

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 07-0250.01 John Hershey

HOUSE BILL 07-1157

HOUSE SPONSORSHIP

Garcia,

SENATE SPONSORSHIP

Veiga,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING REAL ESTATE FORECLOSURES.**

Bill Summary

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

Allows a court in an action for unlawful detention of real property following a foreclosure sale to dispense with appearances by the plaintiff and a hearing in certain circumstances.

Entitles a public trustee to receive fees for processing a rescission of a foreclosure sale and for rescheduling a sale after a rescission.

Changes the time by which a public trustee or sheriff (officer) processing a foreclosure shall send notice of the foreclosure to persons on an amended mailing list provided by the holder of the evidence of debt. Allows a holder of an evidence of debt to provide an amended mailing list

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

to the officer only until a specified number of days before the sale.

Specifies that certain persons may cure a default in the terms of a lien being foreclosed, unless a court determines that there is a reasonable probability that a default other than nonpayment of sums due has occurred. States that the use of a good faith estimate shall not change or extend the period or effective date of a statement of all sums necessary to cure a default.

Allows a bid submitted for a foreclosure sale to be modified orally at the time of the sale only if the person amending the bid is physically present at the sale and modifies and reexecutes the bid.

States that a lienor who accepts a redemption amount less than the full amount of a lien or a holder of an evidence of debt who accepts a redemption amount less than the amount bid at sale before the redemption periods expire shall not be entitled to any excess proceeds from the sale.

Allows the successful bidder at a foreclosure sale to rescind the sale without a court order within a specified period after the sale. Allows the holder of the evidence of debt to direct the public trustee to reschedule a sale that was rescinded. Limits claims by a person arising from a rescission of a sale to actual damages.

Shortens the periods during which a lienor may redeem. Changes the deadline for the holder of a certificate of purchase to provide a statement of all sums necessary to redeem. Clarifies the interest rate that a redeeming lienor is required to pay on the amount of the sale.

Specifies the information that a separate assignment of a certificate of purchase or redemption shall contain. States that the lien represented by a certificate of purchase shall have the same priority as the deed of trust or other lien foreclosed.

Defines terms. Makes conforming amendments.

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

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

4 **13-40-111. Issuance and return of summons.** (3) For actions
5 commenced pursuant to section 13-40-104 (1) (f) and (1) (g) only, if no
6 answer to the complaint is filed as provided in subsection (1) of this
7 section, the court shall examine the complaint and if satisfied that venue
8 is proper and the plaintiff is entitled to possession of the premises, the
9 court shall dispense with further appearances by the plaintiff or further A

1 hearing and shall forthwith enter a judgment for possession, present or
2 future damages, and costs.

3 **SECTION 2.** 38-37-104 (1) (b) (VII) and (1) (b) (VIII), Colorado
4 Revised Statutes, as they will become effective July 1, 2007, are
5 amended, and the said 38-37-104 (1) (b), as it will become effective July
6 1, 2007, is further amended BY THE ADDITION OF THE
7 FOLLOWING NEW SUBPARAGRAPHS, to read:

8 **38-37-104. Duties of public trustees - fees, expenses, and**
9 **salaries - reports.** (1) The public trustees of each county of this state
10 shall perform the functions and exercise the powers conferred upon them
11 by statute. They shall be entitled to receive as fees for such services the
12 following sums and no other fees or perquisites whatever:

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

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

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

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

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

1 **SECTION 3.** The introductory portion to 38-38-100.3, the
2 introductory portion to 38-38-100.3 (10), and 38-38-100.3 (18) and (19),
3 Colorado Revised Statutes, as they will become effective July 1, 2007, are
4 amended, and the said 38-38-100.3, as it will become effective July 1,
5 2007, is further amended BY THE ADDITION OF THE FOLLOWING
6 NEW SUBSECTIONS, to read:

7 **38-38-100.3. Definitions.** As used in ~~this article~~ ARTICLES 37 TO
8 39 OF THIS TITLE, unless the context otherwise requires:

9 (5.3) "CONSENSUAL LIEN" MEANS A CONVEYANCE OF AN INTEREST
10 IN REAL PROPERTY, GRANTED BY THE OWNER OF THE PROPERTY AFTER THE
11 RECORDING OF A NOTICE OF ELECTION AND DEMAND, THAT IS NOT AN
12 ABSOLUTE CONVEYANCE OF FEE TITLE TO THE PROPERTY. "CONSENSUAL
13 LIEN" INCLUDES BUT IS NOT LIMITED TO A DEED OF TRUST, MORTGAGE OR
14 OTHER ASSIGNMENT, ENCUMBRANCE, OR CONVEYANCE AS SECURITY FOR
15 THE PERFORMANCE OF THE GRANTOR, OPTION, LEASE, EASEMENT, OR
16 CONTRACT, INCLUDING AN INSTRUMENT SPECIFIED IN SECTION 38-38-305.
17 "CONSENSUAL LIEN" DOES NOT INCLUDE A LIEN DESCRIBED IN SECTION
18 38-38-306 OR 38-33.3-316.

