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SENATE BILL 02-161

BY SENATOR(S) Perlmutter and Lamborn;
also REPRESENTATIVE(S) Smith, Coleman, Scott, and Stengel.

CONCERNING THE MODIFICATION OF PROCEDURES FOR THE FORECLOSURE OF
DEEDS OF TRUST.

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

SECTION 1. 13-80-103.5 (1) (a), Colorado Revised Statutes, is amended to read:

13-80-103.5. General limitation of actions - six years. (1) The following actions shall be commenced within six years after the cause of action accrues, and not thereafter:

(a) All actions to recover a liquidated debt or an unliquidated, determinable amount of money due to the person bringing the action, all actions for the enforcement of rights set forth in any instrument securing the payment of or evidencing any debt, and all actions of replevin to recover the possession of personal property encumbered under any instrument securing any debt; EXCEPT THAT ACTIONS TO RECOVER PURSUANT TO SECTION 38-35-124.5 (3), C.R.S., SHALL BE COMMENCED WITHIN ONE YEAR.

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

SECTION 2. 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~~ THAT have been held by the creditor or holder in connection with the indebtedness. Any ~~person~~ CREDITOR OR HOLDER 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 INCURRED ENFORCING THE RIGHTS PROVIDED UNDER THIS SECTION, INCLUDING REASONABLE ATTORNEY FEES AND COSTS.

SECTION 3. Part 1 of article 35 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-35-124.5. Effect of written payoff statement. (1) ANY PERSON OR ENTITY PROVIDING CLOSING AND SETTLEMENT SERVICES FOR A REAL ESTATE TRANSACTION AND TO WHOM A PAYOFF STATEMENT IS ADDRESSED SHALL BE ENTITLED TO REASONABLY RELY ON THE AMOUNTS THAT ARE SET FORTH IN SUCH PAYOFF STATEMENT FOR THE TIME FRAME SET FORTH

THEREIN AND SHALL NOT BE LIABLE TO THE CREDITOR OR HOLDER OF THE INDEBTEDNESS OR ITS AGENT FOR ANY OMITTED AMOUNTS, UNLESS A WRITTEN AMENDMENT IS RECEIVED BY SUCH PERSON OR ENTITY PRIOR TO THE CLOSING OF THE TRANSACTION. UPON PAYMENT TO THE CREDITOR OR HOLDER OF THE AMOUNTS STATED IN THE WRITTEN PAYOFF STATEMENT, AS MAY BE AMENDED, SUCH CREDITOR OR HOLDER SHALL BE REQUIRED TO COMPLY WITH THE RELEASE PROVISIONS OF SECTION 38-35-124.

(2) ANY CREDITOR OR HOLDER OF THE INDEBTEDNESS WHO FAILS TO COMPLY WITH THE RELEASE PROVISIONS OF SECTION 38-35-124 AS REQUIRED BY SUBSECTION (1) OF THIS SECTION SHALL BE LIABLE TO THOSE PERSONS OR ENTITIES TO WHOM THE WRITTEN PAYOFF STATEMENT WAS ADDRESSED FOR ANY ACTUAL ECONOMIC LOSS SUFFERED BY SUCH PERSONS OR ENTITIES, INCLUDING REASONABLE ATTORNEY FEES AND COSTS IN ENFORCING THE PROVISIONS OF THIS SECTION.

(3) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, IN THE EVENT OF AN ERROR IN THE WRITTEN PAYOFF STATEMENT PROVIDED BY A CREDITOR OR HOLDER OF THE INDEBTEDNESS OR ITS AGENT, THE CREDITOR SHALL RETAIN ANY REMEDIES, LEGAL OR EQUITABLE, TO COLLECT DIRECTLY AGAINST THE OBLIGOR ANY UNSECURED ADDITIONAL AMOUNTS DETERMINED TO BE OUTSTANDING.

SECTION 4. 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", TITLE 4, C.R.S., made payable to such public trustee, certified or issued by a ~~federally chartered~~ 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 5. Article 37 of title 38, Colorado Revised Statutes, is

amended BY THE ADDITION OF A NEW SECTION to read:

38-37-113. Checking account - custodial funds. (1) IN THE PERFORMANCE OF HIS OR HER DUTIES UNDER ARTICLES 37 AND 38 OF THIS TITLE, THE PUBLIC TRUSTEE OF EACH COUNTY SHALL HAVE THE AUTHORITY TO ESTABLISH AND MANAGE A CHECKING ACCOUNT OR SIMILAR BANKING SERVICES WITH A BANK THAT HAS BEEN DESIGNATED AS AN ELIGIBLE PUBLIC DEPOSITORY UNDER THE "PUBLIC DEPOSIT PROTECTION ACT", ARTICLE 10.5 OF TITLE 11, C.R.S.

