Second Regular Session

Sixty-second General Assembly

LLS NO. 00-1037.01 Bob Lackner SENATE BILL 00-220

STATE OF COLORADO

BY SENATOR Perlmutter;
also REPRESENTATIVE Smith.

REENGROSSED

A BILL FOR AN ACT

101 CONCERNING THE MODIFICATION OF PROCEDURES FOR THE FORECLOSURE

102 OF DEEDS OF TRUST.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Makes the following changes to statutory provisions for the foreclosure of deeds of trust:

- Makes any person who fails to comply with requirements governing the satisfaction of indebtedness liable to any other person liable on the indebtedness, besides the owner of the subject real property, for all actual economic loss, including attorney fees and costs, incurred enforcing such requirements;
- Clarifies requirements concerning the form of payment to the public trustee;
- Permits certain specified entities, as owners of the evidence of debt, to provide the public trustee in lieu of the original evidence of debt, either a corporate surety bond or a copy of the evidence of debt together with required certification as to the owner's status. Specifies that, under certain circumstances, any owner of an evidence of debt that elects to file a copy of the same shall be deemed to have agreed to indemnify any person liable for repayment of any portion of the original evidence of debt. Changes the period by which the public trustee shall mail a copy of the notice of sale to the grantor of the subject deed of trust after such notice has appeared in the newspaper.
- Changes the period after the recording of the notice of election and demand for sale by which the public trustee or

SENATE
3rd Reading Unamended
April 26, 2000

SENATE
Amended 2nd Reading
April 25, 2000

sheriff shall mail notice of a right to cure and right to redeem to the grantors of the subject deed of trust or mortgage being foreclosed;

- Changes the period prior to a foreclosure sale by which written notice evidencing intention to cure a default must be provided. Recodifies the list of sums that must be paid on the day before the date of the foreclosure sale to cure any default. Upon receipt of the notice of intention to cure default, requires the officer conducting the foreclosure sale to immediately transmit to the owner of the evidence of debt or to the owner's attorney a request for a written statement of all sums necessary to cure such default. Specifies penalties for the owner's failure to timely provide such statement.
- Requires that the order authorizing sale include a finding that the owner has satisfied statutory requirements concerning requirements for submitting such copy in cases where the owner of the evidence of debt has provided the public trustee with a copy of the evidence of debt in lieu of the original;
- Provides that, where a foreclosure sale is held in violation of the automatic stay provisions of the federal bankruptcy code and an order is subsequently entered granting the owner of the evidence of debt relief from the automatic stay, then the original evidence of debt shall be immediately deemed reinstated;
- Provides that the owner of the subject real property or any other person liable after the foreclosure sale for the deficiency may redeem the property sold by giving written notice of the intention to redeem to the public trustee or sheriff a specified number of days prior to the end of the redemption period and by paying certain specified sums prior to the end of the redemption period. Upon receipt of such notice, requires the public trustee or sheriff to transmit to the holder of the certificate of purchase or the holder's attorney a written request of all sums necessary to redeem the sale. Requires the holder to file with the public trustee or sheriff, subject to certain specified deadlines, a statement of all sums necessary to redeem. Specifies the manner by which accrued interest is to be calculated. Requires the officer conducting the sale to transmit to the party filing the notice of intent the written statement filed by the holder.

- Expands existing requirements pertaining to a lienor's entitlement to redeem by specifying that no lienor is entitled to redeem unless such lien is either a mortgage or deed of trust or is created or recognized by state or federal statute or by judgement of a court of competent jurisdiction. Requires such lien to be recorded a specified number of days prior to the end of the owner's redemption period to preserve the right to redeem where a consensual lien is created after the recording of the notice of election and demand. Clarifies which holders of consensual liens or interests in the subject property shall have a right to redeem when more than 3 such liens or interests have been created and recorded. Requires a lienor holding a lien on less than all the property sold to redeem the entire property.
- Modifies statutory provisions concerning indemnification agreements required in the case of a release of the deed of trust to encompass the case of a partial release.

Makes conforming amendments.