19 (5.7) "CORPORATE SURETY BOND" MEANS A BOND ISSUED BY A
20 PERSON AUTHORIZED TO ISSUE BONDS IN THE STATE OF COLORADO WITH
21 THE PUBLIC TRUSTEE AS OBLIGEE, CONDITIONED AGAINST THE DELIVERY
22 OF AN ORIGINAL EVIDENCE OF DEBT TO THE DAMAGE OF THE PUBLIC
23 TRUSTEE.

24 (10) "Holder of AN evidence of debt" means the person in actual
25 possession of or otherwise entitled to enforce an evidence of debt; except
26 that "holder of AN evidence of debt" does not include a person acting as
27 a nominee solely for the purpose of holding the evidence of debt or deed

1 of trust as an electronic registry without any authority to enforce the
2 evidence of debt or deed of trust. For the purposes of articles 37 to 40 of
3 this title, the following persons are presumed to be the holder of AN
4 evidence of debt:

5 (12.5) "LIENOR" INCLUDES WITHOUT LIMITATION THE HOLDER OF
6 A CERTIFICATE OF PURCHASE OR CERTIFICATE OF REDEMPTION FOR
7 PROPERTY, ISSUED UPON THE FORECLOSURE OF A DEED OF TRUST OR OTHER
8 LIEN ON THE PROPERTY.

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

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

20 **SECTION 4.** 38-38-101 (1) (b) (I), Colorado Revised Statutes,
21 as it will become effective July 1, 2007, is amended to read:

22 **38-38-101. Holder of evidence of debt may elect to foreclose.**

23 (1) **Documents required.** Whenever a holder of an evidence of debt
24 declares a violation of a covenant of a deed of trust and elects to publish
25 all or a portion of the property therein described for sale, the holder or the
26 attorney for the holder shall file the following with the public trustee of
27 the county where the property is located:

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

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

9 **SECTION 5.** The introductory portion to 38-38-103 (1) (a) (II)
10 and 38-38-103 (2), Colorado Revised Statutes, as they will become
11 effective July 1, 2007, are amended to read:

12 **38-38-103. Combined notice - publication - providing**
13 **information.** (1) (a) The public trustee shall mail a combined notice as
14 described in subsection (4) of this section to the following persons as set
15 forth in the initial mailing list as follows:

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

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

25 (b) ~~At any time after the first publication of the combined notice~~
26 ~~under paragraph (a) of subsection (5) of this section and prior to the date~~
27 ~~of sale, the holder of the evidence of debt or the attorney for the holder~~

1 ~~may deliver an amended mailing list to the officer, and the officer shall~~
2 ~~mail the amended combined notice, republish, and continue the sale~~
3 ~~pursuant to section 38-38-109 (1) (b).~~

4 **SECTION 6.** The introductory portion to 38-38-104 (1) and
5 38-38-104 (5), Colorado Revised Statutes, as they will become effective
6 July 1, 2007, are amended to read:

7 **38-38-104. Right to cure when default is nonpayment - right**
8 **to cure for certain technical defaults.** (1) ~~Whenever the only alleged~~
9 UNLESS THE ORDER AUTHORIZING THE SALE DESCRIBED IN SECTION
10 38-38-105 CONTAINS A DETERMINATION THAT THERE IS A REASONABLE
11 PROBABILITY THAT A default in the terms of the evidence of debt, deed of
12 trust, or other lien being foreclosed ~~is~~ OTHER THAN nonpayment of sums
13 due thereunder HAS OCCURRED, any of the following persons is entitled
14 to cure the default if the person files with the officer, no later than fifteen
15 calendar days prior to the date of sale, a written notice of intent to cure
16 together with evidence of the person's right to cure to the satisfaction of
17 the officer:

18 (5) A cure statement pursuant to paragraph (a) of subsection (2)
19 of this section shall state the period for which it is effective. The cure
20 statement shall be effective for at least ten calendar days after the date of
21 the cure statement or until the last day to cure under paragraph (b) of
22 subsection (2) of this section, whichever occurs first. The cure statement
23 shall be effective for no more than thirty calendar days after the date of
24 the cure statement or until the last day to cure under paragraph (b) of
25 subsection (2) of this section, whichever occurs first. The use of good
26 faith estimates in the cure statement with respect to interest and fees and
27 costs is specifically authorized by this article, so long as the cure

1 statement states that it is a good faith estimate effective through the last
2 day to cure as indicated in the cure statement. THE USE OF A GOOD FAITH
3 ESTIMATE SHALL NOT CHANGE OR EXTEND THE PERIOD OR EFFECTIVE DATE
4 OF A CURE STATEMENT.

