address shown in the recorded deed of trust or other lien being foreclosed and, if different, the last address, if any, shown in the records of the holder of the evidence of debt;~~

~~(B) Any person known or believed by the holder of the evidence of debt to be personally liable under the evidence of debt secured by the deed of trust or other lien being foreclosed at the last address, if any, shown in the records of the holder; and~~

~~(C) The occupant of the property, addressed to "occupant" at the address of the property;~~

~~(H) 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:~~

~~(A) The original grantor of the deed of trust or obligor under any other lien being foreclosed at the address shown in the recorded deed of trust or other lien being foreclosed and, if different, the last address, if any, shown in the records of the holder of the evidence of debt;~~

~~(B) The owner of the property as of the date and time of the recording of the notice of election and demand or lis pendens as shown in the records at the address indicated in such recorded instrument;~~

~~(C) Any person known or believed by the holder of the evidence of debt to be personally liable under the evidence of debt secured by the deed of trust or other lien being foreclosed, at the last address, if any, shown in the records of the holder;~~

~~(D) The occupant of the property, addressed to "occupant" at the address of the property; and~~

~~(E) Each person who appears to have an interest in the property described in the combined notice by an instrument recorded prior to the date and time of the recording of the notice of election and demand or lis pendens with the clerk and recorder of the county where the property or any portion thereof is located at the address of the person indicated on such instrument, if the person's interest in the property may be extinguished by the foreclosure.~~

~~(b) With respect to a public trustee sale, if a deed of trust being foreclosed has priority over a lessee who has an unrecorded possessory interest in the property and the holder of the evidence of debt desires to~~

~~terminate the possessory interest with the foreclosure, the holder shall include on the mailing list the lessee together with the address of the premises of the lessee and, if different, the address of the property~~ NO MORE THAN SIXTY CALENDAR DAYS NOR LESS THAN FORTY-FIVE CALENDAR DAYS PRIOR TO THE FIRST SCHEDULED DATE OF SALE, THE PUBLIC TRUSTEE SHALL MAIL A COMBINED NOTICE AS DESCRIBED IN SUBSECTION (4) OF THIS SECTION TO THE PERSONS AS SET FORTH IN THE MOST RECENT AMENDED MAILING LIST. IF THERE IS NO AMENDED MAILING LIST, THE PUBLIC TRUSTEE SHALL MAIL A COMBINED NOTICE AS DESCRIBED IN SUBSECTION (4) OF THIS SECTION TO THE PERSONS AS SET FORTH IN THE MAILING LIST.

(2) (a) The holder of the evidence of debt or the attorney for the holder ~~may~~ SHALL deliver an amended mailing list to the officer ~~from time to time, but~~ AS NEEDED. IF AN AMENDED MAILING LIST IS RECEIVED AFTER THE OFFICER HAS SENT THE MAILING DESCRIBED IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, THE OFFICER SHALL CONTINUE THE SALE TO no less than sixty-five calendar days ~~prior to the actual date of sale~~ AFTER RECEIPT OF THE AMENDED MAILING LIST. The officer shall send the notice pursuant to subsection (4) of this section to the persons on the amended mailing list no less than forty-five calendar days prior to the actual date of sale.

(3) The sheriff shall mail a combined notice as described in subsection (4) of this section to the persons named at the addresses indicated in a THE mailing list ~~containing the names and addresses of the persons listed in subparagraph (H) of paragraph (a) of subsection (1) of this section~~ no less than sixteen nor more than thirty calendar days after the holder of the evidence of debt or the attorney for the holder delivers to the sheriff the mailing list and the original or a copy of a decree of foreclosure or a writ of execution directing the sheriff to sell property.

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

(IV) ~~The name, address, and telephone number of each attorney, if any, representing the holder of the evidence of debt~~ THE DATE TO WHICH THE SALE HAS BEEN CONTINUED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION;

(b) A legible copy of this section and ~~sections 38-37-108,~~

~~38-38-104, 38-38-301, 38-38-304, 38-38-305, and 38-38-306~~ SECTIONS 38-37-108, 38-38-104, 38-38-301, 38-38-302, 38-38-304, 38-38-305, AND 38-38-306 shall be sent with all notices pursuant to this section.