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

SECTION 1. 38-35-124, Colorado Revised Statutes, is amended to read:

38-35-124. Requirements upon satisfaction of indebtedness. Except as provided in articles 22 and 23 of this title, when all indebtedness, whether absolute or contingent, secured by a lien on real property has been satisfied, unless the debtor requests in writing that the lien not be released, the creditor or holder of the indebtedness shall, within ninety days after the satisfaction of the indebtedness and receipt from the debtor of the reasonable costs of procuring and recording the release documents, record with the appropriate clerk and recorder the documents necessary to release or satisfy the lien of record or, in the case of an indebtedness secured by a deed of trust to a public trustee, file with the public trustee the documents required for a release as prescribed by

section 38-39-102. If the debtor requests in writing that the lien be released, or fails to request in writing that the lien not be released, then the debtor's request or the actual release shall cancel any obligations on the part of the creditor or holder to make any further loan or advance that would be secured by the lien. If the person satisfying the indebtedness requests in writing delivery to him OR HER of the cancelled instruments of indebtedness at the time of satisfaction, the creditor or holder shall be relieved of any further obligation or liability under this section after such delivery has been completed. Upon satisfaction of the indebtedness, the creditor or holder shall return to the person satisfying the indebtedness all papers and personal property of the debtor which have been held by the creditor or holder in connection with the indebtedness. Any person who fails to comply with this section shall be liable to the owner of the real property encumbered by such indebtedness AND TO ANY OTHER PERSON LIABLE ON SUCH INDEBTEDNESS FOR ALL ACTUAL ECONOMIC LOSS, INCLUDING REASONABLE ATTORNEY FEES AND COSTS, INCURRED ENFORCING THE RIGHTS PROVIDED UNDER THIS SECTION.

SECTION 2. 38-37-108, Colorado Revised Statutes, is amended to read:

38-37-108. Form of payments to public trustee. All moneys payable to a public trustee at any foreclosure sale under the provisions of this article or upon redemption or cure under the provisions of article 38 of this title shall be in the form of cash or by electronic transfer to an account of the public trustee available for such purpose or in the form of a certified check, cashier's check, ~~or~~ teller's check, OR A DRAFT DENOMINATED AS AN OFFICIAL CHECK THAT IS A TELLER'S CHECK OR A

CASHIER'S CHECK AS THOSE TERMS ARE DEFINED IN AND GOVERNED BY THE "UNIFORM COMMERCIAL CODE", made payable to such public trustee, certified or issued by a federally-chartered or state-chartered financial institution, as defined in section 15-15-201 (4), C.R.S., licensed to do business in the state of Colorado.

SECTION 3. 38-38-101 (1) (b) and (7) (a), Colorado Revised Statutes, are amended, and the said 38-38-101 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

38-38-101. Owner of evidence of debt may elect to foreclose - notice - record of sale - withdrawal. (1) Whenever the owner of an evidence of debt which is secured by a deed of trust containing a power of sale declares a violation of any of the covenants of such deed of trust and elects to advertise all or a portion of the property therein described for sale, such owner shall file with the public trustee of the county wherein such property is located:

(b) The original evidence of debt, such as a note or bond, or, in lieu thereof, ONE OF THE FOLLOWING:

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

(II) A COPY OF THE EVIDENCE OF DEBT TOGETHER WITH A CERTIFICATION FROM THE OWNER OF THE EVIDENCE OF DEBT OR THE AGENT OR ATTORNEY FOR SUCH OWNER THAT THE OWNER IS AN ENTITY DESCRIBED IN SUBSECTION (1.5) OF THIS SECTION, IS THE OWNER AND HOLDER OF THE ORIGINAL EVIDENCE OF DEBT, THAT THE COPY OF THE

EVIDENCE OF DEBT IS TRUE AND CORRECT, AND THAT THE USE OF THE COPY OF THE EVIDENCE OF DEBT IS SUBJECT TO THE CONDITIONS DESCRIBED IN SUBSECTION (1.6) OF THIS SECTION. FOLLOWING THE FORECLOSURE SALE, A COPY OF THE EVIDENCE OF DEBT, EITHER MARKED AS CANCELLED OR SHOWING THE AMOUNT OF ANY DEFICIENCY, SHALL BE RECORDED BY THE PUBLIC TRUSTEE WITH THE DUPLICATE CERTIFICATE OF PURCHASE AS REQUIRED BY SECTION 38-38-401.