5 **SECTION 7.** 38-38-105, Colorado Revised Statutes, is amended
6 to read:

7 **38-38-105. Court order authorizing sale mandatory.**

8 Whenever a public trustee forecloses upon a deed of trust under this
9 article, the holder of the evidence of debt or the attorney for the holder
10 shall obtain an order authorizing sale from a court of competent
11 jurisdiction to issue the same pursuant to rule 120 of the Colorado rules
12 of civil procedure. The order shall recite the date the hearing was
13 scheduled if no ~~response was filed~~ HEARING WAS HELD, or the date the
14 hearing was completed if a response was filed, which date in either case
15 must be no later than the day prior to the last day on which an effective
16 notice of intent to cure may be filed with the public trustee under section
17 38-38-104. The holder or the attorney for the holder shall cause a copy
18 of the order to be provided to the public trustee no later than 12 noon on
19 the second business day prior to the date of sale. A sale held ~~in violation~~
20 ~~of this section~~ WITHOUT AN ORDER AUTHORIZING SALE shall be invalid.

21 **SECTION 8.** 38-38-106 (5), Colorado Revised Statutes, as it will
22 become effective July 1, 2007, is amended to read:

23 **38-38-106. Bid required - form of bid.** (5) Bids submitted
24 pursuant to this section may be amended by the holder of the evidence of
25 debt or the attorney for the holder in writing or electronically, as
26 determined by the officer pursuant to section 38-38-112, no later than 12
27 noon the day prior to the sale, or orally at the time of sale IF THE PERSON

1 AMENDING THE BID IS PHYSICALLY PRESENT AT THE SALE. ~~If A bid is~~
2 SUBMITTED PURSUANT TO THIS SECTION MAY BE modified orally at the
3 time of sale IF the person making the ~~bid shall immediately note the~~
4 modification ~~on the itemization~~ MODIFIES and ~~reexecute~~ REEXECUTES the
5 bid AT THE SALE.

6 **SECTION 9.** 38-38-108 (2) (a) (I) (C), Colorado Revised
7 Statutes, as it will become effective July 1, 2007, is amended to read:

8 **38-38-108. Date of sale.** (2) (a) (I) If it is not evident from the
9 legal description contained in the deed of trust or other lien being
10 foreclosed whether the property described therein is agricultural property,
11 the officer shall make that determination no less than ten calendar days
12 nor more than twenty calendar days after the recording of the notice of
13 election and demand and shall accept the following as evidence that the
14 property is not agricultural property:

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

21 **SECTION 10.** 38-38-109 (1) (a), (1) (b), (1) (c) (I) (B), and (2),
22 Colorado Revised Statutes, as they will become effective July 1, 2007, are
23 amended to read:

24 **38-38-109. Continuance of sale - effect of bankruptcy -**
25 **withdrawal of sale.** (1) **Continuance.** (a) For any reason deemed by
26 the officer to be good cause or upon written request by the holder of the
27 evidence of debt or by the attorney for the holder, at any time before

1 commencement of the sale, the officer may continue the sale to a later
2 date by making, at the time and place designated for the sale, an oral
3 announcement of the time and place of such continuance, or by posting
4 or providing a notice of the continuance at the time and place designated
5 for the sale, which shall include the time and place to which the sale is
6 continued. Except as provided in ~~subparagraph (H) of paragraph (a)~~
7 SUBPARAGRAPH (I) OF PARAGRAPH (b) of subsection (2) of this section, a
8 sale that is not held on the then-scheduled date of sale and is not
9 continued from the then-scheduled date of sale pursuant to this paragraph
10 (a) shall be deemed to have been continued for a period of one week, and
11 from week to week thereafter in like manner, until the sale is held or
12 otherwise continued pursuant to this paragraph (a). No sale shall be
13 continued to a date later than nine months from the originally designated
14 date in the combined notice, except as provided in subsection (2) of this
15 section.

16 (b) At the request of the holder of the evidence of debt or the
17 attorney for the holder, the officer shall correct any errors in ~~the~~ A
18 published combined notice ~~or accept an amended mailing list pursuant to~~
19 ~~section 38-38-103(2)~~ and shall continue the ~~initial~~ THEN-SCHEDULED date
20 of sale to a future date within the period of continuance allowed by
21 paragraph (a) of this subsection (1) to permit a corrected combined notice
22 to be published or the original combined notice to be republished
23 pursuant to section 38-38-103 (5). The future date of sale shall be no
24 later than thirty calendar days after the fifth publication of the corrected
25 combined notice or republished combined notice. The officer shall mail
26 a copy of the combined notice, or corrected combined notice if the
27 original combined notice was erroneous, to the persons and addresses on

1 the SUPPLEMENTAL OR amended mailing list no later than ten calendar
2 days after the first correct publication or republication AND NO LESS THAN
3 FORTY-FIVE CALENDAR DAYS PRIOR TO THE ACTUAL DATE OF SALE in the
4 same manner as set forth in section 38-38-103.