(2) OTHER THAN FEES AND COSTS WHICH SHALL BE GOVERNED BY SECTION 38-37-104, ALL MONEYS RECEIVED BY A PUBLIC TRUSTEE FOR THE PURPOSES OF A BID, A CURE UNDER SECTION 38-38-104, AS EXCESS FUNDS UNDER SECTION 38-38-111, OR FOR REDEMPTION UNDER SECTIONS 38-38-302 AND 38-38-303 SHALL BE HELD AS CUSTODIAL FUNDS FOR THE PARTY ENTITLED TO RECEIVE SUCH MONEYS.

(3) NOTHING IN THIS SECTION SHALL LESSEN OR OTHERWISE MODIFY THE IMMUNITIES AND PROTECTIONS EXTENDED BY LAW TO PUBLIC TRUSTEES AND ANY GOVERNMENTAL ENTITY WITH WHICH PUBLIC TRUSTEES ARE ASSOCIATED. NO CONTRACTUAL RELATIONSHIP SHALL BE DEEMED TO EXIST BETWEEN A PUBLIC TRUSTEE AND A PARTY ENTITLED TO RECEIVE MONEYS AS DESCRIBED UNDER SUBSECTION (2) OF THIS SECTION.

SECTION 6. 38-38-101 (1) (b), (7) (a), and (11), 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, THE COPY OF THE EVIDENCE OF DEBT IS TRUE AND CORRECT, AND 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 ATTACHED TO AND 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 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 5-1-301 (46), C.R.S., THAT IS LICENSED TO MAKE SUPERVISED LOANS PURSUANT TO SECTION 5-2-302, C.R.S., AND THAT IS EITHER:

(I) A PUBLIC ENTITY, 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 5-1-301 (46), C.R.S., THAT IS LICENSED TO MAKE SUPERVISED LOANS PURSUANT TO SECTION 5-2-302, 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 WHO ELECTS TO FORECLOSE WITHOUT THE ORIGINAL EVIDENCE OF DEBT 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 AND DEFEND 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 AND ANY PERSON WHO SUSTAINS A LOSS DUE TO ANY TITLE DEFECT THAT RESULTS FROM RELIANCE UPON A FORECLOSURE SALE AT WHICH THE ORIGINAL EVIDENCE OF DEBT WAS NOT PRESENTED. SUCH INDEMNITY SHALL BE LIMITED TO ACTUAL ECONOMIC LOSS SUFFERED 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).

(1.7) IN THE EVENT THAT THE OWNER OF AN EVIDENCE OF DEBT COMMENCES A FORECLOSURE WITHOUT PRODUCTION OF THE ORIGINAL EVIDENCE OF DEBT, THE OWNER OF THE EVIDENCE OF DEBT MAY SUBMIT THE ORIGINAL EVIDENCE OF DEBT TO THE PUBLIC TRUSTEE OR SHERIFF PRIOR TO THE OCCURRENCE OF THE FORECLOSURE SALE. IN SUCH EVENT, THE SALE

SHALL BE CONDUCTED AND ADMINISTERED AS IF THE ORIGINAL EVIDENCE OF DEBT HAD BEEN SUBMITTED AT THE TIME OF COMMENCEMENT OF SUCH PROCEEDING AND ANY INDEMNITIES DEEMED TO HAVE BEEN GIVEN BY THE OWNER OF THE EVIDENCE OF DEBT UNDER SUBSECTION (1.6) OF THIS SECTION SHALL BE CONSIDERED NULL AND VOID.

(1.8) IN THE EVENT THAT A FORECLOSURE IS CONDUCTED BY AN ALLEGED OWNER OF THE EVIDENCE OF DEBT WHERE THE EVIDENCE OF DEBT HAS NOT BEEN PRODUCED AND IT IS SUBSEQUENTLY DETERMINED THAT THE ALLEGED OWNER WAS NOT THE TRUE AND LAWFUL OWNER OF THE EVIDENCE OF DEBT, THE ONLY CLAIMS FOR THE TRUE AND LAWFUL OWNER OF THE EVIDENCE OF DEBT SHALL BE SOLELY AGAINST THE INDEMNITOR AS PROVIDED IN SUBSECTION (1.6) OF THIS SECTION AND NOT AGAINST THE REAL PROPERTY. NOTHING IN THIS SECTION SHALL PRECLUDE A PERSON LIABLE FOR REPAYMENT OF THE EVIDENCE OF DEBT FROM PURSUING REMEDIES ALLOWED BY LAW, INCLUDING, BUT NOT LIMITED TO, ACTIONS FOR FRAUD.

(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.