(1.5) THE FOLLOWING ENTITIES MAY ELECT TO FILE WITH THE PUBLIC TRUSTEE A COPY OF THE ORIGINAL EVIDENCE OF DEBT IN LIEU OF THE ORIGINAL AND THE CERTIFICATION REQUIRED BY SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION:

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

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

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

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

(I) A PUBLIC ENTITY, AS DEFINED AS AN ENTITY THAT HAS ISSUED VOTING SECURITIES THAT ARE LISTED ON A NATIONAL SECURITY EXCHANGE REGISTERED UNDER THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934"; OR

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

(e) AN ENTITY IN WHICH ALL OF THE OUTSTANDING VOTING

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

(f) A FEDERAL HOUSING ADMINISTRATION APPROVED MORTGAGEE;

(g) 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.;

(h) AN AGENCY OF THE FEDERAL GOVERNMENT; OR

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

(1.6) ANY OWNER OF AN EVIDENCE OF DEBT THAT ELECTS TO FILE A COPY THEREOF IN LIEU OF THE ORIGINAL PURSUANT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION AND SUBSECTION (1.5) OF THIS SECTION SHALL BY OPERATION OF LAW BE DEEMED TO HAVE AGREED TO INDEMNIFY ANY PERSON LIABLE FOR REPAYMENT OF ANY PORTION OF THE ORIGINAL EVIDENCE OF DEBT IN THE EVENT THAT THE ORIGINAL EVIDENCE OF DEBT IS PRESENTED FOR PAYMENT FOR ANY AMOUNT OTHER THAN A NOTED DEFICIENCY FOLLOWING ISSUANCE OF A CERTIFICATE OF PURCHASE PURSUANT TO SECTION 38-38-401. SUCH INDEMNITY SHALL BE LIMITED TO ACTUAL ECONOMIC LOSS SUFFERED BY A PARTY LIABLE UNDER THE ORIGINAL EVIDENCE OF DEBT TOGETHER WITH ANY COURT COSTS AND REASONABLE ATTORNEY FEES INCURRED IN DEFENDING A CLAIM BROUGHT AS A DIRECT AND PROXIMATE CAUSE OF THE FAILURE TO PRODUCE THE ORIGINAL EVIDENCE OF DEBT. THE PUBLIC TRUSTEE SHALL BE IMMUNE

FROM ANY CLAIMS FOR LIABILITY OR DAMAGES RESULTING FROM ANY INJURY AS DESCRIBED UNDER THIS SUBSECTION (1.6).

(7) (a) The public trustee, within ~~ten~~ TWENTY days after the date of the first publication of the notice of sale, shall mail a copy of such notice as it appeared in a newspaper of general circulation to the grantor at the address given in the deed of trust, and the public trustee shall also mail a like notice to each person who appears to have acquired a record interest in the property described in such notice of sale subsequent to the recording of such deed of trust, whether by deed, mortgage, judgment, or any other instrument of record, and, if the foreclosing party has a lien with priority over the lessee or lessees who have unrecorded possessory interests in the property being foreclosed and desires to terminate such possessory interests with the foreclosure, as evidenced by the inclusion of the names of the lessee or lessees or the occupant or occupants in the list supplied the public trustee pursuant to subsection (1) of this section, the public trustee shall also mail such a notice to the lessee or lessees of the premises as provided in section 38-38-305 (1.5). Such notice shall be mailed to such person at the address given in the recorded instrument, or, if such notice is being sent to the lessee or lessees of the premises, such notice shall be mailed as provided in section 38-38-305 (1.5). Postage costs under this section shall be part of foreclosure costs. If such recorded instrument does not give such address or if only the county and state are given as the address of such person, it will not be necessary to mail any notice to such person. It is not necessary to mail a copy of said printed notice to any person whose interest does not appear of record at the time said notice of election and demand for sale is recorded.