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

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

1 of the evidence of debt or the attorney for the holder.

2 ~~(H)~~ (b) (I) If all publications of the combined notice prescribed by
3 section 38-38-103 (5) or 13-56-201 (1), C.R.S., have not been completed
4 before a bankruptcy petition has been filed that automatically stays the
5 officer from conducting the sale, the officer shall immediately cancel any
6 remaining publications of the combined notice and, on the date set for the
7 sale, announce, post, or provide a notice that the sale has been enjoined
8 or has been stayed by the automatic stay provisions of the federal
9 bankruptcy code of 1978, title 11 of the United States Code, as amended.
10 The sale shall not be continued under paragraph (a) of subsection (1) of
11 this section.

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

21 ~~(H)~~ (III) When the property is to be sold by the sheriff under any
22 statutory or judicial foreclosure or upon execution and levy made
23 pursuant to any court order or decree, upon the termination of any
24 injunction or upon the entry of a bankruptcy court order dismissing the
25 bankruptcy case, abandoning the property being foreclosed, closing the
26 bankruptcy case, or granting relief from the automatic stay provisions of
27 the federal bankruptcy code of 1978, title 11 of the United States Code,

1 as amended, the sheriff shall forthwith establish a new date of sale and
2 republish a new combined notice pursuant to section 13-56-201 (1),
3 C.R.S.

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

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

27 Date: _____

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

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

7 **SECTION 11.** 38-38-110 (2), Colorado Revised Statutes, as it
8 will become effective July 1, 2007, is amended to read:

9 **38-38-110. Sales by officer - location - announcement -**
10 **records.** (2) At a ~~public trustee~~ sale, the ~~public trustee~~ OFFICER shall
11 read only the public trustee's sale number FOR A SALE BY THE PUBLIC
12 TRUSTEE OR THE COURT CASE NUMBER FOR A SALE BY THE SHERIFF, the
13 name of the original grantor, the street address or, if none, the legal
14 description of the property, the name of the holder of the evidence of
15 debt, the date of sale, the first and last publication dates of the combined
16 notice, and, in accordance with section 38-38-106 (4), the amount of the
17 bid and the name of the person that submitted the bid. In lieu of reading
18 the information listed above, the ~~public trustee~~ OFFICER may post the
19 information or provide a written copy of the information to all persons
20 present at the sale.

21 **SECTION 12.** 38-38-111 (2), Colorado Revised Statutes, as it
22 will become effective July 1, 2007, is amended, and the said 38-38-111,
23 as it will become effective July 1, 2007, is further amended BY THE
24 ADDITION OF A NEW SUBSECTION, to read:

25 **38-38-111. Treatment of excess proceeds.** (2) Upon the
26 expiration of all redemption periods provided in section 38-38-302, the
27 excess proceeds shall be paid in order of recording priority, first to the

1 holder of the evidence of debt to the extent of any deficiency as indicated
2 in the holder's bid, SUBJECT TO SUBSECTION (4) OF THIS SECTION, and
3 second to junior lienors, determined as of the recording date of the notice
4 of election and demand or lis pendens according to the records, who have
5 duly filed a notice of intent to redeem and whose liens have not been
6 redeemed in full pursuant to section 38-38-302, in each case up to the
7 unpaid amount of each such lienor's lien plus fees and costs. A lienor
8 holding a lien that is not entitled to redeem by virtue of being recorded
9 after the notice of election and demand or a lienor that has not timely filed
10 a notice of intent to redeem pursuant to section 38-38-302 shall not have
11 any claim to any portion of the excess proceeds. After payment to all
12 lienors and the holder entitled to receive excess proceeds pursuant to this
13 section, any remaining excess proceeds shall be paid to the owner of the
14 property as of the date and time of the recording of the notice of election
15 and demand or lis pendens.