(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~~ COMMENCE PUBLICATION OF the combined notice, omitting BOTH THE STATEMENTS UNDER SUBPARAGRAPHS (II) AND (III) OF PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION AND 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.

(b) The officer shall review ~~all such publications~~ THE PUBLICATION of the combined notice for accuracy.

SECTION 7. 38-38-104 (1) (a) (V), (1) (d), and (2) (a), Colorado Revised Statutes, are amended, and the said 38-38-104 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

38-38-104. Right to cure when default is nonpayment - right to cure for certain technical defaults. (1) 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 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:

(a) (V) The holder of an order or judgment entered by a court of competent jurisdiction as evidenced in the records after the date and time of the recording of the notice of election and demand or lis pendens ordering title to the property to be vested in a person other than the owner; ~~in connection with a divorce, property settlement, quiet title action, or similar proceeding;~~

(d) A holder of an interest junior to the lien being foreclosed by virtue of being a lienor or lessee of, or a holder of an easement or license on, the property or a contract vendee of the property, if the instrument evidencing the interest was recorded in the records prior to the date and time of the recording of the notice of election and demand or lis pendens. IF, PRIOR TO THE DATE AND TIME OF THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND OR LIS PENDENS, A LIEN IS RECORDED IN AN INCORRECT COUNTY, THE HOLDER'S RIGHTS UNDER THIS SECTION SHALL ONLY BE VALID IF THE LIEN IS RERECORDED IN THE CORRECT COUNTY AT LEAST FIFTEEN CALENDAR DAYS PRIOR TO THE ACTUAL DATE OF SALE.

(2) (a) Promptly upon receipt of a notice of intent to cure by the officer, but no less than twelve calendar days prior to the date of sale, the officer shall transmit by mail, facsimile, or electronic means to the person executing the notice of election and demand a request for a statement of all sums necessary to cure the default. The statement shall be filed with the officer by the attorney for the holder or, if none, by the holder of the evidence of debt and shall set forth the amounts necessary to cure as identified in paragraph (b) of this subsection (2), with the same detail as required for a bid pursuant to section 38-38-106. UPON RECEIPT OF THE STATEMENT OF THE AMOUNTS NEEDED TO CURE, THE OFFICER SHALL TRANSMIT THE STATEMENT IN WRITING TO THE PERSON FILING THE NOTICE OF INTENT TO CURE THE DEFAULT.

(6) FOLLOWING EXPIRATION OF THE PERIOD FOR WHICH THE CURE STATEMENT IS EFFECTIVE, BUT NO LESS THAN FIFTEEN CALENDAR DAYS PRIOR TO THE DATE OF SALE, THE PERSON WHO ORIGINALLY SUBMITTED THE NOTICE OF INTENT TO CURE MAY MAKE A WRITTEN REQUEST TO THE PUBLIC TRUSTEE FOR AN UPDATE OF THE AMOUNT NECESSARY TO CURE. UPON RECEIPT BY THE PUBLIC TRUSTEE OF SUCH WRITTEN REQUEST FOR UPDATED CURE FIGURES, SUBSECTION (2) OF THIS SECTION SHALL APPLY.

(7) IF THE HOLDER OF THE EVIDENCE OF DEBT OR THE ATTORNEY FOR THE HOLDER RECEIVES A REQUEST FOR A CURE STATEMENT UNDER PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION AND DOES NOT FILE A CURE STATEMENT WITH THE PUBLIC TRUSTEE BY THE EARLIER OF TEN BUSINESS DAYS AFTER RECEIPT OF THE REQUEST OR THE CLOSE OF OPERATIONS IN THE PUBLIC TRUSTEE'S OFFICE ON THE EIGHTH CALENDAR DAY BEFORE THE DATE OF THE SALE, THE OFFICER SHALL CONTINUE THE SALE FOR ONE WEEK. THEREAFTER AND UNTIL THE CURE STATEMENT IS

FILED, THE OFFICER SHALL CONTINUE THE SALE AN ADDITIONAL WEEK FOR EACH WEEK THAT THE HOLDER FAILS TO FILE THE CURE STATEMENT; EXCEPT THAT THE SALE SHALL NOT BE CONTINUED BEYOND THE PERIOD OF CONTINUANCE ALLOWED UNDER SECTION 38-38-109 (1) (a).