SECTION 4. 38-38-103 (1), Colorado Revised Statutes, is amended to read:

38-38-103. Combined notice of right to cure and right to redeem. (1) Within ~~ten~~ TWENTY days after the recording of the notice of election and demand for sale by the public trustee pursuant to section 38-38-101, or not less than sixteen nor more than twenty-five days after the entry of a decree of foreclosure or the issuance of a writ of execution directing the sheriff to sell real property, the public trustee or sheriff shall mail a notice to the grantors of the deed of trust or mortgage being foreclosed, to any subsequent owners of the property being foreclosed, to the current owner of the property being sold, and to any other person having a right to cure a default under section 38-38-104 or a right to redeem the property subject to foreclosure under section 38-38-302, 38-38-303, 38-38-305, or 38-38-306. Such notice shall state the names of the grantors of the deed of trust or mortgage and the original beneficiaries or grantees thereof, the name of the current owner of an evidence of debt secured by the deed of trust or mortgage being foreclosed or the owner of the lien being foreclosed, and the names, addresses, and telephone numbers of the attorneys, if any, representing the foreclosing lienor. A legible copy of this section and sections 38-37-108, 38-38-104, and 38-38-301 to 38-38-306 shall be sent with such notice.

SECTION 5. 38-38-104, Colorado Revised Statutes, is amended to read:

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

terms of the evidence of debt and deed of trust or mortgage being foreclosed is nonpayment of any sums due thereunder, the owners of the property being foreclosed, any person liable thereon, any guarantor of the evidence of debt, and, if the deed of trust or mortgage being foreclosed was recorded on or after October 1, 1990, any holder of an interest junior to the lien being foreclosed by virtue of being a lienor, lessee, or vendee of, or holder of an easement or a certificate of purchase on, the property, under a recorded instrument, shall be entitled to cure said default if, at least ~~seven~~ FIFTEEN CALENDAR days prior to the date the foreclosure sale is held, such persons give written notice, attaching true copies of instruments evidencing their right to cure, to the public trustee or sheriff conducting the sale of their intention to cure said default. ~~On or before 12 noon on the day before the date upon which said sale is set, as it may have been continued or postponed, such persons desiring to cure the default shall pay to the officer conducting the sale all of the following:~~

(a) ~~All expenses actually incurred by the officer conducting the sale;~~

(b) ~~The amount authorized in section 38-37-104 (1) (b) plus an additional fee of thirty-five dollars;~~

(c) ~~All costs, expenses, late charges, attorney fees, and other fees and charges incurred by the owner of the evidence of debt as of the date of cure and which are allowable by section 38-38-107 or allowable by the evidence of debt, deed of trust, or mortgage; and~~

(d) ~~All other sums which are due under the evidence of debt or deed of trust or mortgage as of the date of cure; except that any principal which would not have been due in the absence of acceleration of the debt~~

~~shall not be included in such sums due.~~

(2) (a) Upon receipt by the officer conducting the sale of said notice of intention to cure the default, such officer shall ~~obtain in writing from~~ IMMEDIATELY TRANSMIT BY MAIL OR BY TELEFAX TRANSMISSION TO the owner of the evidence of debt, deed of trust, ~~or~~ mortgage, ~~a~~ OR TO THE ATTORNEY FOR SAID OWNER A REQUEST FOR A WRITTEN statement of all sums necessary to cure ~~said~~ THE default. SAID STATEMENT SHALL INCLUDE THE AMOUNTS REQUIRED BY SUBPARAGRAPHS (III) AND (IV) OF PARAGRAPH (c) OF THIS SUBSECTION (2).

(b) If ~~at least forty-eight hours prior to the sale,~~ the owner of the evidence of debt, deed of trust, or mortgage has not delivered a written statement to the officer conducting the sale setting forth the amount necessary to be paid to cure such default ON OR BEFORE 12 NOON ON THE SEVENTH CALENDAR DAY BEFORE THE SALE, the sale shall be postponed by such officer for no longer than two weeks and thereafter from week to week, but not to exceed one month or the period of continuance allowed by section 38-38-109 (1), whichever is longer, until such statement has been provided. FAILURE TO SUBMIT THE WRITTEN STATEMENT TO THE OFFICER CONDUCTING THE SALE ON OR BEFORE 12 NOON ON THE SEVENTH CALENDAR DAY BEFORE THE LAST SALE DATE PERMITTED UNDER SECTION 38-38-109 (1) SHALL RESULT IN THE FORECLOSURE BEING DEEMED WITHDRAWN, IN WHICH EVENT SAID OWNER SHALL PAY THE OFFICER CONDUCTING THE SALE ALL FEES PRESCRIBED BY SECTION 38-37-104 (1) (f) BEFORE THE EVIDENCE OF DEBT IS RETURNED TO THE OWNER.