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

22 **SECTION 13.** Part 1 of article 38 of title 38, Colorado Revised
23 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
24 read:

25 **38-38-113. Rescission of public trustee sale.** (1) THE
26 SUCCESSFUL BIDDER AT A FORECLOSURE SALE OR THE BIDDER'S
27 ATTORNEY, OR THE ASSIGNEE OF THE SUCCESSFUL BIDDER PURSUANT TO

1 SECTION 38-38-403 OR THE ASSIGNEE'S ATTORNEY, MAY RESCIND THE
2 SALE WITHOUT OBTAINING A COURT ORDER BY FILING WITH THE PUBLIC
3 TRUSTEE NO LATER THAN EIGHT BUSINESS DAYS AFTER THE DATE OF THE
4 SALE A NOTICE OF RESCISSION OF SALE STATING THAT THE SALE IS BEING
5 RESCINDED, THE NUMBER AND DATE OF THE SALE, THE NAME OF THE
6 PERSON TO WHOM THE CERTIFICATE OF PURCHASE WAS ISSUED, THE NAME
7 OF THE ASSIGNEE, IF ANY, THE RECEPTION NUMBER OR BOOK AND PAGE
8 NUMBER FOR THE RECORDED CERTIFICATE OF PURCHASE, AND THE LEGAL
9 DESCRIPTION OF THE PROPERTY FORECLOSED, WHICH NOTICE SHALL BE
10 SIGNED AND PROPERLY ACKNOWLEDGED BY THE SUCCESSFUL BIDDER OR
11 ASSIGNEE, OR SIGNED BY THE BIDDER OR ASSIGNEE'S ATTORNEY. UPON
12 RECEIPT OF THE NOTICE OF RESCISSION OF SALE, THE ORIGINAL
13 CERTIFICATE OF PURCHASE, ANY ASSIGNMENT OF THE CERTIFICATE OF
14 PURCHASE, THE PUBLIC TRUSTEE'S FEE FOR THE RESCISSION SPECIFIED IN
15 SECTION 38-37-104, AND THE COSTS OF RECORDING THE NOTICE OF
16 RESCISSION OF THE SALE, THE PUBLIC TRUSTEE SHALL RECORD THE NOTICE
17 OF RESCISSION OF SALE IN THE COUNTY RECORDS.

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

26 (3) WITHIN TEN CALENDAR DAYS AFTER RECEIPT OF ALL
27 DOCUMENTS AND FEES AND COSTS SPECIFIED IN SUBSECTION (1) OF THIS

1 SECTION, THE PUBLIC TRUSTEE SHALL MAIL A COPY OF THE NOTICE OF
2 RESCISSION OF SALE TO EACH PERSON WHO WAS ENTITLED TO RECEIVE THE
3 COMBINED NOTICE PURSUANT TO SECTION 38-38-103. THE PERSON
4 RESCINDING THE SALE SHALL PROVIDE ADDRESSED AND STAMPED
5 ENVELOPES TO THE PUBLIC TRUSTEE FOR MAILING THE COPIES.

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

14 (b) NO LATER THAN TEN CALENDAR DAYS AFTER RECEIVING
15 NOTICE TO SCHEDULE A NEW DATE OF SALE, THE PUBLIC TRUSTEE SHALL
16 MAIL A COMBINED NOTICE SETTING FORTH THE RESCHEDULED DATE OF
17 SALE TO EACH PERSON WHO WAS ENTITLED TO RECEIVE THE
18 SUPPLEMENTAL OR AMENDED COMBINED NOTICE.

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

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

27 (e) AFTER A SALE HAS BEEN RESCINDED AND RESCHEDULED

1 PURSUANT TO THIS SUBSECTION (4), THE SALE MAY BE CONTINUED IN
2 ACCORDANCE WITH SECTION 38-38-109 (1) (a).

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

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

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

14 THE UNDERSIGNED, AS PUBLIC TRUSTEE FOR THE COUNTY OF
15 _____, STATE OF COLORADO, BY THIS INDORSEMENT, HEREBY
16 CONFIRMS THE REINSTATEMENT OF THIS (EVIDENCE OF DEBT) (DEED OF
17 TRUST) (LIEN) IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION
18 38-38-113, COLORADO REVISED STATUTES.

19 DATE: _____

20 SIGNATURE:

21 PUBLIC TRUSTEE

22 FOR THE COUNTY OF _____,

23 STATE OF COLORADO.

24 **SECTION 14.** The introductory portion to 38-38-302 (1) (d) and
25 38-38-302 (1) (e), (3), (4) (a), (4) (c), and (4) (d), Colorado Revised
26 Statutes, as they will become effective July 1, 2007, are amended to read:

27 **38-38-302. Redemption by lienor - procedure.**

1 (1) **Requirements for redemption.** A lienor or assignee of a lien is
2 entitled to redeem if:

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

7 (e) The lienor has attached to the notice of intent to redeem the
8 original INSTRUMENT, or ~~copies~~ IN THE CASE OF A QUALIFIED HOLDER, A
9 COPY of the ~~recorded instruments~~ INSTRUMENT evidencing the ~~lien and~~
10 ~~any~~ assignment of the lien TO THE PERSON ATTEMPTING TO REDEEM. If
11 THE original ~~instruments are~~ INSTRUMENT IS delivered to the officer, ~~they~~
12 ~~shall be returned to the lienor, and a copy shall be retained by the officer~~
13 SHALL RETURN THE INSTRUMENT TO THE LIENOR AND RETAIN A COPY.