(11) Whenever the owner of an evidence of debt which is secured by a deed of trust files with the public trustee, prior to the sale, a written withdrawal of the notice of election and demand for sale, the foreclosure proceedings shall thereupon terminate. The public trustee shall record the withdrawal and collect all expenses actually incurred and, in addition thereto, a withdrawal fee equal to the amounts authorized under section 38-37-104 (1) (b) and, if applicable, ~~section 38-38-104 (1)~~ SECTION 38-38-104 (2) (c) (II).

SECTION 7. 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) (a) 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~~ CONTAIN:

(I) The names of the grantors of the deed of trust or mortgage and the original beneficiaries or grantees thereof;

(II) 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;

(III) A STATEMENT THAT THE NOTICE OF INTENTION TO REDEEM FILED PURSUANT TO SECTION 38-38-302 SHALL BE FILED AT LEAST FIFTEEN CALENDAR DAYS PRIOR TO THE END OF THE OWNER'S REDEMPTION PERIOD;

(IV) A STATEMENT THAT THE NOTICE OF INTENT TO CURE PURSUANT TO SECTION 38-38-104 SHALL BE FILED AT LEAST FIFTEEN CALENDAR DAYS PRIOR TO THE DATE UPON WHICH THE FORECLOSURE SALE IS SET; AND

(V) The names, addresses, and telephone numbers of the attorneys,

if any, representing the foreclosing lienor.

(b) 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~~ THE notice SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (1).

SECTION 8. 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 the owner of the evidence of debt, deed of trust, or mortgage~~ a PROMPTLY TRANSMIT BY MAIL OR BY TELEFAX TRANSMISSION TO THE PERSON EXECUTING THE NOTICE OF ELECTION AND DEMAND PURSUANT TO SECTION 38-38-101 A REQUEST FOR A WRITTEN statement of all sums necessary to cure ~~said~~ THE default. THE 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 DATE UPON WHICH THE SALE IS SET, 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 AND THE ATTORNEY FOR THE OWNER OF THE EVIDENCE OF DEBT, DEED OF TRUST, OR MORTGAGE ACCORDING TO THE RECORDS OF THE OFFICER CONDUCTING THE SALE, OR IF NO ATTORNEY IS SHOWN, THEN THE OWNER SHALL SUBMIT A WRITTEN WITHDRAWAL OF THE NOTICE OF ELECTION AND DEMAND TO THE OFFICER CONDUCTING THE SALE. THE OFFICER CONDUCTING THE SALE SHALL RECORD THE WITHDRAWAL AND COLLECT ALL EXPENSES ACTUALLY INCURRED TOGETHER WITH A WITHDRAWAL FEE EQUAL TO THE AMOUNTS AUTHORIZED UNDER SECTION 38-37-104 (1) (b) AND, IF APPLICABLE, SECTION 38-38-104 (2) (c) (II).

(c) ON OR BEFORE 12 NOON ON THE DAY BEFORE THE DATE UPON WHICH THE 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 IN FORECLOSING THE LIEN AS OF THE DATE OF CURE AND THAT ARE ALLOWABLE BY SECTIONS 38-38-106 AND 38-38-107 OR ALLOWABLE BY THE EVIDENCE OF DEBT, DEED OF TRUST, OR MORTGAGE; AND

(IV) ALL OTHER SUMS THAT ARE DUE UNDER THE EVIDENCE OF DEBT OR DEED OF TRUST OR MORTGAGE AS OF THE DATE OF CURE; EXCEPT THAT ANY PRINCIPAL THAT 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 uncanceled 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 9. 38-38-106 (2), Colorado Revised Statutes, is amended to read:

38-38-106. Written bid required - form of bid. (2) (a) Any written bid submitted to the public trustee or sheriff shall be signed by such owner or by the attorney ~~or agent~~ for such owner and shall set forth an itemization of all amounts due under the evidence of debt and deed of trust, mortgage or other lien being foreclosed, and all costs and expenses allowable by the evidence of debt, deed of trust, mortgage, or other lien being foreclosed, ~~including appraisal fees~~, REASONABLE attorney fees, and costs ~~of an~~ INCURRED BY SUCH OWNER OR THE attorney ~~in the employment of~~ FOR such owner IN ENFORCING THE OWNER'S LIEN OR IN DEFENDING, PROTECTING, AND INSURING THE OWNERS INTEREST IN THE FORECLOSED PROPERTY OR ANY IMPROVEMENTS LOCATED THEREON, INCLUDING, BUT NOT LIMITED TO:

(I) ALL EXPENSES ACTUALLY INCURRED BY THE OFFICER CONDUCTING THE SALE, PUBLICATION COSTS, STATUTORY NOTICE COSTS AND POSTAGE, AND APPRAISAL FEES;

(II) ANY GENERAL OR SPECIAL TAXES OR DITCH OR WATER ASSESSMENTS LEVIED OR ACCRUING AGAINST SAID PROPERTY AND ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL LIEN, FINE, PENALTY, OR ASSESSMENT AGAINST THE PROPERTY;