(c) ON OR BEFORE 12 NOON ON THE DAY BEFORE THE DATE UPON WHICH SAID SALE IS SET, AS IT MAY HAVE BEEN CONTINUED OR POSTPONED,

SUCH PERSONS DESIRING TO CURE THE DEFAULT SHALL PAY TO THE OFFICER CONDUCTING THE SALE ALL OF THE FOLLOWING:

(I) ALL EXPENSES ACTUALLY INCURRED BY THE OFFICER CONDUCTING THE SALE;

(II) THE AMOUNT AUTHORIZED IN SECTION 38-37-104 (1) (b) PLUS AN ADDITIONAL FEE OF THIRTY-FIVE DOLLARS;

(III) ALL COSTS, EXPENSES, LATE CHARGES, ATTORNEY FEES, AND OTHER FEES AND CHARGES INCURRED BY THE OWNER OF THE EVIDENCE OF DEBT AS OF THE DATE OF CURE AND WHICH ARE ALLOWABLE BY SECTION 38-38-107 OR ALLOWABLE BY THE EVIDENCE OF DEBT, DEED OF TRUST, OR MORTGAGE; AND

(IV) ALL OTHER SUMS WHICH ARE DUE UNDER THE EVIDENCE OF DEBT OR DEED OF TRUST OR MORTGAGE AS OF THE DATE OF CURE; EXCEPT THAT ANY PRINCIPAL WHICH WOULD NOT HAVE BEEN DUE IN THE ABSENCE OF ACCELERATION OF THE DEBT SHALL NOT BE INCLUDED IN SUCH SUMS DUE.

(d) If a cure is made, interest for the period of such postponement shall be allowed only at the regular rate and not at the default rate specified in the evidence of debt, deed of trust, or mortgage. If a cure is not made, interest at the default rate, if specified in the evidence of debt, deed of trust, or mortgage, for the period of such postponement shall be allowed.

(e) Upon receipt of the cure amount, the officer conducting the sale shall deliver said sum to the owner of the evidence of debt, deed of trust, or mortgage or to the agent or attorney for such owner, the foreclosure shall be withdrawn or dismissed as provided by law, and the

evidence of debt shall be returned uncancelled to the owner thereof by the public trustee or court.

(2.5) Where the default in the terms of the evidence of debt and deed of trust or mortgage on which the owner claims the right to foreclose is the failure of a borrower to furnish balance sheets or tax returns, the borrower may cure such default in the manner prescribed in this section by providing to the owner of the evidence of debt, deed of trust, or mortgage the required balance sheets, tax returns, or other adequate evidence of the borrower's financial condition so long as all sums currently due under the evidence of debt have been paid and all amounts due under ~~paragraphs (a) to (c) of subsection (1)~~ PARAGRAPH (c) OF SUBSECTION (2) of this section, where applicable, have been paid.

(3) Nothing in this section shall constitute a waiver of any right accruing on account of the violation of any covenant of said evidence of debt, deed of trust, or mortgage occurring after the payment described in ~~subsection (1)~~ PARAGRAPH (c) OF SUBSECTION (2) of this section.

SECTION 6. 38-38-105, Colorado Revised Statutes, is amended to read:

38-38-105. Court order authorizing sale mandatory. In all cases of foreclosure of property by the public trustee pursuant to a power of sale contained in a deed of trust, the owner of an evidence of debt secured thereby shall obtain an order authorizing sale from a court properly having jurisdiction to issue the same. Such order shall be dated, or recite that the hearing was completed, on or before the day prior to the last day on which an effective notice of intention to cure may be filed with the public trustee under section 38-38-104. IF THE OWNER OF THE

EVIDENCE OF DEBT HAS PROVIDED THE PUBLIC TRUSTEE WITH A COPY OF THE EVIDENCE OF DEBT IN LIEU OF THE ORIGINAL UNDER THE PROVISIONS OF SECTION 38-38-101 (1) (b) (II), THE ORDER SHALL INCLUDE A FINDING THAT THE PETITIONER MEETS THE REQUIREMENTS OF THAT SECTION. In no event shall the public trustee sell the subject property prior to the issuance of such an order authorizing the sale.