SECTION 8. 38-38-105 (2), Colorado Revised Statutes, is amended to read:

38-38-105. Court order authorizing sale mandatory. (2) (a) 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 OR OTHER RULE 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~~ HEARING WAS HELD, 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. A SALE HELD WITHOUT AN ORDER AUTHORIZING SALE ISSUED IN COMPLIANCE WITH THIS PARAGRAPH (a) SHALL BE INVALID.

(b) THE PUBLIC TRUSTEE SHALL POSTPONE THE SALE, UNLESS the holder or the attorney for the holder ~~shall cause~~ CAUSES 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~~ A SALE HELD IN VIOLATION OF THIS PARAGRAPH (b) SHALL NOT BE INVALID IF AN ORDER THAT COMPLIED WITH THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2) WAS ENTERED.

SECTION 9. 38-38-106 (2) and (7), Colorado Revised Statutes, are amended to read:

38-38-106. Bid required - form of bid. (2) The holder of the evidence of debt shall submit a signed and acknowledged bid, or the attorney for the holder shall submit a signed bid, which shall specify the following amounts, itemized in substantially the following categories and in substantially the following form:

BID

To: _____

Public Trustee (or Sheriff) of the County (or City and County) of _____,
State of Colorado (hereinafter the "officer").

Date: _____

_____, whose mailing address is _____, bids the
sum of \$_____ in your Sale No. _____ to be held on the ____ day of _____,
20__.

The following is an itemization of all amounts due the holder of the
evidence of debt secured by the deed of trust or other lien being foreclosed.

STREET ADDRESS OF PROPERTY BEING
FORECLOSED, IF KNOWN: _____
REGULAR [] / DEFAULT [] RATE OF INTEREST AS OF THE DATE OF
SALE: _____

(Inapplicable items may be omitted):

AMOUNTS DUE UNDER THE EVIDENCE OF DEBT:
Principal \$ _____
Interest _____
Late charges _____
Allowable prepayment penalties or
premiums _____
Other amounts due under the evidence of debt
(specify) _____

CATEGORY SUBTOTAL: \$ _____

OTHER FEES AND COSTS ADVANCED BY THE HOLDER OF EVIDENCE OF
DEBT:
PROPERTY, GENERAL LIABILITY, AND
CASUALTY INSURANCE _____
PROPERTY INSPECTIONS _____
APPRAISALS _____
TAXES AND ASSESSMENTS _____
UTILITY CHARGES OWED OR INCURRED _____
HOMEOWNER'S ASSOCIATION _____

ASSESSMENT PAID	_____	
PERMITTED AMOUNTS PAID ON	_____	
PRIOR LIENS	_____	
PERMITTED LEASE PAYMENTS	_____	
Less impound/escrow account credit	_____	
Plus impound/escrow account	_____	
deficiency	_____	
Other (describe)	_____	
Category subtotal:		\$ _____
Plus ATTORNEY fees and costs for the following ADVANCES:		
ATTORNEY FEES	_____	
Title commitments and insurances or abstractor	_____	
charges	_____	
Property, general liability, and	_____	
casualty insurance	_____	
Court docketing	_____	
Appraisals	_____	
Property inspections	_____	
Statutory notice	_____	
Postage	_____	
Electronic transmissions	_____	
Photocopies	_____	
Attorney fees	_____	
Telephone	_____	
OTHER (DESCRIBE)	_____	
Category subtotal:		\$ _____
Plus OFFICER fees and costs: for the following:		
Officer STATUTORY FEE	_____	
Publication CHARGES	_____	
Other (describe)	_____	
Category subtotal:		\$ _____
Plus the following:		
Permitted amounts paid on prior liens	_____	
Taxes and assessments	_____	
Utility charges owed or incurred	_____	
Homeowners' association assessments	_____	
paid	_____	
Permitted lease payments	_____	
Category subtotal:		\$ _____
Total due holder of the evidence of		

debt

Bid _____
\$ _____
Deficiency \$ _____

I enclose herewith the following:

1. Order authorizing sale.
2. Check (if applicable) to your order in the sum of \$_____ covering the balance of your fees and costs.
3. Other: _____ .