(III) THE PREMIUMS ON ANY PROPERTY, CASUALTY, GENERAL LIABILITY, AND TITLE INSURANCE ACQUIRED TO PROTECT THE HOLDER'S INTEREST IN THE PROPERTY OR THE IMPROVEMENTS COMPRISING A PART OF SUCH PROPERTY;

(IV) SUMS DUE ON ANY PRIOR LIEN OR ENCUMBRANCE ON SUCH PROPERTY, INCLUDING THAT PORTION OF AN ASSESSMENT BY A HOMEOWNERS' ASSOCIATION THAT CONSTITUTES A LIEN PRIOR TO THE LIEN BEING FORECLOSED;

(V) IF THE PROPERTY IS SUBJECT TO A LEASE, ALL SUMS DUE UNDER

SUCH LEASE;

(VI) THE REASONABLE COSTS AND EXPENSES OF DEFENDING, PROTECTING, SECURING, MAINTAINING, AND REPAIRING SUCH PROPERTY AND THE HOLDER'S INTEREST IN SUCH PROPERTY, OR THE IMPROVEMENTS ON SUCH PROPERTY, RECEIVER'S FEES AND EXPENSES, INSPECTION FEES, COURT COSTS, ATTORNEY FEES, AND FEES AND COSTS OF THE ATTORNEY IN THE EMPLOYMENT OF THE OWNER OF THE EVIDENCE OF DEBT;

(VII) COSTS AND EXPENSES MADE PURSUANT TO A VALID ORDER FROM A COURT OF COMPETENT JURISDICTION TO BRING THE PROPERTY AND THE IMPROVEMENTS THEREON IN COMPLIANCE WITH THE FEDERAL, STATE, COUNTY, AND LOCAL LAWS, ORDINANCES, AND REGULATIONS AFFECTING THE PROPERTY, THE IMPROVEMENTS ON THE PROPERTY, OR THE USE OF THE PROPERTY; AND

(VIII) SUCH OTHER COSTS AND EXPENSES THAT MAY BE PERMITTED BY THE DEED OF TRUST, MORTGAGE, OR OTHER LIEN SECURING THE DEBT OR THAT MAY BE AUTHORIZED BY A COURT OF COMPETENT JURISDICTION.

(b) Bids shall be in substantially the following form:

BID

To: _____
(Public Trustee)*(Sheriff)* of the County of _____, State of Colorado.

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 owner of the evidence of debt secured by the (deed of trust) (mortgage) (lien) being foreclosed.

(Inapplicable items may be omitted):

Principal	\$ _____
Interest	_____
Late charges	_____
Less impound account credit	_____
Plus impound account deficiency	_____
Title or abstracting charges	_____
Docket fee	_____
Appraisal fee	_____

STATUTORY NOTICE COSTS	_____
Postage	_____
Photocopies	_____
Attorney fees	_____
Telephone charges	_____
INSURANCE PREMIUMS	_____
Other (describe):	_____
Total due holder	_____
(Public Trustee's)*(Sheriff's)* FEES AND COSTS	
Fee and costs*	_____
PUBLICATION COSTS	_____
	Total _____
	Bid _____
	Deficiency _____

I enclose herewith the following:

1. Order authorizing sale.
2. Check to your order in the sum of \$ _____ covering the balance of your fees.
3. Other: _____.

Please send us the following:

1. Original Certificate of Purchase.*
2. Promissory Note (with deficiency noted thereon).*
3. Refund Check for overpayment of (Public Trustee's)*(Sheriff's)* costs if any.
4. Other: _____.

*Delete as case may be.

Name of foreclosing party, agent, or attorney

By: _____

Address: _____

Telephone: _____

SECTION 10. 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, TITLE 11 OF THE UNITED STATES CODE, as amended, and an order is subsequently entered by a bankruptcy

SECTION 11. 38-38-111, Colorado Revised Statutes, is amended to read:

38-38-111. Treatment of excess funds. (1) If, at a foreclosure sale, the property is struck and sold for an amount in excess of expenses of sale and moneys due the owner of the evidence of debt secured by the deed of trust, mortgage, or other lien foreclosed, the excess moneys shall be paid into the hands of the ~~county treasurer~~ PUBLIC TRUSTEE to be held in escrow until the end of all redemption periods as provided in sections 38-38-302 and 38-38-303.