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

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

18 (4) **Redemption period.** (a) No sooner than fifteen business
19 days nor later than ~~twenty~~ NINETEEN business days after a sale under this
20 article, the junior lienor having the most senior recorded lien on the sold
21 property or any portion thereof, according to the records, having first
22 complied with the requirements of subsection (1) of this section, may
23 redeem the property sold by paying to the officer, no later than 12 noon
24 on the last day of the lienor's redemption period, in the form specified in
25 section 38-37-108, the amount for which the property was sold with
26 interest from the date of sale, together with all sums allowed under
27 section 38-38-301. Interest on the amount for which the property was

1 sold shall be charged at the default rate specified in the evidence of debt,
2 deed of trust, or other lien being foreclosed or, if not so specified, at the
3 regular rate specified in the evidence of debt, deed of trust, or other lien
4 being foreclosed. IF DIFFERENT INTEREST RATES ARE SPECIFIED IN THE
5 EVIDENCE OF DEBT, DEED OF TRUST, OR OTHER LIEN BEING FORECLOSED,
6 THE INTEREST RATE SPECIFIED IN THE EVIDENCE OF DEBT SHALL PREVAIL.
7 IF THE EVIDENCE OF DEBT DOES NOT SPECIFY AN INTEREST RATE,
8 INCLUDING A DEFAULT INTEREST RATE, THE HIGHEST INTEREST RATE
9 SPECIFIED IN THE DEED OF TRUST OR OTHER LIEN BEING FORECLOSED
10 SHALL APPLY.

11 (c) If the statement described in paragraph (f) of subsection (1) of
12 this section so states, or upon other written authorization from the holder
13 of the certificate of purchase or the then-current holder of the certificate
14 of redemption or the attorney for either such holder, the officer may
15 accept as a full redemption ~~any lesser~~ AN amount LESS than the amount
16 specified in paragraph (a) of subsection (3) of this section.
17 Notwithstanding the first sentence of this paragraph (c), the amount bid
18 at sale shall determine the amount and extent of any deficiency remaining
19 on the debt represented by the evidence of debt that is the subject of the
20 foreclosure as stated in the bid pursuant to section 38-38-106 (2). Any
21 redemption under this section shall constitute a full redemption and shall
22 be deemed to be payment of all sums to which the holder of the certificate
23 of purchase is entitled.

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

1 before the expiration of his or her redemption period.

2 **SECTION 15.** 38-38-403, Colorado Revised Statutes, is amended
3 to read:

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

13 (a) THE NAME AND ADDRESS OF THE ASSIGNEE;

14 (b) THE NAME AND ADDRESS OF THE ASSIGNOR;

15 (c) A DESCRIPTION OF THE PROPERTY;

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

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

20 **SECTION 16.** Part 4 of article 38 of title 38, Colorado Revised
21 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
22 read:

23 **38-38-401.5. Certificate - priority of lien.** THE LIEN
24 REPRESENTED BY A CERTIFICATE OF PURCHASE SHALL HAVE THE SAME
25 PRIORITY AS THE DEED OF TRUST OR OTHER LIEN FORECLOSED.

26 **SECTION 17.** 38-38-502, Colorado Revised Statutes, as it will
27 become effective July 1, 2007, is amended to read:

1 **38-38-502. Form of confirmation deed for public trustee's sale.**

2 The confirmation deed executed by the public trustee in a foreclosure sale
3 may be in substantially the following form:

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

10 WHEREAS, _____ did, by deed of trust dated____,
11 20__, and recorded in the office of the clerk and recorder
12 of the _____ County of _____, Colorado, on _____, 20__, in
13 Book __, Page __, (Film no. __, Reception no. __) convey
14 to the public trustee, in trust, the property hereinafter
15 described to secure the payment of the indebtedness
16 provided in said deed of trust; and

17 WHEREAS, a violation was made in certain of the terms
18 and covenants of said deed of trust as shown by the notice
19 of election and demand for sale filed with the public
20 trustee; ~~(a duplicate of which was recorded in the office of~~
21 ~~said county clerk and recorder);~~ the said property was
22 advertised for public sale at the place and in the manner
23 provided by law and by said deed of trust; combined notice
24 of sale and right to cure and redeem was given as required
25 by law; said property was sold according to said combined
26 notice; and a certificate of purchase thereof was made and
27 recorded in the office of said county clerk and recorder;

1 or attorney, ~~thereof~~, or a title insurance company providing an
2 indemnification agreement and affidavit described in paragraph (c) of
3 subsection (3) of this section, which request shall be duly executed and
4 acknowledged;

5 (II) Production of the original cancelled evidence of debt such as
6 a note or bond as evidence that the indebtedness secured by such deed of
7 trust has been paid; except that such production may be omitted in the
8 circumstances contemplated in subsection (3.5) of this section; and

9 (III) Receipt by the public trustee of the fee prescribed by section
10 38-37-104 (1) (a) and the fee for recording the release.