SECTION 7. 38-38-109 (4) (a) and the introductory portion to 38-38-109 (4) (b) (I), Colorado Revised Statutes, are amended to read:

38-38-109. Continuance of sale. (4) (a) In the event that a foreclosure sale is held in violation of the automatic stay provisions of Title 11 of the federal bankruptcy code of 1978, as amended, and an order is subsequently entered by a bankruptcy court of competent jurisdiction dismissing the bankruptcy case OR AN ORDER IS SUBSEQUENTLY ENTERED GRANTING THE OWNER OF THE EVIDENCE OF DEBT AND DEED OF TRUST, MORTGAGE, OR OTHER LIEN SECURING THE EVIDENCE OF DEBT, RELIEF FROM THE AUTOMATIC STAY PROVIDED BY THE FEDERAL BANKRUPTCY CODE OF 1978, TITLE 11 OF THE UNITED STATES CODE, AS AMENDED, THEN the original evidence of debt ~~such as a note or bond,~~ and the deed of trust, mortgage, or other lien shall immediately be deemed reinstated. Such reinstatement shall be confirmed by endorsement of the public trustee or sheriff, although the failure to so endorse shall not affect the validity of the reinstatement. Immediately upon reinstatement, the power of sale provided therein, if any, shall be deemed revived. The endorsement shall be in substantially the following form:

The undersigned, as ___(Public Trustee)___(Sheriff)___ for the _____, county of _____, state of Colorado, by this endorsement, hereby confirms the reinstatement of this ___(evidence of debt)___(deed of trust)___(mortgage)___(lien)___ in accordance with the requirements of section 38-38-109 (4) (a), Colorado Revised Statutes.

Date: _____

___Signature___

___(Public Trustee)___(Sheriff)___

For the _____,

County of _____,

State of Colorado.

(b) (I) If the owner of the original evidence of debt and deed of trust, mortgage, or other lien reinstated pursuant to paragraph (a) of this subsection (4) notifies the public trustee or sheriff in writing of the ~~dismissal of~~ ENTRY OF AN ORDER DISMISSING the bankruptcy case OR GRANTING SAID OWNER RELIEF FROM THE AUTOMATIC STAY PROVIDED BY THE FEDERAL BANKRUPTCY CODE OF 1978, TITLE 11 OF THE UNITED STATES CODE, AS AMENDED, within sixty days of the date on which the foreclosed property is no longer subject to such automatic stay, the public trustee or sheriff shall set a new foreclosure sale date at least twenty-four days but not more than thirty-nine days after the date on which the official receives such notice. Within ten days of receiving such notice:

SECTION 8. 38-38-302 (1), the introductory portion to

38-38-302 (4) (b) (I), and 38-38-302 (4) (d), Colorado Revised Statutes, are amended, and the said 38-38-302 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

38-38-302. Redemption within specified period - procedure. (1) Except as provided in this section with respect to agricultural real estate, within seventy-five days after the date of the sale of the property by virtue of any foreclosure of a mortgage, deed of trust, or other lien or by virtue of an execution and levy, the owner of the property, or any other person liable after the foreclosure sale for the deficiency, may redeem the property sold by GIVING A WRITTEN NOTICE OF THE INTENTION TO REDEEM TO THE PUBLIC TRUSTEE OR SHERIFF CONDUCTING THE SALE AT LEAST FIFTEEN CALENDAR DAYS PRIOR TO THE END OF THE REDEMPTION PERIOD PROVIDED IN THIS SECTION AND paying to the public trustee or sheriff PRIOR TO THE END OF THE REDEMPTION PERIOD the sum for which the property was sold with interest from the date of sale, together with any taxes paid or other proper charges as now provided by law, with interest from the date such expense was paid OR SUCH OTHER SUM AS IS SPECIFIED IN SUBSECTION (1.6) OF THIS SECTION. Such interest shall be charged at the default rate if specified in the ~~original instrument~~ EVIDENCE OF DEBT, DEED OF TRUST, OR MORTGAGE, or, if not so specified, at the regular rate specified in the ~~original instrument~~ EVIDENCE OF DEBT, DEED OF TRUST , OR MORTGAGE. For the purposes of this section, "other proper charges" includes those costs and expenses paid by the holder of a certificate of purchase as permitted by section 38-38-301 (1) for which said holder has filed with the public trustee or sheriff conducting the sale receipts evidencing such payments AND AN AFFIDAVIT VERIFYING SUCH

PAYMENTS.