Please send us the following:

- ~~1. Certificate of Purchase~~
- ~~2. Confirmation Deed~~
- ~~3. 1. Promissory note with THE deficiency, IF ANY, noted thereon~~
- ~~4. 2. Refund for overpayment of officer's fees and costs, if any~~
- ~~5. 3. Other: _____ .~~

Name of the holder of the evidence of debt
or AND the attorney for the holder:

HOLDER: _____

ATTORNEY: _____

By: _____

ATTORNEY REGISTRATION NUMBER: _____

ATTORNEY address: _____

ATTORNEY BUSINESS telephone: _____

(7) (a) Other than a bid by the holder of the evidence of debt not exceeding the total amount due shown on the bid pursuant to subsection (2) of this section, the payment of any bid amount at sale must be received by the officer no later than the date and time of the sale, or at an alternative time after the sale and on the day of the sale, as specified in writing by the officer. The payment shall be in the form specified in section 38-37-108. If the officer has not received full payment of the bid amount from the highest bidder at the sale pursuant to this subsection (7), the next highest bidder who has timely tendered the full amount of the bid under this subsection (7) shall be deemed the successful bidder at the sale.

(b) THE OFFICER MAY ESTABLISH WRITTEN POLICIES RELATING TO ALL ASPECTS OF THE FORECLOSURE SALE THAT ARE CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE. THE WRITTEN POLICIES SHALL BE MADE AVAILABLE TO THE GENERAL PUBLIC.

SECTION 10. The introductory portion to 38-38-108 (2) (a) (I), Colorado Revised Statutes, 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~~ EXCEPT THAT THE OFFICER MAY MAKE THE DETERMINATION AT ANY EARLIER TIME UPON PRESENTATION OF ACCEPTABLE EVIDENCE THAT THE PROPERTY IS NOT AGRICULTURAL PROPERTY. THE OFFICER shall accept the following as evidence that the property is not agricultural property:

SECTION 11. 38-38-109 (1) (b), (1) (c), (2) (b) (I), (2) (d), and (3) (b), Colorado Revised Statutes, are amended to read:

38-38-109. Continuance of sale - effect of bankruptcy - withdrawal of sale. (1) **Continuance.** (b) At the request of the holder of the evidence of debt or the attorney for the holder OR UPON THE OFFICER'S OWN INITIATIVE, the officer shall correct any errors in a published combined notice and shall continue the 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). IF THE OFFICER FAILED TO PUBLISH THE COMBINED NOTICE AS REQUIRED BY SECTION 38-38-103 (5), THE OFFICER SHALL CONTINUE THE THEN-SCHEDULED DATE OF SALE TO A FUTURE DATE WITHIN THE PERIOD OF CONTINUANCE ALLOWED BY PARAGRAPH (a) OF THIS SUBSECTION (1). The future date of sale TO WHICH THE SALE IS CONTINUED PURSUANT TO THIS PARAGRAPH (b) 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 MOST RECENT 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. IF THERE IS NO AMENDED MAILING LIST, THE OFFICER SHALL MAIL A COPY OF THE COMBINED NOTICE, OR CORRECTED COMBINED NOTICE IF THE ORIGINAL COMBINED NOTICE WAS ERRONEOUS, TO THE PERSONS AS SET FORTH IN THE

MAILING LIST.