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

16 (2) If the purpose of the deed of trust has been fully or partially
17 satisfied and the indebtedness secured by such deed of trust has not been
18 paid, the public trustee shall release ~~the lien of~~ the deed of trust as to all
19 or portions of the property encumbered by the deed of trust pursuant to
20 the provisions of subsection (1) of this section if the request to release
21 certifies that the purpose of the deed of trust has been fully or partially
22 satisfied and if either the original evidence of debt is exhibited or the
23 ~~owner~~ HOLDER OF THE EVIDENCE OF DEBT is ~~an entity described in~~
24 ~~paragraph (b) of subsection (3.5) of this section~~ A QUALIFIED HOLDER that
25 has made, in the ~~owner's~~ QUALIFIED HOLDER'S request for release or
26 partial release, the certification contemplated in paragraph (a) of
27 ~~subsection (3.5)~~ SUBSECTION (3) of this section.

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

5 (a) ~~An indemnification agreement accompanied by a certified~~
6 ~~copy of an authorizing resolution passed by the board of directors of a~~
7 ~~bank, as defined in section 11-101-401 (5), C.R.S., an industrial bank, as~~
8 ~~provided for in article 108 of title 11, C.R.S., a savings and loan~~
9 ~~association licensed to do business in Colorado, a federal housing~~
10 ~~administration approved mortgagee, or a federally chartered credit union~~
11 ~~operating in Colorado or a state-chartered credit union, as defined in~~
12 ~~section 11-30-101, C.R.S., or an indemnification agreement that has been~~
13 ~~duly authorized by any agency of the federal government or by any~~
14 ~~federally created corporation that originates, guarantees, or purchases~~
15 ~~loans indemnifying the public trustee against claims for issuing a release~~
16 ~~under this subsection (3) made within the time period described in~~
17 ~~subsection (7) of this section, which indemnification agreement is~~
18 ~~satisfactory to the public trustee; IF THE HOLDER OF THE EVIDENCE OF~~
19 ~~DEBT IS A QUALIFIED HOLDER, AS DEFINED IN SECTION 38-38-100.3 (20),~~
20 ~~A CERTIFICATION IN THE QUALIFIED HOLDER'S REQUEST FOR RELEASE OR~~
21 ~~PARTIAL RELEASE, ACKNOWLEDGED BY THE QUALIFIED HOLDER OR SIGNED~~
22 ~~BY THE ATTORNEY FOR THE HOLDER AND IN THE FORM ACCEPTABLE TO~~
23 ~~THE PUBLIC TRUSTEE, CERTIFYING THAT THE HOLDER OF THE EVIDENCE OF~~
24 ~~DEBT IS A QUALIFIED HOLDER, THAT THE ORIGINAL EVIDENCE OF DEBT IS~~
25 ~~NOT BEING EXHIBITED OR PRODUCED, AND THAT THE QUALIFIED HOLDER~~
26 ~~AGREES TO INDEMNIFY THE PUBLIC TRUSTEE PURSUANT TO THIS SECTION.~~
27 ~~REGARDLESS OF WHETHER THE CERTIFICATION CONTAINS THE AGREEMENT~~

1 TO INDEMNIFY, THE QUALIFIED HOLDER, BY REQUESTING RELEASE OR
2 PARTIAL RELEASE WITHOUT PRODUCTION OR EXHIBITION OF THE ORIGINAL
3 EVIDENCE OF DEBT, SHALL BE DEEMED TO HAVE AGREED TO INDEMNIFY
4 THE PUBLIC TRUSTEE FOR ANY CLAIM MADE WITHIN THE PERIOD
5 DESCRIBED IN SUBSECTION (7) OF THIS SECTION FOR DAMAGES, COSTS,
6 LIABILITIES, OR REASONABLE ATTORNEY FEES INCURRED AS A RESULT OF
7 THE ACTION OF THE PUBLIC TRUSTEE TAKEN IN ACCORDANCE WITH THE
8 REQUEST, AND NO SEPARATE INDEMNIFICATION AGREEMENT SHALL BE
9 NECESSARY FOR THE AGREEMENT TO INDEMNIFY TO BE EFFECTIVE.

10 (b) A corporate surety bond ~~issued by a company authorized to~~
11 ~~issue such bonds in the state of Colorado with the public trustee as~~
12 ~~obligee, conditioned against the delivery of any such original evidence of~~
13 ~~debt to the damage of the public trustee and in a sum~~ IN AN AMOUNT equal
14 to the original principal amount recited in ~~such~~ THE deed of trust, which
15 corporate surety bond shall remain in full force and effect for the ~~time~~
16 period described in subsection (7) of this section; or

17 (c) An indemnification agreement from a title insurance company
18 licensed and qualified in Colorado in a form acceptable to the public
19 trustee indemnifying the public trustee from any ~~and all~~ CLAIM MADE
20 WITHIN THE PERIOD DESCRIBED IN SUBSECTION (7) OF THIS SECTION FOR
21 damages, COSTS, LIABILITIES, AND REASONABLE ATTORNEY FEES
22 INCURRED as the result of issuing ~~such~~ A release PURSUANT TO THIS
23 SUBSECTION (3), accompanied by an affidavit executed by an officer of
24 the ~~title insurance~~ company stating that the ~~title insurance~~ company has
25 caused the indebtedness secured by the deed of trust to be satisfied in full
26 or, in the case of a partial release, to the extent required by the holder of
27 the indebtedness.

1 ~~(3.5) (a) If the owner of the evidence of debt is a financial~~
2 ~~institution described in paragraph (b) of this subsection (3.5), the public~~
3 ~~trustee may accept, in lieu of production or exhibition of the original~~
4 ~~evidence of debt required by subsection (1) or (2) of this section, a~~
5 ~~certification made in the owner's request for release or partial release~~
6 ~~certifying that the owner is a financial institution described in paragraph~~
7 ~~(b) of this subsection (3.5), that the original evidence of debt is not being~~
8 ~~exhibited or produced, and that the owner agrees that the owner is~~
9 ~~obligated to indemnify the public trustee pursuant to this paragraph (a).~~
10 ~~Whether such agreement is contained in the certification, the owner, by~~
11 ~~requesting release or partial release without production or exhibition of~~
12 ~~the evidence of indebtedness, shall be deemed to have agreed to~~
13 ~~indemnify the public trustee for any and all damages, costs, liabilities, and~~
14 ~~reasonable attorney fees incurred as a result of the action of the public~~
15 ~~trustee taken in accordance with such request, and no separate~~
16 ~~indemnification agreement shall be necessary for the agreement to~~
17 ~~indemnify to be effective. Venue for any action based upon such~~ THE
18 ~~indemnification agreement SPECIFIED IN PARAGRAPH (a) OF SUBSECTION~~
19 ~~(3) OF THIS SECTION shall be proper only in the county in which the public~~
20 ~~trustee receiving the certification is located.~~

21 ~~(b) Only the following financial institutions shall be entitled to~~
22 ~~submit a certification pursuant to paragraph (a) of this subsection (3.5):~~

23 ~~(I) A bank, as defined in section 11-101-401 (5), C.R.S.;~~

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

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

1 ~~(IV) A supervised lender, as defined in section 5-1-301 (46),~~
2 ~~C.R.S., that is licensed to make supervised loans pursuant to section~~
3 ~~5-2-302, C.R.S., and that is either:~~

4 ~~(A) A public entity, as defined in paragraph (c) of this subsection~~
5 ~~(3.5); or~~

6 ~~(B) An entity in which all of the outstanding voting securities are~~
7 ~~held, directly or indirectly, by a public entity;~~

8 ~~(V) An entity in which all of the outstanding voting securities are~~
9 ~~held, directly or indirectly, by a public entity also owning, directly or~~
10 ~~indirectly, all of the voting securities of a supervised lender, as defined in~~
11 ~~section 5-1-301 (46), C.R.S., that is licensed to make supervised loans~~
12 ~~pursuant to section 5-2-302, C.R.S.;~~

13 ~~(VI) A federal housing administration approved mortgagee;~~

14 ~~(VII) A federally chartered credit union doing business in~~
15 ~~Colorado or a state chartered credit union, as defined in section~~
16 ~~11-30-101, C.R.S.;~~

17 ~~(VIII) An agency of the federal government; or~~

18 ~~(IX) A federally created corporation that originates, guarantees,~~
19 ~~or purchases loans.~~

20 ~~(c) For purposes of this subsection (3.5), "public entity" means an~~
21 ~~entity that has issued voting securities that are listed on a national~~
22 ~~securities exchange registered under the federal "Securities Exchange Act~~
23 ~~of 1934".~~

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

1 encumbered by the deed of trust upon the:

2 **SECTION 20. Repeal.** 38-38-305 (4), Colorado Revised
3 Statutes, is repealed.

4 **SECTION 21. Effective date.** This act shall take effect July 1,
5 2007.

6 **SECTION 22. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, and safety.