(1.5) UPON RECEIPT BY THE PUBLIC TRUSTEE OR SHERIFF CONDUCTING THE SALE OF THE NOTICE OF INTENTION TO REDEEM FILED BY A PERSON AUTHORIZED TO REDEEM UNDER THIS SECTION, THE PUBLIC TRUSTEE OR SHERIFF SHALL IMMEDIATELY TRANSMIT BY MAIL OR BY TELEFAX TRANSMISSION TO THE HOLDER OF THE CERTIFICATE OF PURCHASE OR THE ATTORNEY FOR THE HOLDER ACCORDING TO THE RECORDS OF THE OFFICER CONDUCTING THE SALE A WRITTEN REQUEST FOR A STATEMENT OF ALL SUMS NECESSARY TO REDEEM THE SALE. THE STATEMENT SHALL INCLUDE THE AMOUNTS REQUIRED TO REDEEM IN ACCORDANCE WITH THIS SECTION.

(1.6) THE HOLDER OF A CERTIFICATE OF PURCHASE SHALL FILE A STATEMENT WITH THE PUBLIC TRUSTEE OR SHERIFF CONDUCTING THE SALE AT LEAST SIX CALENDAR DAYS PRIOR TO THE END OF THE PERIOD SPECIFIED FOR REDEMPTION IN SUBSECTION (1) OR (3) OF THIS SECTION, OR WITHIN TEN CALENDAR DAYS FOLLOWING RECEIPT BY THE PUBLIC TRUSTEE OR SHERIFF OF THE NOTICE OF INTENTION TO REDEEM FILED IN ACCORDANCE WITH THIS SECTION, WHICHEVER IS EARLIER, OF ALL SUMS NECESSARY TO REDEEM AS OF THE DATE OF SUCH STATEMENT, TOGETHER WITH A STATEMENT OF THE METHOD USED TO CALCULATE THE PER DIEM INTEREST ACCRUING THEREAFTER. THE STATEMENT MAY BE AMENDED FROM TIME TO TIME BY THE HOLDER OF A CERTIFICATE OF PURCHASE TO REFLECT ADDITIONAL SUMS ADVANCED AS ALLOWED BY STATUTE, BUT IN NO EVENT SHALL THE STATEMENT BE AMENDED AFTER THE SEVENTH DAY PRIOR TO THE END OF THE PERIOD SPECIFIED FOR REDEMPTION. IF THE HOLDER OF THE CERTIFICATE OF PURCHASE FAILS TO SUBMIT THE WRITTEN STATEMENT

TO THE PUBLIC TRUSTEE OR SHERIFF WITHIN THE PERIOD SPECIFIED IN THIS SECTION, THE OFFICER CONDUCTING THE SALE SHALL CALCULATE THE AMOUNT NECESSARY TO REDEEM BY ADDING TO THE SUCCESSFUL BID AN ESTIMATE OF ACCRUED INTEREST FROM THE SALE DATE TO THE DATE OF REDEMPTION. THE ESTIMATE OF 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 MORTGAGE, DIVIDED BY THREE HUNDRED SIXTY-FIVE, AND THEN MULTIPLIED BY THE NUMBER OF DAYS FROM THE SALE DATE THROUGH THE DATE OF REDEMPTION. THE OFFICER CONDUCTING THE SALE SHALL TRANSMIT BY MAIL OR BY TELEFAX TRANSMISSION TO THE PARTY FILING THE NOTICE OF INTENT TO REDEEM, IMMEDIATELY UPON RECEIPT, THE STATEMENT FILED BY THE CERTIFICATE OF PURCHASE HOLDER, OR IF NO SUCH STATEMENT IS FILED, THE OFFICER'S ESTIMATE OF THE REDEMPTION FIGURE, WHICH SHALL BE TRANSMITTED NO LATER THAN FIVE CALENDAR DAYS PRIOR TO THE END OF THE REDEMPTION PERIOD. 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 UNDER SECTIONS 38-38-301 AND 38-38-302 (1).