(2) Upon the expiration of ~~the~~ ALL redemption ~~period~~ PERIODS provided in sections 38-38-302 and 38-38-303, the excess moneys shall be paid first to the last redeeming lienor up to the amount due on such last redeeming lienor's lien, and the balance, if any, shall be paid, in order of priority, to junior lienors who have duly filed notice of intent to redeem as provided in section 38-38-303 (2) and who have failed to redeem, in each case up to the amount of each such lienor's lien and finally to the owner of record as of the day of the foreclosure sale. A LIENOR HOLDING A CONSENSUAL LIEN PURSUANT TO SECTION 38-38-303 (2) (e) THAT IS NOT ENTITLED TO REDEEM PURSUANT TO SECTION 38-38-303 (2) (d) SHALL NOT CLAIM ANY PORTION OF THE EXCESS MONEYS. Any excess moneys not claimed by the person entitled thereto shall be ~~held by the county treasurer~~ TRANSFERRED BY THE PUBLIC TRUSTEE TO THE COUNTY TREASURER WITHIN FORTY-FIVE DAYS AFTER THE EXPIRATION OF ALL REDEMPTION PERIODS AS PROVIDED IN SECTIONS 38-38-302 AND 38-38-303 AND HELD in escrow for five years from the date of sale. The county shall be answerable for such funds without interest at any time within said five-year period to such persons as shall be legally entitled thereto. Any interest earned on such escrowed funds shall be paid to the county at least annually. Any funds not claimed within five years from the date of sale shall be paid by the county treasurer to the general fund of said county. After the lapse of five years from the date of sale, no claim therefor having been made and established by any person entitled thereto, said moneys shall become the property of the county, and the county treasurer and public trustee shall be discharged from any further liability or responsibility for such moneys; except that, if said moneys exceed five hundred dollars and have not been claimed by any person entitled thereto within sixty days from the expiration of the property redemption period, the county treasurer, within ninety days from the expiration of the proper redemption period, shall commence publication of a notice for four weeks, which means publication once each week for five

successive weeks in some newspaper of general circulation in the county in which the subject real estate is located. Said notice shall contain the name of the owner of record as of the day of the foreclosure sale, his address as given in the recorded instrument evidencing his interest, and the legal description and street address, if any, of the property sold at foreclosure sale and shall state that excess moneys were realized from said sale and that, unless said funds are claimed by the owner of record as of the day of the foreclosure sale or other person entitled thereto within five years from the date of sale, said funds shall become the property of the county in the manner provided in this subsection (2). The county treasurer shall also mail a copy of such notice to such record owner at the address provided in the recorded instrument evidencing his interest and at the property address. The costs of publication and mailing shall be paid from such moneys escrowed by the county treasurer.

SECTION 12. 38-38-301 (1), Colorado Revised Statutes, is amended to read:

38-38-301. Purchaser paying charges - redemption. (1) The purchaser at any sale of property under foreclosure of ~~deeds~~ DEED of trust, ~~or mortgages~~ MORTGAGE OR OTHER LIEN, or under execution or order of any court of competent jurisdiction which has received from the public trustee or sheriff conducting said sale a certificate of purchase evidencing such sale may pay at any time after receiving such certificate of purchase and during the period of redemption described in section 38-38-302:

(a) Any general or special taxes or ditch or water assessments levied or accruing against said property AND ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL LIEN, FINE, PENALTY, OR ASSESSMENT AGAINST THE PROPERTY;

(b) The premiums on any PROPERTY, CASUALTY, GENERAL LIABILITY, AND TITLE insurance ~~necessary~~ ACQUIRED to protect ~~any~~ THE HOLDER'S INTEREST IN THE PROPERTY OR THE improvements comprising a part of such property;

(c) Sums due on any prior lien or encumbrance on such property, INCLUDING THAT PORTION OF AN ASSESSMENT BY A HOMEOWNERS' ASSOCIATION THAT CONSTITUTES A LIEN PRIOR TO THE LIEN BEING FORECLOSED;

(d) If the property is a leasehold or is subject to a lease, all sums due under such lease;

~~(e) The reasonable costs and expenses of defending, protecting, and maintaining such property and the holder's interest in such property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the property, receiver's fees and expenses, inspection fees, court costs, attorney fees, and fees and costs of an attorney in the employment of the holder of the certificate of purchase; and~~

~~(f) Such other costs and expenses which may be authorized by a court of competent jurisdiction.~~

(g) THE REASONABLE COSTS AND EXPENSES OF DEFENDING, PROTECTING, SECURING, MAINTAINING, AND REPAIRING SUCH PROPERTY AND THE HOLDER'S INTEREST IN SUCH PROPERTY, OR THE IMPROVEMENTS ON SUCH PROPERTY, RECEIVER'S FEES AND EXPENSES, INSPECTION FEES, COURT COSTS, ATTORNEY FEES, AND FEES AND COSTS OF THE ATTORNEY IN THE EMPLOYMENT OF THE HOLDER OF THE CERTIFICATE OF PURCHASE;

(h) COSTS AND EXPENSES INCURRED PURSUANT TO A VALID ORDER FROM A COURT OF COMPETENT JURISDICTION TO BRING THE PROPERTY AND THE IMPROVEMENTS THEREON INTO COMPLIANCE WITH THE FEDERAL, STATE, COUNTY, AND LOCAL LAWS, ORDINANCES, AND REGULATIONS AFFECTING THE PROPERTY, THE IMPROVEMENTS ON THE PROPERTY, OR THE USE OF THE PROPERTY; AND

(i) SUCH OTHER COSTS AND EXPENSES THAT MAY BE PERMITTED BY THE DEED OF TRUST, MORTGAGE, OR OTHER LIEN SECURING THE DEBT OR THAT MAY BE AUTHORIZED BY A COURT OF COMPETENT JURISDICTION.