~~(c) (I) (A) 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) thirty calendar days or less before the date of sale and does not file a cure statement 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 but not beyond the period of continuance allowed by paragraph (a) of this subsection (1). IF A CURE STATEMENT IS NOT TIMELY FILED, THE SALE WILL BE CONTINUED PURSUANT TO SECTION 38-38-104 (7).~~

~~(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 business days after receipt of the request, the public trustee 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).~~

~~(II) If the cure statement is not filed with the public trustee by 12 noon on the seventh calendar day before the last date of sale permitted under paragraph (a) of this subsection (1), the foreclosure shall be deemed withdrawn, and the holder of the evidence of debt or the attorney for the holder shall file a written withdrawal of the notice of election and demand with the public trustee. The public trustee shall record the withdrawal and collect all fees and costs actually incurred by the public trustee together with a withdrawal fee in the amount authorized under section 38-37-104 (1) (b) (V).~~

(2) Effect of bankruptcy proceedings. (b) (I) If ~~at~~ THE publications of the combined notice prescribed by section 38-38-103 (5) or 13-56-201 (1), C.R.S., HAVE NOT BEEN STARTED OR IF ALL THE PUBLICATIONS 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.

(d) If a sale is enjoined OR SET ASIDE by court order, the same procedures as set forth in paragraphs (a), ~~and~~ (b), AND (c) of this subsection (2) shall apply unless the court order specifies otherwise. THE FEES PRESCRIBED IN SECTION 38-37-104 (1) (b) (VII) AND (1) (b) (VIII) SHALL APPLY TO THE PROCEDURES DESCRIBED IN THIS SUBSECTION (2).

(3) **Withdrawal.** (b) If there is no sale and if a withdrawal is not filed within forty-five calendar days after the last date of sale permitted by law, the public trustee may transmit by mail or electronic transmission to the attorney for the holder of the evidence of debt, or if no attorney then to the holder, a notice that a withdrawal of the notice of election and demand may be recorded by the public trustee unless a response requesting that such withdrawal ~~not be recorded~~ BE DELAYED FOR NINETY CALENDAR DAYS is received by the public trustee within thirty calendar days after the date the public trustee's notice is transmitted. IF SUCH RESPONSE IS RECEIVED BY THE PUBLIC TRUSTEE AND THERE IS NO SALE NOR IS A WITHDRAWAL FILED WITHIN THE NINETY-DAY DELAY, THE PUBLIC TRUSTEE MAY RECORD A WITHDRAWAL OF THE NOTICE OF ELECTION AND DEMAND. If a withdrawal is recorded during the pendency of an automatic stay imposed on the sale based on any proceeding filed under the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, the withdrawal shall be void and of no force and effect, and the public trustee shall mail to all persons on the mailing list a notice that the withdrawal of the notice of election and demand occurred during the pendency of an injunction or bankruptcy stay and is void and of no force and effect. The public trustee shall cause the notice to be recorded in the office of the county clerk and recorder of the county where the property described in the notice is located. All unpaid fees and costs owed and incurred by the public trustee, as well as a withdrawal fee in the amount authorized by section 38-37-104 (1) (b) (VI), shall be paid by the holder. The amount due shall accrue interest at the rate provided by law. Until all amounts due and owing are paid, the public trustee shall be entitled to hold all documentation in the public trustee's possession and to withhold all other services requested by the holder or the attorney for the holder with respect to the deed of trust or other lien being foreclosed.

SECTION 12. 38-38-111 (1) and (2), Colorado Revised Statutes,

are amended to read:

38-38-111. Treatment of excess proceeds. (1) If, at a sale, the property is sold for an amount in excess of the ~~sum of the fees and costs pursuant to section 38-37-104, the fees and costs of sale, and moneys due~~ WRITTEN OR AMENDED BID AMOUNT EXECUTED BY the holder of the evidence of debt secured by the deed of trust or other lien being foreclosed, such excess proceeds shall be FIRST APPLIED TO ANY DEFICIENCY AS INDICATED IN THE HOLDER'S BID, AND THEN paid to the officer to be held in escrow until the end of all redemption periods as provided in section 38-38-302.

(2) Upon the expiration of all redemption periods provided in section 38-38-302, ~~the~~ ANY REMAINING 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, OR A LIENOR WHO ACCEPTS LESS THAN A FULL REDEMPTION PURSUANT TO SECTION 38-38-302 (4) (c) 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.

SECTION 13. 38-38-113 (1), Colorado Revised Statutes, is amended 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 RECORDING DATE AND 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.

SECTION 14. The introductory portion to 38-38-302 (1) and 38-38-302 (1) (c), (1) (d) (III), (1) (d) (IV), (1) (f), (3) (a), (6), and (8), Colorado Revised Statutes, 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 THE FOLLOWING REQUIREMENTS ARE MET TO THE SATISFACTION OF THE OFFICER:

(c) The lienor's lien appears by instruments that were duly recorded in the office of the clerk and recorder of the county ~~where all or a portion of the property is located~~ prior to the recording of the notice of election and demand or lis pendens and the lienor IS ONE OF THE PERSONS WHO would be entitled to cure pursuant to section 38-38-104 (1), REGARDLESS OF WHETHER SUCH LIENOR FILED A NOTICE OF INTENT TO CURE. IF, PRIOR TO THE DATE AND TIME OF THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND OR LIS PENDENS, A LIEN WAS RECORDED IN AN INCORRECT COUNTY, THE HOLDER'S RIGHTS UNDER THIS SECTION SHALL BE VALID ONLY IF THE LIEN IS RERECORDED IN THE CORRECT COUNTY AT LEAST FIFTEEN CALENDAR DAYS PRIOR TO THE ACTUAL DATE OF SALE.

(d) The lienor has, within 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 eight business days after sale if:

(III) ~~All redemption periods have not expired~~ A REDEMPTION PERIOD

HAS BEEN CREATED BY THE TIMELY FILING OF A NOTICE OF INTENT TO REDEEM; and

(IV) The notice of intent to redeem is accompanied by a written authorization from the attorney for the holder of the certificate of purchase according to the records of the officer conducting the sale, or, if no attorney is shown, then the holder of the certificate of purchase, OR, IF A REDEMPTION HAS OCCURRED, FROM THE IMMEDIATELY PRIOR REDEEMING LIENOR, OR THE ATTORNEY FOR THE IMMEDIATELY PRIOR REDEEMING LIENOR, authorizing the officer to accept such notice of intent to redeem.

(f) The lienor has attached to the notice of intent to redeem a signed and properly acknowledged statement of the lienor, or a signed statement by the lienor's attorney, setting forth the amount required to redeem the lienor's lien, including per diem interest, through the end of the ~~lienor's redemption period~~ NINETEENTH BUSINESS DAY AFTER THE SALE WITH THE SAME SPECIFICITY AND ITEMIZATION AS REQUIRED IN SECTION 38-38-106. IF THE AMOUNT REQUIRED TO REDEEM THE LIENOR'S LIEN SHOWN ON THE STATEMENT IS ZERO, THE LIENOR HAS NO RIGHT TO REDEEM UNLESS SECTION 38-38-305 APPLIES.

(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 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. A HOLDER OF THE CERTIFICATE OF PURCHASE THAT IS NOT A QUALIFIED HOLDER, OR THE ATTORNEY FOR THE HOLDER, SHALL ALSO SUBMIT TO THE OFFICER RECEIPTS, INVOICES, EVIDENCE OF ELECTRONIC ACCOUNT-TO-ACCOUNT TRANSFERS, OR COPIES OF LOAN SERVICING COMPUTER SCREENS EVIDENCING THE FEES AND COSTS AND VERIFYING THAT THE FEES AND COSTS WERE ACTUALLY INCURRED AS OF THE DATE OF THE STATEMENT, ALONG WITH THE PER DIEM AMOUNTS THAT ACCRUE AFTER THE DATE OF SALE. 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.

(6) **Certificate of lienor.** A redeeming lienor shall pay to the officer the amount required to redeem and shall deliver to the officer a signed and properly acknowledged statement by the lienor or a signed statement by the lienor's attorney showing the amount owing on such lien, including per diem interest and fees and costs actually incurred that are permitted by subsection (7) of this section and for which the lienor has submitted to the officer receipts, invoices, evidence of electronic account-to-account transfers, or copies of loan servicing computer screens evidencing the fees and costs and verifying that the fees and costs were actually incurred as of the date of sale ~~THE STATEMENT OF REDEMPTION~~ with the per diem amounts that accrue ~~after the date of sale~~ THEREAFTER. At any time before the expiration of a redeeming lienor's redemption period, the redeeming lienor may submit a revised or corrected certificate, or the attorney for the lienor may submit a revised or corrected statement.