(4) (b) (I) If it is not evident from the legal description contained in the mortgage or deed of trust that the real estate described therein is or is not agricultural real estate, the public trustee or sheriff shall accept as evidence, WHICH SHALL BE PROVIDED TO THE PUBLIC TRUSTEE OR SHERIFF PRIOR TO SALE, that the parcel is not agricultural real estate either:

(d) If at the time of recording of the mortgage or deed of trust, or

at the time of the foreclosure sale, the property is, in whole or in part, either platted as a subdivision, ~~or is both~~ located within the incorporated limits of a town, city, or city and county, ~~and~~ OR is not valued and assessed as agricultural land, it shall be deemed for all purposes under this section, and against all persons, that such parcel is not agricultural real estate.

SECTION 9. 38-38-303 (2), Colorado Revised Statutes, is amended, and the said 38-38-303 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

38-38-303. Time of redemption by lienor. (2) (a) No lienor is entitled to redeem unless his OR HER lien IS EITHER A MORTGAGE OR DEED OF TRUST OR IS CREATED OR RECOGNIZED BY STATE OR FEDERAL STATUTE OR BY JUDGMENT OF A COURT OF COMPETENT JURISDICTION AND appears by instruments duly recorded or filed as permitted by law and unless, within the redemption period provided for in section 38-38-302, he OR SHE files a notice with the public trustee or sheriff making the sale attaching a true and correct copy of such recorded instruments evidencing ~~his~~ THE lien AND ANY ASSIGNMENT OF THE LIEN with evidence of recording affixed by the county clerk and recorder's office and advising of his OR HER intention to redeem. No lienor shall be entitled to redeem under this section unless his OR HER lien appears by an instrument so recorded or filed prior to the expiration of the period of redemption provided for in section 38-38-302.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION (2), ANY CONSENSUAL LIENS OR CONSENSUAL INTERESTS IN THE SOLD PROPERTY SHALL BE RECORDED FIFTEEN CALENDAR DAYS PRIOR

TO THE END OF THE OWNER'S REDEMPTION PERIOD IN ORDER FOR THE HOLDER OF SUCH LIEN TO HAVE ANY RIGHT TO REDEEM UNDER THIS SECTION.

(c) IF MORE THAN THREE CONSENSUAL LIENS OR CONSENSUAL INTERESTS IN THE SOLD PROPERTY HAVE BEEN _____ RECORDED AFTER THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND, ONLY THE HOLDERS OF THREE SUCH LIENS OR INTERESTS WHO HAVE FILED TIMELY NOTICES OF INTENTION TO REDEEM WITH THE PUBLIC TRUSTEE UNDER PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL HAVE A RIGHT TO REDEEM. THE PRIORITY OF REDEMPTION FOR THE HOLDERS OF THE THREE LIENS OR INTERESTS SHALL BE DETERMINED BY THE ORDER OF RECORDING OF SUCH LIENS OR INTERESTS.

(5) A LIENOR HOLDING A LIEN ON LESS THAN ALL OF THE PROPERTY SOLD AT FORECLOSURE OR AGAINST A PARTIAL INTEREST IN THE PROPERTY SHALL REDEEM THE ENTIRE PROPERTY. THERE SHALL BE NO PARTIAL REDEMPTIONS PERMITTED UNDER THIS ARTICLE. THE PRIORITY OF LIENS FOR THE PURPOSE OF THIS SECTION SHALL BE DETERMINED WITHOUT CONSIDERATION OF THE FACT THAT THE LIEN RELATES TO A PORTION OF THE PROPERTY OR TO A PARTIAL INTEREST THEREIN.

SECTION 10. 38-39-102 (3) (c), Colorado Revised Statutes, is amended to read:

38-39-102. When liens of deeds of trust shall be released. (3) 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:

(c) An indemnification agreement from 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 damages as the result of issuing such release accompanied by 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.

SECTION 11. Effective date - applicability. This act shall take effect July 1, 2000, and shall apply to all proceedings for the foreclosure of deeds of trust commenced on or after said date.

SECTION 12. 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.