SECTION 13. 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) (a) 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~~ INCURRED 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 OR INVOICES evidencing such ~~payments~~ COSTS AND EXPENSES AND AN AFFIDAVIT VERIFYING THAT SUCH COSTS AND EXPENSES WERE ACTUALLY INCURRED.

(b) THE PUBLIC TRUSTEE OR SHERIFF CONDUCTING THE SALE MAY ACCEPT A WRITTEN NOTICE OF THE INTENTION TO REDEEM AND THE SUM NECESSARY TO REDEEM AFTER FIFTEEN CALENDAR DAYS PRIOR TO THE END OF THE REDEMPTION PERIOD, BUT PRIOR TO THE END OF THE REDEMPTION PERIOD, UPON RECEIPT OF 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.

(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 PROMPTLY TRANSMIT BY MAIL OR BY TELEFAX TRANSMISSION TO 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 TO SUCH HOLDER, 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) (a) THE HOLDER OF A CERTIFICATE OF PURCHASE SHALL SUBMIT

AN INITIAL STATEMENT WITH THE PUBLIC TRUSTEE OR SHERIFF CONDUCTING THE SALE SEVEN CALENDAR DAYS OR MORE 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 THE PER DIEM INTEREST ACCRUING THEREAFTER AND THE INTEREST RATE ON WHICH SUCH AMOUNT IS BASED. 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 CALENDAR DAY PRIOR TO THE END OF THE PERIOD SPECIFIED FOR REDEMPTION.

(b) 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 PARAGRAPH (a) OF THIS SUBSECTION (1.6), 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, PROMPTLY 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.

(c) 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 (1) AND 38-38-302 (1). THE PUBLIC TRUSTEE OR SHERIFF SHALL HAVE NO LIABILITY WITH RESPECT TO ANY ACTION REQUIRED TO BE TAKEN UNDER SUBSECTION (1.5) OF THIS SECTION OR UNDER THIS SUBSECTION (1.6).

(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.

(4.5) IN THE CASE OF THE FILING OF A BANKRUPTCY PETITION UNDER THE FEDERAL BANKRUPTCY CODE OF 1978, TITLE 11 OF THE UNITED STATES CODE, AS AMENDED, DURING THE OWNER'S REDEMPTION PERIOD THAT AFFECTS A PENDING FORECLOSURE, THE REDEMPTION PERIOD IN THAT FORECLOSURE SHALL BE THE TIME PERIOD OTHERWISE PROVIDED BY THIS SECTION OR THE DURATION OF THE TIME PERIOD SPECIFIED UNDER THE PROVISIONS OF SECTION 108 (b) OF THE FEDERAL BANKRUPTCY CODE OF 1978, TITLE 11 OF THE UNITED STATE CODE, AS AMENDED, OR ANY SUCCESSOR STATUTE, WHICHEVER IS THE LAST TO EXPIRE.

SECTION 14. 38-38-303 (1), (2), and (4), Colorado Revised Statutes, are amended, and the said 38-38-303 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

38-38-303. Time of redemption by lienor. (1) If no redemption is made within the redemption period provided for in section 38-38-302, the lienor having the senior lien, according to the records of the county clerk and recorder's office of the county where the property is located, on the sold property or some part thereof subsequent to the lien upon which such sale was held may redeem within ten days after the expiration of the redemption period provided for in section 38-38-302 by paying to the public trustee or sheriff the redemption amount required by section 38-38-302, and each subsequent lienor in succession shall have and be allowed a five-day period to redeem, according to the priority of his OR HER lien, and may redeem within the five-day period allotted to him OR HER by paying to the public trustee or sheriff the redemption amount paid by the next prior redeeming lienor, with interest, plus the amount claimed in the affidavit of the prior redeeming lienor as provided for in ~~subsection (4)~~ SUBSECTIONS (1.5) AND

(4) of this section, including the per diem amount through the date payment is made or, if no lienor prior to himself OR HERSELF has redeemed, by paying to the public trustee or sheriff the redemption amount required by section 38-38-302.

(1.5) IF THE REDEEMING LIENOR IS THE IDENTICAL PERSON OR ENTITY AS THE PRIOR REDEEMING LIENOR AS EVIDENCED BY THE INSTRUMENTS REFERRED TO IN SUBSECTION (2) OF THIS SECTION, REGARDLESS OF THE NUMBER OF CONSECUTIVE LIENS HELD BY THE REDEEMING LIENOR, THE REDEEMING LIENOR SHALL NOT PAY TO THE PUBLIC TRUSTEE OR SHERIFF THE REDEMPTION AMOUNT PAID BY THAT IDENTICAL PERSON OR ENTITY AS THE PRIOR REDEEMING LIENOR AND SHALL BE REQUIRED ONLY TO PAY TO THE PUBLIC TRUSTEE OR SHERIFF THE COSTS AND FEES REQUIRED FOR SUCH REDEMPTION AND TO PROVIDE THE AFFIDAVIT PROVIDED FOR IN SUBSECTION (4) OF THIS SECTION.

(2) (a) No lienor is entitled to redeem unless ~~his~~:

(I) SUCH LIENOR'S LIEN IS EITHER A MORTGAGE OR DEED OF TRUST OR IS CREATED OR RECOGNIZED BY STATE OR FEDERAL STATUTE OR BY JUDGMENT FROM A COURT OF COMPETENT JURISDICTION;

(II) SUCH LIENOR'S LIEN appears by instruments duly recorded or filed as permitted by law ~~and unless~~ WITHIN THE TIME FOR FILING A NOTICE OF INTENT TO REDEEM PROVIDED FOR IN SECTION 38-38-302;

(III) SUCH LIENOR HAS, within the ~~redemption period~~ TIME FOR FILING A NOTICE OF INTENT TO REDEEM provided for in section 38-38-302, ~~he files~~ FILED a notice with the public trustee or sheriff making the sale ~~attaching~~ ADVISING THE PUBLIC TRUSTEE OR SHERIFF OF SUCH LIENOR'S INTENTION TO REDEEM;

(IV) SUCH LIENOR HAS ATTACHED TO THE NOTICE TO REDEEM, 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 intention to redeem. No lienor shall be entitled to redeem under this section unless his 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.;~~ AND

(V) SUCH LIENOR HAS ATTACHED TO THE NOTICE OF INTENT TO

REDEEM AN AFFIDAVIT OF THE LIENOR, SIGNED BY THE REDEEMING LIENOR OR SUCH LIENOR'S ATTORNEY, SETTING FORTH THE AMOUNT REQUIRED TO REDEEM SUCH LIENOR'S LIEN.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION (2), ANY CONSENSUAL LIEN AS DEFINED IN PARAGRAPH (d) OF THIS SUBSECTION (2) ENCUMBERING THE SOLD PROPERTY SHALL BE RECORDED NOT LESS THAN FIFTEEN CALENDAR DAYS PRIOR TO THE END OF THE OWNER'S REDEMPTION PERIOD IN ORDER FOR THE HOLDER OF SUCH CONSENSUAL LIEN TO HAVE ANY RIGHT TO REDEEM UNDER THIS SECTION.

(c) IF MORE THAN THREE CONSENSUAL LIENS ENCUMBERING THE SOLD PROPERTY ARE RECORDED AFTER THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND, ONLY THE HOLDERS OF THE THREE MOST SENIOR OF SUCH CONSENSUAL LIENS 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 CONSENSUAL LIENS SHALL BE DETERMINED BY THE ORDER OF RECORDING OF SUCH CONSENSUAL LIENS.

(d) AS USED IN THIS SECTION, "CONSENSUAL LIEN" MEANS ANY CONVEYANCE OF AN INTEREST IN REAL PROPERTY GRANTED BY THE OWNER OF THE PROPERTY, AFTER THE RECORDING OF A NOTICE OF ELECTION AND DEMAND, THAT IS NOT AN ABSOLUTE CONVEYANCE OF FEE TITLE IN AND TO THE PROPERTY, WITHOUT RIGHTS OF RECISSION, REVERTER, OR REMAINDER. "CONSENSUAL LIEN" INCLUDES, BUT IS NOT LIMITED TO, ALL DEEDS OF TRUST, MORTGAGES OR OTHER ASSIGNMENTS, ENCUMBRANCES OR CONVEYANCES AS SECURITY FOR THE PERFORMANCE OF THE GRANTEE, AND ALL OPTIONS, LEASES, EASEMENTS, AND CONTRACTS, INCLUDING THOSE SPECIFIED IN SECTION 38-38-305. "CONSENSUAL LIEN" DOES NOT INCLUDE LIENS SPECIFIED IN SECTION 38-38-306 OR 38-33.3-316.

(4) A lienor redeeming shall pay to the public trustee or sheriff the amount required to redeem and shall deliver to such official an affidavit of ~~himself~~ THE LIENOR or ~~his agent~~ SUCH LIENOR'S ATTORNEY showing the amount owing on such lien INCLUDING THOSE COSTS AND EXPENSES ACTUALLY INCURRED WHICH ARE PERMITTED BY SUBSECTION (5) OF THIS SECTION FOR WHICH SUCH LIENOR HAS FILED WITH THE PUBLIC TRUSTEE OR SHERIFF CONDUCTING THE SALE RECEIPTS OR INVOICES EVIDENCING SUCH COSTS AND EXPENSES AND AN AFFIDAVIT VERIFYING THAT SUCH COSTS AND EXPENSES WERE ACTUALLY INCURRED as of the last day of the owner's

redemption period with the per diem amount that shall accrue thereafter. IF, FOLLOWING THE END OF THE OWNER'S REDEMPTION PERIOD, THE AMOUNT OWING UNDER THE REDEEMING LIENOR'S LIEN CHANGES FROM THE AMOUNT SHOWN ON THE AFFIDAVIT PREVIOUSLY DELIVERED TO THE PUBLIC TRUSTEE OR SHERIFF, SUCH REDEEMING LIENOR MAY, AT ANY TIME PRIOR TO SUCH REDEEMING LIENOR'S REDEMPTION, SUBMIT A REVISED OR CORRECTED AFFIDAVIT. IT SHALL NOT BE THE RESPONSIBILITY OF THE PUBLIC TRUSTEE OR SHERIFF TO REQUEST A REVISED OR CORRECTED AFFIDAVIT FROM THE REDEEMING LIENOR.

(5) A redeeming lienor may pay the following:

(a) THE PREMIUMS ON ANY PROPERTY, CASUALTY, GENERAL LIABILITY, AND TITLE INSURANCE ACQUIRED TO PROTECT THE HOLDER'S INTEREST IN THE PROPERTY OR THE IMPROVEMENTS COMPRISING A PART OF SUCH PROPERTY; AND

(b) AT ANY TIME AFTER RECEIVING A CERTIFICATE OF REDEMPTION AND DURING THE PERIOD OF REDEMPTION SPECIFIED IN SUBSECTION (1) OF THIS SECTION:

(I) ANY GENERAL OR SPECIAL TAXES OR DITCH OR WATER ASSESSMENTS LEVIED OR ACCRUING AGAINST SAID PROPERTY AND ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL LIEN, FINE, PENALTY, OR ASSESSMENT AGAINST THE PROPERTY;

(II) SUMS DUE ON ANY PRIOR LIEN OR ENCUMBRANCE ON SUCH PROPERTY, INCLUDING THAT PORTION OF AN ASSESSMENT BY A HOMEOWNER'S ASSOCIATION THAT CONSTITUTES A LIEN PRIOR TO THE LIEN BEING FORECLOSED; AND

(III) IF THE PROPERTY IS SUBJECT TO A LEASE, ALL SUMS DUE UNDER SUCH LEASE.

(6) THE PUBLIC TRUSTEE OR SHERIFF SHALL HAVE NO OBLIGATION TO VERIFY OR CONFIRM THE ACCURACY OR PROPRIETY OF AMOUNTS CLAIMED DUE BY A REDEEMING LIENOR ON THE AFFIDAVIT DESCRIBED IN SUBSECTION (4) OF THIS SECTION.

(7) IN THE EVENT AN AGGRIEVED PERSON CONTESTS THE AMOUNT SET FORTH IN A REDEEMING LIENOR'S AFFIDAVIT AS DESCRIBED IN SUBSECTION

(4) OF THIS SECTION AND A COURT DETERMINES THAT SUCH REDEEMING LIENOR MADE A MATERIAL MISSTATEMENT OF THE AMOUNT DUE WITH RESPECT TO SUCH REDEEMING LIENOR'S LIEN, SUCH COURT SHALL, IN ADDITION TO OTHER RELIEF, AWARD TO THE AGGRIEVED PERSON SUCH AGGRIEVED PERSON'S COURT COSTS AND REASONABLE ATTORNEY FEES.

(8) 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 PART 3. 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 15. The introductory portion to 38-38-402 (1), Colorado Revised Statutes, is amended to read:

38-38-402. Certificate of redemption - contents. (1) The public trustee or sheriff to whom the redemption money is paid UNDER SECTION 38-38-302 OR SECTION 38-38-303 shall execute and deliver an original certificate of redemption to the person redeeming and record a duplicate certificate of redemption containing:

SECTION 16. 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 17. Effective date - applicability. This act shall take effect July 1, 2002, and shall apply to all proceedings for the foreclosure of deeds of trust commenced on or after said date.

SECTION 18. 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.

Stan Matsunaka
PRESIDENT OF
THE SENATE

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO