

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 07-0250.01 John Hershey

HOUSE BILL 07-1157

HOUSE SPONSORSHIP

Garcia,

SENATE SPONSORSHIP

Veiga,

House Committees

Judiciary
Business Affairs and Labor

Senate Committees

Business, Labor and Technology

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.

SENATE
Amended 2nd Reading
March 12, 2007

HOUSE
3rd Reading Unamended
February 20, 2007

HOUSE
Amended 2nd Reading
February 16, 2007

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.** Article 37 of title 38, Colorado Revised Statutes, is
4 amended BY THE ADDITION OF A NEW SECTION to read:

5 **38-37-100.5. Definitions.** THE DEFINITIONS IN SECTION
6 38-38-100.3 APPLY TO THIS ARTICLE UNLESS THE CONTEXT OTHERWISE
7 REQUIRES.

8 **SECTION 3.** 38-37-103, Colorado Revised Statutes, is amended
9 to read:

10 **38-37-103. Deputy trustee - successor in office.** Each public
11 trustee may appoint deputies who shall have the same power in all
12 respects as the public trustee. ALL ACTS OF A DEPUTY PUBLIC TRUSTEE
13 SHALL HAVE THE SAME EFFECT AS THOUGH PERFORMED BY THE PUBLIC
14 TRUSTEE. If any A public trustee dies, resigns, or is removed from office,
15 or if any A public trustee's term of office expires after selling any property
16 under the term of any A deed of trust and before executing a certificate of
17 redemption or deed for the same, such PROPERTY, THE public trustee's
18 successor in office shall execute such THE certificate or deed in the same
19 manner that the public trustee making such sale might have done.

20 **SECTION 4.** 38-37-104 (1) (b) (VII) and (1) (b) (VIII), Colorado
21 Revised Statutes, as they will become effective July 1, 2007, are
22 amended, and the said 38-37-104 (1) (b), as it will become effective July
23 1, 2007, is further amended BY THE ADDITION OF THE
24 FOLLOWING NEW SUBPARAGRAPHS, to read:

25 **38-37-104. Duties of public trustees - fees, expenses, and**
26 **salaries - reports.** (1) The public trustees of each county of this state
27 shall perform the functions and exercise the powers conferred upon them

1 by statute. They shall be entitled to receive as fees for such services the
2 following sums and no other fees or perquisites whatever:

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

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

10 (VIII) For recommending the foreclosure after bankruptcy where
11 publication was not completed pursuant to ~~section 38-38-109 (2) (a) (II)~~
12 SECTION 38-38-109 (2) (b) (I), the sum of seventy-five dollars;

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

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

18 **SECTION 5.** The introductory portion to 38-38-100.3, the
19 introductory portion to 38-38-100.3 (10), and 38-38-100.3 (18) and (19),
20 Colorado Revised Statutes, as they will become effective July 1, 2007, are
21 amended, and the said 38-38-100.3, as it will become effective July 1,
22 2007, is further amended BY THE ADDITION OF THE FOLLOWING
23 NEW SUBSECTIONS, to read:

24 **38-38-100.3. Definitions.** As used in ~~this article~~ ARTICLES 37 TO
25 39 OF THIS TITLE, unless the context otherwise requires:

26 (5.3) "CONSENSUAL LIEN" MEANS A CONVEYANCE OF AN INTEREST
27 IN REAL PROPERTY, GRANTED BY THE OWNER OF THE PROPERTY AFTER THE

1 RECORDING OF A NOTICE OF ELECTION AND DEMAND, THAT IS NOT AN
2 ABSOLUTE CONVEYANCE OF FEE TITLE TO THE PROPERTY. "CONSENSUAL
3 LIEN" INCLUDES BUT IS NOT LIMITED TO A DEED OF TRUST, MORTGAGE OR
4 OTHER ASSIGNMENT, ENCUMBRANCE, OPTION, LEASE, EASEMENT,
5 CONTRACT, INCLUDING AN INSTRUMENT SPECIFIED IN SECTION 38-38-305,
6 OR CONVEYANCE AS SECURITY FOR THE PERFORMANCE OF THE GRANTOR.
7 "CONSENSUAL LIEN" DOES NOT INCLUDE A LIEN DESCRIBED IN SECTION
8 38-38-306 OR 38-33.3-316.

9 (5.7) "CORPORATE SURETY BOND" MEANS A BOND ISSUED BY A
10 PERSON AUTHORIZED TO ISSUE BONDS IN THE STATE OF COLORADO WITH
11 THE PUBLIC TRUSTEE AS OBLIGEE, CONDITIONED AGAINST THE DELIVERY
12 OF AN ORIGINAL EVIDENCE OF DEBT TO THE DAMAGE OF THE PUBLIC
13 TRUSTEE.

14 (10) "Holder of AN evidence of debt" means the person in actual
15 possession of or otherwise entitled to enforce an evidence of debt; except
16 that "holder of AN evidence of debt" does not include a person acting as
17 a nominee solely for the purpose of holding the evidence of debt or deed
18 of trust as an electronic registry without any authority to enforce the
19 evidence of debt or deed of trust. For the purposes of articles 37 to 40 of
20 this title, the following persons are presumed to be the holder of AN
21 evidence of debt:

22 (12.5) "LIENOR" INCLUDES WITHOUT LIMITATION THE HOLDER OF
23 A CERTIFICATE OF PURCHASE OR CERTIFICATE OF REDEMPTION FOR
24 PROPERTY, ISSUED UPON THE FORECLOSURE OF A DEED OF TRUST OR OTHER
25 LIEN ON THE PROPERTY.

26 (18) "Property" means the portion of the property encumbered by
27 a deed of trust or other lien that is being foreclosed under this article OR

1 THE PORTION OF THE PROPERTY BEING RELEASED FROM A DEED OF TRUST
2 OR OTHER LIEN UNDER ARTICLE 39 OF THIS TITLE.

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

10 **SECTION 6.** 38-38-101 (1) (b) (I), Colorado Revised Statutes,
11 as it will become effective July 1, 2007, is amended to read:

12 **38-38-101. Holder of evidence of debt may elect to foreclose.**

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

18 (b) The original evidence of debt, together with the original
19 indorsement or assignment thereof, if any, to the holder of the evidence
20 of debt or other proper indorsement or assignment in accordance with
21 subsection (6) of this section or, in lieu of the original evidence of debt,
22 one of the following:

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

26 **SECTION 7.** The introductory portion to 38-38-103 (1) (a) (II)
27 and 38-38-103 (2), (4) (a) (III), and (5) (a), Colorado Revised Statutes, as

1 they will become effective July 1, 2007, are amended to read:

2 **38-38-103. Combined notice - publication - providing**
3 **information.** (1) (a) The public trustee shall mail a combined notice as
4 described in subsection (4) of this section to the following persons as set
5 forth in the initial mailing list as follows:

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

9 (2) (a) The holder of the evidence of debt or the attorney for the
10 holder may deliver an amended mailing list to the officer from time to
11 time, but no less than sixty-five calendar days prior to the ACTUAL date of
12 sale. The officer shall send the notice pursuant to subsection (4) of this
13 section to the persons on the amended mailing list no less than sixty
14 FORTY-FIVE calendar days prior to the ACTUAL date of sale.

15 (b) ~~At any time after the first publication of the combined notice~~
16 ~~under paragraph (a) of subsection (5) of this section and prior to the date~~
17 ~~of sale, the holder of the evidence of debt or the attorney for the holder~~
18 ~~may deliver an amended mailing list to the officer, and the officer shall~~
19 ~~mail the amended combined notice, republish, and continue the sale~~
20 ~~pursuant to section 38-38-109 (1) (b).~~

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

23 (III) The statement: A notice of intent to redeem filed pursuant
24 to section 38-38-302 shall be filed with the officer no later than ten EIGHT
25 business days after the sale;

26 (5) (a) No more than sixty calendar days nor less than forty-five
27 calendar days prior to the first scheduled date of sale, unless a longer

1 period of publication is specified in the deed of trust or other lien being
2 foreclosed, a deed of trust or other lien being foreclosed shall be deemed
3 to require the officer to publish the combined notice, omitting the copies
4 of the statutes under paragraph (b) of subsection (4) of this section AND
5 ADDING THE FIRST AND LAST PUBLICATION DATES IF NOT ALREADY
6 SPECIFIED IN THE COMBINED NOTICE, for four weeks, which means
7 publication once each week for five consecutive weeks.

8 **SECTION 8.** The introductory portion to 38-38-104 (1) and
9 38-38-104 (5), Colorado Revised Statutes, as they will become effective
10 July 1, 2007, are amended to read:

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

22 (5) A cure statement pursuant to paragraph (a) of subsection (2)
23 of this section shall state the period for which it is effective. The cure
24 statement shall be effective for at least ten calendar days after the date of
25 the cure statement or until the last day to cure under paragraph (b) of
26 subsection (2) of this section, whichever occurs first. The cure statement
27 shall be effective for no more than thirty calendar days after the date of

1 the cure statement or until the last day to cure under paragraph (b) of
2 subsection (2) of this section, whichever occurs first. The use of good
3 faith estimates in the cure statement with respect to interest and fees and
4 costs is specifically authorized by this article, so long as the cure
5 statement states that it is a good faith estimate effective through the last
6 day to cure as indicated in the cure statement. THE USE OF A GOOD FAITH
7 ESTIMATE SHALL NOT CHANGE OR EXTEND THE PERIOD OR EFFECTIVE DATE
8 OF A CURE STATEMENT.

9 **SECTION 9.** 38-38-105, Colorado Revised Statutes, is amended
10 to read:

11 **38-38-105. Court order authorizing sale mandatory.**

12 Whenever a public trustee forecloses upon a deed of trust under this
13 article, the holder of the evidence of debt or the attorney for the holder
14 shall obtain an order authorizing sale from a court of competent
15 jurisdiction to issue the same pursuant to rule 120 of the Colorado rules
16 of civil procedure. The order shall recite the date the hearing was
17 scheduled if no ~~response was filed~~ HEARING WAS HELD, or the date the
18 hearing was completed if a response was filed, which date in either case
19 must be no later than the day prior to the last day on which an effective
20 notice of intent to cure may be filed with the public trustee under section
21 38-38-104. The holder or the attorney for the holder shall cause a copy
22 of the order to be provided to the public trustee no later than 12 noon on
23 the second business day prior to the date of sale. A sale held ~~in violation~~
24 ~~of this section~~ WITHOUT AN ORDER AUTHORIZING SALE shall be invalid.

25 **SECTION 10.** 38-38-106 (5), Colorado Revised Statutes, as it
26 will become effective July 1, 2007, is amended to read:

27 **38-38-106. Bid required - form of bid.** (5) Bids submitted

1 pursuant to this section may be amended by the holder of the evidence of
2 debt or the attorney for the holder in writing or electronically, as
3 determined by the officer pursuant to section 38-38-112, no later than 12
4 noon the day prior to the sale, or orally at the time of sale IF THE PERSON
5 AMENDING THE BID IS PHYSICALLY PRESENT AT THE SALE. ~~If A bid is~~
6 ~~SUBMITTED PURSUANT TO THIS SECTION MAY BE~~ modified orally at the
7 time of sale IF the person making the bid ~~shall immediately note the~~
8 ~~modification on the itemization~~ MODIFIES and ~~reexecute~~ REEXECUTES the
9 bid AT THE SALE.

10 **SECTION 11.** 38-38-108 (2) (a) (I) (C), Colorado Revised
11 Statutes, as it will become effective July 1, 2007, is amended to read:

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

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

25 **SECTION 12.** 38-38-109 (1) (a), (1) (b), (1) (c) (I) (B), and (2),
26 Colorado Revised Statutes, as they will become effective July 1, 2007, are
27 amended to read:

1 **38-38-109. Continuance of sale - effect of bankruptcy -**
2 **withdrawal of sale.** (1) **Continuance.** (a) For any reason deemed by
3 the officer to be good cause or upon written request by the holder of the
4 evidence of debt or by the attorney for the holder, at any time before
5 commencement of the sale, the officer may continue the sale to a later
6 date by making, at the time and place designated for the sale, an oral
7 announcement of the time and place of such continuance, or by posting
8 or providing a notice of the continuance at the time and place designated
9 for the sale, which shall include the time and place to which the sale is
10 continued. Except as provided in ~~subparagraph (H) of paragraph (a)~~
11 ~~SUBPARAGRAPH (I) OF PARAGRAPH (b) of subsection (2) of this section,~~ a
12 sale that is not held on the then-scheduled date of sale and is not
13 continued from the then-scheduled date of sale pursuant to this paragraph
14 (a) shall be deemed to have been continued for a period of one week, and
15 from week to week thereafter in like manner, until the sale is held or
16 otherwise continued pursuant to this paragraph (a). No sale shall be
17 continued to a date later than ~~nine~~ TWELVE months from the originally
18 designated date in the combined notice, except as provided in subsection
19 (2) of this section.

20 (b) At the request of the holder of the evidence of debt or the
21 attorney for the holder, the officer shall correct any errors in ~~the~~ A
22 published combined notice ~~or accept an amended mailing list pursuant to~~
23 ~~section 38-38-103(2) and shall continue the initial~~ THEN-SCHEDULED date
24 of sale to a future date within the period of continuance allowed by
25 paragraph (a) of this subsection (1) to permit a corrected combined notice
26 to be published or the original combined notice to be republished
27 pursuant to section 38-38-103 (5). The future date of sale shall be no

1 later than thirty calendar days after the fifth publication of the corrected
2 combined notice or republished combined notice. The officer shall mail
3 a copy of the combined notice, or corrected combined notice if the
4 original combined notice was erroneous, to the persons and addresses on
5 the SUPPLEMENTAL OR amended mailing list no later than ten calendar
6 days after the first correct publication or republication AND NO LESS THAN
7 FORTY-FIVE CALENDAR DAYS PRIOR TO THE ACTUAL DATE OF SALE in the
8 same manner as set forth in section 38-38-103.

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

23 (2) **Effect of bankruptcy proceedings.** (a) ~~(f)~~ If all publications
24 of the combined notice prescribed by section 38-38-103 (5) or 13-56-201
25 (1), C.R.S., have been completed before a bankruptcy petition has been
26 filed that automatically stays the officer from conducting the sale, the
27 officer shall announce, post, or provide notice of that fact on the

1 then-scheduled date of sale, take no action at the then-scheduled sale, and
2 allow the sale to be automatically continued from week to week in
3 accordance with paragraph (a) of subsection (1) of this section unless
4 otherwise requested in writing prior to any such date of sale by the holder
5 of the evidence of debt or the attorney for the holder.

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

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

25 ~~(H)~~ (III) When the property is to be sold by the sheriff under any
26 statutory or judicial foreclosure or upon execution and levy made
27 pursuant to any court order or decree, upon the termination of any

1 injunction or upon the entry of a bankruptcy court order dismissing the
2 bankruptcy case, abandoning the property being foreclosed, closing the
3 bankruptcy case, or granting relief from the automatic stay provisions of
4 the federal bankruptcy code of 1978, title 11 of the United States Code,
5 as amended, the sheriff shall forthwith establish a new date of sale and
6 republish a new combined notice pursuant to section 13-56-201 (1),
7 C.R.S.

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

25 The undersigned, as (Public Trustee) (Sheriff) for the
26 _____, county of _____, state of Colorado, by this indorsement, hereby
27 confirms the reinstatement of this (evidence of debt) (deed of

1 trust) (~~mortgage~~) (lien) in accordance with the requirements of
2 ~~section 38-38-109(2)(c)~~ SECTION 38-38-109(2)(c)(I), Colorado Revised
3 Statutes.

4 Date: _____

5 Signature
6 (Public Trustee) (Sheriff)

7 For the _____,

8 County of _____,

9 State of Colorado.

10 ~~(d)~~ (I) (II) If the holder of the evidence of debt, deed of trust, or
11 other lien reinstated pursuant to paragraph (c) of this subsection (2) or the
12 attorney for the holder notifies the officer in writing of the entry of an
13 order dismissing the bankruptcy case, abandoning the property being
14 foreclosed, closing the bankruptcy case, or granting relief from the
15 automatic stay provided by the federal bankruptcy code of 1978, title 11
16 of the United States Code, as amended, within sixty calendar days of the
17 date on which the foreclosed property is no longer subject to the
18 automatic stay, the officer shall set a new date of sale at least twenty-four
19 calendar days but not more than forty-nine calendar days after the date on
20 which the official receives such notice. No later than ten business days
21 after receiving such notice, the officer shall mail an amended combined
22 notice containing the date of the rescheduled sale to each person
23 appearing on the most recent mailing list. No later than twenty calendar
24 days after receiving such notice, but no less than ten calendar days prior
25 to the new date of sale, the officer shall sale publish the amended
26 combined notice, omitting the copies of the statutes, ~~under paragraph (b)~~
27 ~~of subsection (4) of this section~~, one time only in a newspaper of general

1 circulation in the county where the property is located.

2 (H) (III) All fees and costs of providing and publishing the
3 amended combined notice and publication shall be part of the foreclosure
4 costs.

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

8 (f) (e) The periods for which a sale may be continued under this
9 subsection (2) shall be in addition to the ~~nine-month~~ TWELVE-MONTH
10 period of continuance provided by subsection (1) of this section.

11 **SECTION 13.** 38-38-110 (2), Colorado Revised Statutes, as it
12 will become effective July 1, 2007, is amended to read:

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

25 **SECTION 14.** 38-38-111 (2), Colorado Revised Statutes, as it
26 will become effective July 1, 2007, is amended, and the said 38-38-111,
27 as it will become effective July 1, 2007, is further amended BY THE

1 ADDITION OF A NEW SUBSECTION, to read:

2 **38-38-111. Treatment of excess proceeds.** (2) Upon the
3 expiration of all redemption periods provided in section 38-38-302, the
4 excess proceeds shall be paid in order of recording priority, first to the
5 holder of the evidence of debt to the extent of any deficiency as indicated
6 in the holder's bid, SUBJECT TO SUBSECTION (4) OF THIS SECTION, and
7 second to junior lienors, determined as of the recording date of the notice
8 of election and demand or lis pendens according to the records, who have
9 duly filed a notice of intent to redeem and whose liens have not been
10 redeemed in full pursuant to section 38-38-302, in each case up to the
11 unpaid amount of each such lienor's lien plus fees and costs. A lienor
12 holding a lien that is not entitled to redeem by virtue of being recorded
13 after the notice of election and demand or a lienor that has not timely filed
14 a notice of intent to redeem pursuant to section 38-38-302 shall not have
15 any claim to any portion of the excess proceeds. After payment to all
16 lienors and the holder entitled to receive excess proceeds pursuant to this
17 section, any remaining excess proceeds shall be paid to the owner of the
18 property as of the date and time of the recording of the notice of election
19 and demand or lis pendens.

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

26 **SECTION 15. 38-38-112 (1) (a) and (2) (a), Colorado Revised**
27 **Statutes, are amended to read:**

1 **38-38-112. Use of electronic documents authorized - repeal.**

2 (1) (a) Consistent with the provisions of the "Uniform Electronic
3 Transactions Act", article 71.3 of title 24, C.R.S., any document or record
4 related to a foreclosure may be accepted by the public trustee or sheriff
5 in an electronic format or may be made available to the public by the
6 public trustee or sheriff in an electronic format. NO LATER THAN JULY 1,
7 2007, the public trustee or sheriff shall establish and uniformly apply
8 WRITTEN policies FOR determining whether and the extent to which the
9 public trustee or sheriff shall accept documents or records in electronic
10 form; except that the public trustee or sheriff shall not require the use of
11 an electronic format for any purpose under this article. THE PUBLIC
12 TRUSTEE OR SHERIFF SHALL UNIFORMLY APPLY THE POLICIES ESTABLISHED
13 PURSUANT TO THIS PARAGRAPH (a).

14 (2) (a) Consistent with the provisions of the "Uniform Electronic
15 Transactions Act", article 71.3 of title 24, C.R.S., any document or record
16 related to a foreclosure may be accepted by the officer in an electronic
17 format or may be made available to the public by the officer in an
18 electronic format. The officer shall establish and uniformly apply
19 WRITTEN policies FOR determining whether and the extent to which the
20 officer shall accept documents or records in electronic form; except that
21 the officer shall not require the use of an electronic format for any
22 purpose under this article.

23 **SECTION 16.** Part 1 of article 38 of title 38, Colorado Revised
24 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
25 SECTIONS to read:

26 **38-38-113. Rescission of public trustee sale.** (1) IF THE
27 SUCCESSFUL BIDDER AT A FORECLOSURE SALE IS THE HOLDER OF THE

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

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

1 PURSUANT TO SECTION 38-38-101.

2 (3) WITHIN TEN CALENDAR DAYS AFTER RECEIPT OF ALL
3 DOCUMENTS AND FEES AND COSTS SPECIFIED IN SUBSECTION (1) OF THIS
4 SECTION, THE PUBLIC TRUSTEE SHALL MAIL A COPY OF THE NOTICE OF
5 RESCISSION OF SALE TO EACH PERSON WHO WAS ENTITLED TO RECEIVE THE
6 COMBINED NOTICE PURSUANT TO SECTION 38-38-103. THE PERSON
7 RESCINDING THE SALE SHALL PROVIDE ADDRESSED AND STAMPED
8 ENVELOPES TO THE PUBLIC TRUSTEE FOR MAILING THE COPIES.

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

17 (b) NO LATER THAN TEN CALENDAR DAYS AFTER RECEIVING
18 NOTICE TO SCHEDULE A NEW DATE OF SALE, THE PUBLIC TRUSTEE SHALL
19 MAIL A COMBINED NOTICE SETTING FORTH THE RESCHEDULED DATE OF
20 SALE TO EACH PERSON WHO WAS ENTITLED TO RECEIVE THE COMBINED
21 NOTICE PURSUANT TO SECTION 38-38-103.

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

26 (d) ALL FEES AND COSTS OF THE PUBLIC TRUSTEE FOR ACTIONS
27 PERFORMED UNDER THIS SECTION AND THE COST OF RECORDING THE

1 NOTICE OF RESCISSION OF SALE SHALL BE PART OF THE FORECLOSURE
2 COSTS.

3 (e) AFTER A SALE HAS BEEN RESCINDED AND RESCHEDULED
4 PURSUANT TO THIS SUBSECTION (4), THE SALE MAY BE CONTINUED IN
5 ACCORDANCE WITH SECTION 38-38-109 (1) (a).

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

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

14 (7) THE INDORSEMENT OF THE PUBLIC TRUSTEE PURSUANT TO
15 SUBSECTION (2) OF THIS SECTION SHALL BE IN SUBSTANTIALLY THE
16 FOLLOWING FORM:

17 THE UNDERSIGNED, AS PUBLIC TRUSTEE FOR THE COUNTY OF
18 _____, STATE OF COLORADO, BY THIS INDORSEMENT, HEREBY
19 CONFIRMS THE REINSTATEMENT OF THIS (EVIDENCE OF DEBT) (DEED OF
20 TRUST) (LIEN) IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION
21 38-38-113, COLORADO REVISED STATUTES.

22 DATE: _____

23 SIGNATURE:

24 PUBLIC TRUSTEE

25 FOR THE COUNTY OF _____,

26 STATE OF COLORADO.

27 **38-38-114. Unclaimed refunds - disposition under "Unclaimed**

1 **Property Act'**. MONEYS PAYABLE AS A REFUND FOR OVERPAYMENT OF
2 A CURE OF DEFAULT PURSUANT TO SECTION 38-38-104 OR FOR
3 OVERPAYMENT OF A REDEMPTION PURSUANT TO PART 3 OF THIS ARTICLE
4 THAT REMAIN UNCLAIMED BY THE OWNER ONE YEAR AFTER THE MONEYS
5 BECAME PAYABLE ARE PRESUMED ABANDONED AND SHALL BE REPORTED
6 AND PAID TO THE STATE TREASURER IN ACCORDANCE WITH SECTIONS
7 38-13-110 AND 38-13-112.

8 **SECTION 17.** The introductory portion to 38-38-302 (1) (d) and
9 38-38-302 (1) (e), (3), (4) (a), (4) (c), and (4) (d), Colorado Revised
10 Statutes, as they will become effective July 1, 2007, are amended to read:

11 **38-38-302. Redemption by lienor - procedure.**

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

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

18 (e) The lienor has attached to the notice of intent to redeem the
19 original INSTRUMENT OR A CERTIFIED COPY THEREOF, or ~~copies~~ IN THE
20 CASE OF A QUALIFIED HOLDER, A COPY of the ~~recorded instruments~~
21 INSTRUMENT evidencing the lien and any assignment of the lien TO THE
22 PERSON ATTEMPTING TO REDEEM. If THE original ~~instruments are~~
23 INSTRUMENT IS delivered to the officer, ~~they shall be returned to the~~
24 ~~lienor, and a copy shall be retained by~~ the officer SHALL RETURN THE
25 INSTRUMENT TO THE LIENOR AND RETAIN A COPY.

26 (3) **Statement of redemption.** (a) Upon receipt of notice that an
27 intent to redeem was filed, the holder of a certificate of purchase shall

1 submit a signed and acknowledged statement, or the attorney for the
2 holder shall submit a signed statement, to the officer, no later than
3 ~~fourteen~~ THIRTEEN business days following the sale, specifying all sums
4 necessary to redeem as of the date of the statement, the amount of per
5 diem interest accruing thereafter, and the interest rate on which the
6 amount is based. The holder or the attorney for the holder may amend the
7 statement from time to time to reflect additional sums advanced as
8 allowed by law, but the statement shall not be amended later than two
9 business days prior to the commencement of the redemption period
10 pursuant to paragraph (a) of subsection (4) of this section or each
11 subsequent redemption period pursuant to paragraph (b) of subsection (4)
12 of this section.

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

1 subsequent redemption period pursuant to paragraph (b) of subsection (4)
2 of this section.

3 (4) **Redemption period.** (a) No sooner than fifteen business
4 days nor later than ~~twenty~~ NINETEEN business days after a sale under this
5 article, the junior lienor having the most senior recorded lien on the sold
6 property or any portion thereof, according to the records, having first
7 complied with the requirements of subsection (1) of this section, may
8 redeem the property sold by paying to the officer, no later than 12 noon
9 on the last day of the lienor's redemption period, in the form specified in
10 section 38-37-108, the amount for which the property was sold with
11 interest from the date of sale, together with all sums allowed under
12 section 38-38-301. Interest on the amount for which the property was
13 sold shall be charged at the default rate specified in the evidence of debt,
14 deed of trust, or other lien being foreclosed or, if not so specified, at the
15 regular rate specified in the evidence of debt, deed of trust, or other lien
16 being foreclosed. IF DIFFERENT INTEREST RATES ARE SPECIFIED IN THE
17 EVIDENCE OF DEBT, DEED OF TRUST, OR OTHER LIEN BEING FORECLOSED,
18 THE INTEREST RATE SPECIFIED IN THE EVIDENCE OF DEBT SHALL PREVAIL.
19 IF THE EVIDENCE OF DEBT DOES NOT SPECIFY AN INTEREST RATE,
20 INCLUDING A DEFAULT INTEREST RATE, APPLICABLE INTEREST RATE AS
21 SPECIFIED IN THE DEED OF TRUST OR OTHER LIEN BEING FORECLOSED
22 SHALL APPLY.

23 (c) If the statement described in paragraph (f) of subsection (1) of
24 this section so states, or upon other written authorization from the holder
25 of the certificate of purchase or the then-current holder of the certificate
26 of redemption or the attorney for either such holder, the officer may
27 accept as a full redemption ~~any lesser~~ AN amount LESS than the amount

1 specified in paragraph (a) of subsection (3) of this section.
2 Notwithstanding the first sentence of this paragraph (c), the amount bid
3 at sale shall determine the amount and extent of any deficiency remaining
4 on the debt represented by the evidence of debt that is the subject of the
5 foreclosure as stated in the bid pursuant to section 38-38-106 (2). Any
6 redemption under this section shall constitute a full redemption and shall
7 be deemed to be payment of all sums to which the holder of the certificate
8 of purchase is entitled.

9 (d) On the ~~eleventh~~ NINTH business day after the date of sale, the
10 officer shall set the dates of the redemption period of each lienor in
11 accordance with this subsection (4). The redemption period of a lienor
12 shall not be shortened or altered by the fact that a prior lienor redeemed
13 before the expiration of his or her redemption period.

14 **SECTION 18.** 38-38-401 (1), Colorado Revised Statutes, as it
15 will become effective July 1, 2007, is amended BY THE ADDITION OF
16 THE FOLLOWING NEW PARAGRAPHS to read:

17 **38-38-401. Certificate of purchase - issuance.** (1) No later than
18 five business days after the sale, the officer shall execute and record in
19 each county where the property or a portion thereof is located a certificate
20 of purchase containing:

21 (h) AN ATTACHED EXHIBIT CONTAINING A COPY OF THE EXECUTED
22 ORDER AUTHORIZING THE SALE THAT BEARS THE PUBLIC TRUSTEE SALE
23 NUMBER OR CIVIL DOCKET NUMBER IN THE CASE OF A JUDICIAL
24 FORECLOSURE; AND

25 (i) AN ATTACHED EXHIBIT CONTAINING A COPY OF THE INITIAL
26 MAILING LIST AND ANY SUPPLEMENTAL OR AMENDED MAILING LIST THAT
27 BEARS THE PUBLIC TRUSTEE SALE NUMBER OR CIVIL DOCKET NUMBER IN

1 THE CASE OF A JUDICIAL FORECLOSURE.

2 **SECTION 19.** 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 20.** 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 21.** 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 and
2 WHEREAS, all periods of redemption have expired.
3 NOW, THEREFORE, the public trustee, pursuant to the
4 power and authority vested by law and by the said deed of
5 trust, confirms the foreclosure sale and sells and conveys to
6 grantee the following described property located in the
7 County of _____, State of Colorado, to-wit:
8 (describe property)
9 also known by street and number as _____ to have and to
10 hold the same, with all appurtenances, forever.

11 **SECTION 22.** 38-38-504, Colorado Revised Statutes, is amended
12 to read:

13 **38-38-504. Deed evidence of compliance.** Any deed executed by
14 ~~the public trustee or sheriff,~~ AN OFFICER or other official under this article
15 shall be prima facie evidence of compliance with all statutory
16 requirements for the sale and execution of the deed and evidence of the
17 truth of the recitals contained in ~~such~~ THE deed.

18 **SECTION 23.** Part 1 of article 39 of title 38, Colorado Revised
19 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
20 read:

21 **38-39-100.5. Definitions.** THE DEFINITIONS IN SECTION
22 38-38-100.3 APPLY TO THIS ARTICLE UNLESS THE CONTEXT OTHERWISE
23 REQUIRES.

24 **SECTION 24.** 38-39-102 (1), (2), (3), and (3.5) and the
25 introductory portion to 38-39-102 (5), Colorado Revised Statutes, are
26 amended to read:

27 **38-39-102. When deed of trust shall be released.** (1) (a) Except

1 as otherwise provided in ~~subsection (3.5)~~ PARAGRAPH (a) OF SUBSECTION
2 (3) of this section, ~~liens of deeds~~ A DEED of trust to the public trustee,
3 upon compliance with the provisions of ~~such deeds~~ THE DEED of trust,
4 shall be released by the public trustee upon the:

5 (I) Receipt of a written request ~~of~~ FROM the ~~owner~~ HOLDER of the
6 evidence of debt secured by ~~such~~ THE deed of trust, ~~or~~ the HOLDER'S agent
7 or attorney, ~~thereof~~, or a title insurance company providing an
8 indemnification agreement and affidavit described in paragraph (c) of
9 subsection (3) of this section, which request shall be duly executed and
10 acknowledged;

11 (II) Production of the original cancelled evidence of debt such as
12 a note or bond as evidence that the indebtedness secured by such deed of
13 trust has been paid; except that such production may be omitted in the
14 circumstances contemplated in subsection ~~(3.5)~~ (3) of this section; and

15 (III) Receipt by the public trustee of the fee prescribed by section
16 38-37-104 (1) (a) and the fee for recording the release.

17 (b) Immediately upon execution of the release of the ~~lien of deed~~
18 of trust by the public trustee, the public trustee shall cause ~~such~~ THE
19 release to be recorded in the ~~office~~ RECORDS of the county clerk and
20 recorder. ~~of the county in which the property described in such release is~~
21 ~~located.~~

22 (2) If the purpose of the deed of trust has been fully or partially
23 satisfied and the indebtedness secured by such deed of trust has not been
24 paid, the public trustee shall release ~~the lien of~~ the deed of trust as to all
25 or portions of the property encumbered by the deed of trust pursuant to
26 the provisions of subsection (1) of this section if the request to release
27 certifies that the purpose of the deed of trust has been fully or partially

1 satisfied and if either the original evidence of debt is exhibited or the
2 ~~owner~~ HOLDER OF THE EVIDENCE OF DEBT is ~~an entity described in~~
3 ~~paragraph (b) of subsection (3.5) of this section~~ A QUALIFIED HOLDER that
4 has made, in the ~~owner's~~ QUALIFIED HOLDER'S request for release or
5 partial release, the certification contemplated in paragraph (a) of
6 ~~subsection (3.5)~~ SUBSECTION (3) of this section.

7 (3) (a) With respect to either subsection (1) or (2) of this section,
8 ~~if such original evidence of debt cannot be produced, the public trustee~~
9 ~~may accept one of the following in lieu thereof:~~

10 ~~(a) An indemnification agreement accompanied by a certified~~
11 ~~copy of an authorizing resolution passed by the board of directors of a~~
12 ~~bank, as defined in section 11-101-401 (5), C.R.S., an industrial bank, as~~
13 ~~provided for in article 108 of title 11, C.R.S., a savings and loan~~
14 ~~association licensed to do business in Colorado, a federal housing~~
15 ~~administration approved mortgagee, or a federally chartered credit union~~
16 ~~operating in Colorado or a state-chartered credit union, as defined in~~
17 ~~section 11-30-101, C.R.S., or an indemnification agreement that has been~~
18 ~~duly authorized by any agency of the federal government or by any~~
19 ~~federally created corporation that originates, guarantees, or purchases~~
20 ~~loans indemnifying the public trustee against claims for issuing a release~~
21 ~~under this subsection (3) made within the time period described in~~
22 ~~subsection (7) of this section, which indemnification agreement is~~
23 ~~satisfactory to the public trustee;~~ A HOLDER OF THE ORIGINAL EVIDENCE
24 OF DEBT THAT [REDACTED] IS A QUALIFIED HOLDER, AS DEFINED IN SECTION
25 38-38-100.3 (20), [REDACTED] MAY REQUEST THE RELEASE OF A DEED OF TRUST
26 WITHOUT PRODUCING OR EXHIBITING THE ORIGINAL EVIDENCE OF DEBT. A
27 HOLDER THAT REQUESTS THE RELEASE OF A DEED OF TRUST PURSUANT TO

1 THIS PARAGRAPH (a) SHALL BE DEEMED TO HAVE AGREED TO INDEMNIFY
2 AND DEFEND THE PUBLIC TRUSTEE AGAINST ANY CLAIM MADE WITHIN THE
3 PERIOD DESCRIBED IN SUBSECTION (7) OF THIS SECTION FOR DAMAGES
4 RESULTING FROM THE ACTION OF THE PUBLIC TRUSTEE TAKEN IN
5 ACCORDANCE WITH THE REQUEST. THE INDEMNITY GRANTED BY THIS
6 PARAGRAPH (a) IS LIMITED TO ACTUAL ECONOMIC LOSS SUFFERED AND
7 ANY COURT COSTS AND REASONABLE ATTORNEY FEES AND COSTS
8 INCURRED IN DEFENDING A CLAIM BROUGHT AS A DIRECT AND PROXIMATE
9 RESULT OF THE FAILURE TO PRODUCE THE ORIGINAL EVIDENCE OF DEBT,
10 BUT THE INDEMNITY DOES NOT INCLUDE AND NO CLAIMANT IS ENTITLED
11 TO ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXPECTATION,
12 OR PUNITIVE DAMAGES. NO SEPARATE INDEMNIFICATION AGREEMENT
13 SHALL BE NECESSARY FOR THE AGREEMENT TO INDEMNIFY TO BE
14 EFFECTIVE.

15 (b) WITH RESPECT TO EITHER SUBSECTION (1) OR (2) OF THIS
16 SECTION, THE HOLDER OF THE EVIDENCE OF DEBT MAY REQUEST THE
17 RELEASE OF A DEED OF TRUST WITHOUT PRODUCING OR EXHIBITING THE
18 ORIGINAL EVIDENCE OF DEBT. A HOLDER THAT REQUESTS THE RELEASE OF
19 A DEED OF TRUST PURSUANT TO THIS PARAGRAPH (b) SHALL DELIVER TO
20 THE PUBLIC TRUSTEE A corporate surety bond ~~issued by a company~~
21 ~~authorized to issue such bonds in the state of Colorado with the public~~
22 ~~trustee as obligee, conditioned against the delivery of any such original~~
23 ~~evidence of debt to the damage of the public trustee and in a sum~~ IN AN
24 AMOUNT equal to ONE AND ONE-HALF TIMES the original principal amount
25 recited in ~~such~~ THE deed of trust, which corporate surety bond shall
26 remain in full force and effect for the ~~time~~ period described in subsection
27 (7) of this section; or

1 (c) ~~An indemnification agreement from~~ WITH RESPECT TO EITHER
2 SUBSECTION (1) OR (2) OF THIS SECTION, a title insurance company
3 licensed and qualified in Colorado ~~in a form acceptable to the public~~
4 ~~trustee indemnifying the public trustee from any and all~~ MAY REQUEST
5 THE RELEASE OF A DEED OF TRUST WITHOUT PRODUCING OR EXHIBITING
6 THE ORIGINAL EVIDENCE OF DEBT. A COMPANY THAT REQUESTS THE
7 RELEASE OF A DEED OF TRUST PURSUANT TO THIS PARAGRAPH (c) SHALL
8 BE DEEMED TO HAVE AGREED TO INDEMNIFY AND DEFEND THE PUBLIC
9 TRUSTEE AGAINST ANY CLAIM MADE WITHIN THE PERIOD DESCRIBED IN
10 SUBSECTION (7) OF THIS SECTION FOR ~~damages as the result of issuing~~
11 ~~such release, accompanied by~~ RESULTING FROM THE ACTION TAKEN BY
12 THE PUBLIC TRUSTEE IN ACCORDANCE WITH THE REQUEST. THE
13 INDEMNITY GRANTED BY THIS PARAGRAPH (c) IS LIMITED TO ACTUAL
14 ECONOMIC LOSS SUFFERED AND ANY COURT COSTS AND REASONABLE
15 ATTORNEY FEES AND COSTS INCURRED IN DEFENDING A CLAIM BROUGHT
16 AS A DIRECT AND PROXIMATE RESULT OF THE FAILURE TO PRODUCE THE
17 ORIGINAL EVIDENCE OF DEBT, BUT THE INDEMNITY DOES NOT INCLUDE
18 AND NO CLAIMANT IS ENTITLED TO ANY SPECIAL, INCIDENTAL,
19 CONSEQUENTIAL, RELIANCE, EXPECTATION, OR PUNITIVE DAMAGES. NO
20 SEPARATE INDEMNIFICATION AGREEMENT SHALL BE NECESSARY FOR THE
21 AGREEMENT TO INDEMNIFY TO BE EFFECTIVE; HOWEVER, THE COMPANY
22 SHALL PROVIDE TO THE PUBLIC TRUSTEE an affidavit executed by an
23 officer of the ~~title insurance~~ company stating that the ~~title insurance~~
24 company has caused the indebtedness secured by the deed of trust to be
25 satisfied in full or, in the case of a partial release, to the extent required
26 by the holder of the indebtedness.

27 (3.5) (a) ~~If the owner of the evidence of debt is a financial~~

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

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

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

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

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

27 (IV) A supervised lender, as defined in section 5-1-301 (46);

1 ~~C.R.S., that is licensed to make supervised loans pursuant to section~~
2 ~~5-2-302, C.R.S., and that is either:~~

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

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

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

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

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

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

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

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

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

1 **SECTION 25. Repeal.** 38-38-305 (4), Colorado Revised
2 Statutes, is repealed.

3 **SECTION 26. Effective date.** This act shall take effect July 1,
4 2007; except that sections 3, 15, 26, and 27 of this act shall take effect
5 upon passage.

6 **SECTION 27. 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.