(8) **Misstatement of redemption amount.** If an aggrieved person contests the amount set forth in the statement filed BY A REDEEMING LIENOR pursuant to paragraph (f) of subsection (1) of this section OR BY A HOLDER OF A CERTIFICATE OF PURCHASE PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION and a court determines that the redeeming lienor OR HOLDER OF THE CERTIFICATE OF PURCHASE HAS made a material misstatement ~~of the amount due and owing~~ ON THE STATEMENT with respect to the ~~redeeming lienor's lien~~ AMOUNT DUE AND OWING TO THE REDEEMING LIENOR OR THE HOLDER OF THE CERTIFICATE OF PURCHASE, the court shall, in addition to other relief, award to the aggrieved person the aggrieved person's court costs and reasonable attorney fees and costs.

SECTION 15. 38-38-401 (1) (a) and (1) (i), Colorado Revised Statutes, are amended, and the said 38-38-401 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, 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:

(a) The ~~description of the property~~ NAMES OF THE ORIGINAL GRANTORS OF THE DEED OF TRUST BEING FORECLOSED;

(a.5) THE DESCRIPTION OF THE PROPERTY;

(i) An attached exhibit containing a copy of the ~~initial~~ mailing list and ~~any supplemental or amended mailing list that bears~~ ALL AMENDED MAILING LISTS BEARING the public trustee sale number or civil docket number in the case of a judicial foreclosure.

SECTION 16. 38-38-402 (1) (a), Colorado Revised Statutes, is amended, and the said 38-38-402 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

38-38-402. Certificate of redemption - issuance. (1) No sooner than fifteen business days following a sale but no later than five business days following an officer's receipt of redemption money paid under section 38-38-302, the officer shall execute and record in each county where the property or a portion thereof is located a certificate of redemption containing:

(a) ~~The name and address of the person redeeming~~ NAMES OF THE ORIGINAL GRANTORS OF THE DEED OF TRUST BEING FORECLOSED;

(a.5) THE NAME AND ADDRESS OF THE PERSON REDEEMING;

SECTION 17. 38-38-501, Colorado Revised Statutes, 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 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 RIGHT TO CURE AND THE RIGHT TO REDEEM provisions of ~~sections~~ SECTION 38-38-506 and SUBJECT TO THE PROVISIONS OF SECTION 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~~ NINE business days after the date of sale or, if later, the expiration of all redemption periods and ~~the~~ UPON receipt of A WRITTEN REQUEST FOR ISSUANCE OF THE CONFIRMATION DEED AND 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, BUT UNDER NO CIRCUMSTANCES SHALL THE OFFICER BE REQUIRED TO ISSUE A CONFIRMATION DEED UNLESS THE OFFICER HAS RECEIVED AN ORDER AUTHORIZING THE SALE THAT MEETS THE REQUIREMENTS OF SECTION 38-38-105 (2) (a). 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 18. 38-38-506 (2) (a) and (2) (b), Colorado Revised Statutes, are amended, and the said 38-38-506 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

38-38-506. Omitted parties - definitions. (2) (a) The interest of an omitted party in the property that is the subject of a sale may be terminated if the omitted party, OR ANYONE CLAIMING BY, THROUGH, OR UNDER AN OMITTED PARTY, in a civil action commenced at any time by any interested person as defined in paragraph (c) of this subsection (2), BY AN OMITTED PARTY, OR BY ANYONE CLAIMING BY, THROUGH, OR UNDER AN OMITTED PARTY, is afforded rights of cure if the omitted party would have been entitled to cure pursuant to section 38-38-104, or is afforded redemption rights if the omitted party would have been entitled to redeem pursuant to section 38-38-302, upon such terms as the court may deem equitable under the circumstances, which terms shall not, however, be more favorable than the person's statutory rights. The court shall give full consideration to whether the omitted party OR ANYONE CLAIMING BY, THROUGH, OR UNDER AN OMITTED PARTY was given or had actual notice or knowledge of the foreclosure and was given an opportunity to exercise statutory rights to cure or redeem.

(b) For purposes of this section, the lien that is the subject of the sale shall not be extinguished by merger with the title to the property acquired pursuant to section 38-38-501 until the interest of any omitted party has been affirmed pursuant to subsection (3) of this section or has been terminated as provided in paragraph (a) of this subsection (2), or by operation of law. THE OMITTED PARTY, OR ANYONE CLAIMING BY, THROUGH, OR UNDER AN OMITTED PARTY, CANNOT EXTINGUISH THE LIEN THAT IS SUBJECT TO THE SALE BY ENFORCEMENT OF THE LIEN OF THE OMITTED PARTY.

(d) AN OMITTED PARTY, OR ANYONE CLAIMING BY, THROUGH, OR UNDER AN OMITTED PARTY, SHALL NOT HAVE A REMEDY TO CURE OR REDEEM, EXCEPT AS SET FORTH IN THIS SUBSECTION (2). AN INTERESTED PARTY SHALL NOT BE ABLE TO EXTINGUISH AN OMITTED PARTY'S INTEREST EXCEPT AS SET FORTH IN THIS SUBSECTION (2) OR BY WRITTEN WAIVER OR AGREEMENT SIGNED BY THE OMITTED PARTY OR ANYONE CLAIMING BY, THROUGH, OR UNDER AN OMITTED PARTY.

SECTION 19. 38-38-702, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

38-38-702. Limitation of officer's liability. (3) AN OFFICER SHALL NOT HAVE RESPONSIBILITY OR LIABILITY FOR UNKNOWN DAMAGE, DEBT, OR LIENS WHEN A THIRD PARTY SEEKS A JUDICIAL FORECLOSURE AND SALE.

SECTION 20. 38-38-703, Colorado Revised Statutes, is amended to read:

38-38-703. No waiver of or agreement to shorten right to cure. A waiver of or agreement to shorten the time period to exercise the right to cure a default granted by the provisions of this article that is made before the date of a THE default AS TO WHICH THE WAIVER IS GRANTED under a deed of trust, mortgage, or other instrument evidencing a lien or an evidence of debt secured thereby shall be void as against public policy.

SECTION 21. 38-39-102 (1) (a) (III) and (1) (a) (IV), Colorado Revised Statutes, are amended, and the said 38-39-102 (1) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, 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:

(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 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); AND

(V) PRODUCTION OF THE ORIGINAL RECORDED DEED OF TRUST SECURING THE EVIDENCE OF DEBT OR A LEGIBLE COPY THEREOF.

SECTION 22. 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~~ BY HOLDER OF THE
EVIDENCE OF DEBT 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~~
EVIDENCE OF DEBT secured by deed of trust (lender)

Name, title, and address of officer, agent, or attorney of current ~~owner and~~
holder

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;

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 23. 38-39-108, Colorado Revised Statutes, is amended to read:

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) 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~~ BY HOLDER OF THE
EVIDENCE OF DEBT WITHOUT
PRODUCTION OF EVIDENCE OF DEBT PURSUANT TO
§ 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), Colorado Revised Statutes, in support of this Request for Release of Deed of Trust, the undersigned, as the ~~owner~~ HOLDER 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. 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~~ PURSUANT TO STATUTE as a result of the action of the Public Trustee taken in accordance with this Request for Release AND THAT 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.

Name and address of the holder of the 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 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 holder of the 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 24. Act subject to petition - effective date - applicability. (1) Sections 3, 4, 8, 9, 10, 12, 13, 19, 20, 21, 22, 23, and 24 shall take effect September 1, 2009, and the remainder of this act shall take effect January 1, 2010.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-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, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

(3) The provisions of this act shall apply to the foreclosure of any deed of trust or other lien with respect to which a notice of election and

demand or lis pendens is recorded in the office of the clerk and recorder of the county where the property or a portion of the property is located on or after the applicable effective date of this act.

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Peter C. Groff
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO