

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 07-0250.01 John Hershey

**HOUSE BILL 07-1157**

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**HOUSE SPONSORSHIP**

**Garcia,**

**SENATE SPONSORSHIP**

**Veiga,**

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**House Committees**

Judiciary

Business Affairs and Labor

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING REAL ESTATE FORECLOSURES.**

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**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.

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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.** 38-37-104 (1) (b) (VII) and (1) (b) (VIII), Colorado  
9 Revised Statutes, as they will become effective July 1, 2007, are  
10 amended, and the said 38-37-104 (1) (b), as it will become effective July  
11 1, 2007, is further amended BY THE ADDITION OF THE  
12 FOLLOWING NEW SUBPARAGRAPHS, to read:

13 **38-37-104. Duties of public trustees - fees, expenses, and**  
14 **salaries - reports.** (1) The public trustees of each county of this state  
15 shall perform the functions and exercise the powers conferred upon them  
16 by statute. They shall be entitled to receive as fees for such services the  
17 following sums and no other fees or perquisites whatever:

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

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

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

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

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

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

12 **38-38-100.3. Definitions.** As used in ~~this article~~ ARTICLES 37 TO  
13 39 OF THIS TITLE, unless the context otherwise requires:

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

22 "CONSENSUAL LIEN" DOES NOT INCLUDE A LIEN DESCRIBED IN SECTION  
23 38-38-306 OR 38-33.3-316.

24 (5.7) "CORPORATE SURETY BOND" MEANS A BOND ISSUED BY A  
25 PERSON AUTHORIZED TO ISSUE BONDS IN THE STATE OF COLORADO WITH  
26 THE PUBLIC TRUSTEE AS OBLIGEE, CONDITIONED AGAINST THE DELIVERY  
27 OF AN ORIGINAL EVIDENCE OF DEBT TO THE DAMAGE OF THE PUBLIC

1 TRUSTEE.

2 (10) "Holder of AN evidence of debt" means the person in actual  
3 possession of or otherwise entitled to enforce an evidence of debt; except  
4 that "holder of AN evidence of debt" does not include a person acting as  
5 a nominee solely for the purpose of holding the evidence of debt or deed  
6 of trust as an electronic registry without any authority to enforce the  
7 evidence of debt or deed of trust. For the purposes of articles 37 to 40 of  
8 this title, the following persons are presumed to be the holder of AN  
9 evidence of debt:

10 (12.5) "LIENOR" INCLUDES WITHOUT LIMITATION THE HOLDER OF  
11 A CERTIFICATE OF PURCHASE OR CERTIFICATE OF REDEMPTION FOR  
12 PROPERTY, ISSUED UPON THE FORECLOSURE OF A DEED OF TRUST OR OTHER  
13 LIEN ON THE PROPERTY.

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

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

25 **SECTION 5.** 38-38-101 (1) (b) (I), Colorado Revised Statutes,  
26 as it will become effective July 1, 2007, is amended to read:

27 **38-38-101. Holder of evidence of debt may elect to foreclose.**

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

6 (b) The original evidence of debt, together with the original  
7 indorsement or assignment thereof, if any, to the holder of the evidence  
8 of debt or other proper indorsement or assignment in accordance with  
9 subsection (6) of this section or, in lieu of the original evidence of debt,  
10 one of the following:

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

14 **SECTION 6.** The introductory portion to 38-38-103 (1) (a) (II)  
15 and 38-38-103 (2), Colorado Revised Statutes, as they will become  
16 effective July 1, 2007, are amended to read:

17 **38-38-103. Combined notice - publication - providing**  
18 **information.** (1) (a) The public trustee shall mail a combined notice as  
19 described in subsection (4) of this section to the following persons as set  
20 forth in the initial mailing list as follows:

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

24 (2) (a) The holder of the evidence of debt or the attorney for the  
25 holder may deliver an amended mailing list to the officer from time to  
26 time, but no less than sixty-five calendar days prior to the ACTUAL date of  
27 sale. The officer shall send the notice pursuant to subsection (4) of this

1 section to the persons on the amended mailing list no less than sixty  
2 FORTY-FIVE calendar days prior to the ACTUAL date of sale.

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

9 **SECTION 7.** The introductory portion to 38-38-104 (1) and  
10 38-38-104 (5), Colorado Revised Statutes, as they will become effective  
11 July 1, 2007, are amended to read:

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

23 (5) A cure statement pursuant to paragraph (a) of subsection (2)  
24 of this section shall state the period for which it is effective. The cure  
25 statement shall be effective for at least ten calendar days after the date of  
26 the cure statement or until the last day to cure under paragraph (b) of  
27 subsection (2) of this section, whichever occurs first. The cure statement

1 shall be effective for no more than thirty calendar days after the date of  
2 the cure statement or until the last day to cure under paragraph (b) of  
3 subsection (2) of this section, whichever occurs first. The use of good  
4 faith estimates in the cure statement with respect to interest and fees and  
5 costs is specifically authorized by this article, so long as the cure  
6 statement states that it is a good faith estimate effective through the last  
7 day to cure as indicated in the cure statement. THE USE OF A GOOD FAITH  
8 ESTIMATE SHALL NOT CHANGE OR EXTEND THE PERIOD OR EFFECTIVE DATE  
9 OF A CURE STATEMENT.

10 **SECTION 8.** 38-38-105, Colorado Revised Statutes, is amended  
11 to read:

12 **38-38-105. Court order authorizing sale mandatory.**

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

26 **SECTION 9.** 38-38-106 (5), Colorado Revised Statutes, as it will  
27 become effective July 1, 2007, is amended to read:

1           **38-38-106. Bid required - form of bid.** (5) Bids submitted  
2 pursuant to this section may be amended by the holder of the evidence of  
3 debt or the attorney for the holder in writing or electronically, as  
4 determined by the officer pursuant to section 38-38-112, no later than 12  
5 noon the day prior to the sale, or orally at the time of sale IF THE PERSON  
6 AMENDING THE BID IS PHYSICALLY PRESENT AT THE SALE. ~~If A bid is~~  
7 ~~SUBMITTED PURSUANT TO THIS SECTION MAY BE~~ modified orally at the  
8 time of sale IF the person making the ~~bid shall immediately note the~~  
9 ~~modification on the itemization~~ MODIFIES and ~~reexecute~~ REEXECUTES the  
10 bid AT THE SALE.

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

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

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

26           **SECTION 11.** 38-38-109 (1) (a), (1) (b), (1) (c) (I) (B), and (2),  
27 Colorado Revised Statutes, as they will become effective July 1, 2007, are

1 amended to read:

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

21 (b) At the request of the holder of the evidence of debt or the  
22 attorney for the holder, the officer shall correct any errors in ~~the~~ A  
23 published combined notice ~~or accept an amended mailing list pursuant to~~  
24 ~~section 38-38-103(2)~~ and shall continue the ~~initial~~ THEN-SCHEDULED date  
25 of sale to a future date within the period of continuance allowed by  
26 paragraph (a) of this subsection (1) to permit a corrected combined notice  
27 to be published or the original combined notice to be republished

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

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

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

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

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

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

26 ~~(H)~~ (III) When the property is to be sold by the sheriff under any  
27 statutory or judicial foreclosure or upon execution and levy made

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

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

26 The undersigned, as (Public Trustee) (Sheriff) for the  
27 \_\_\_\_\_, county of \_\_\_\_\_, state of Colorado, by this indorsement, hereby

1 confirms the reinstatement of this (evidence of debt) (deed of  
2 trust) (~~mortgage~~) (lien) in accordance with the requirements of  
3 ~~section 38-38-109(2)(c)~~ SECTION 38-38-109(2)(c)(I), Colorado Revised  
4 Statutes.

5 Date: \_\_\_\_\_

6 Signature  
7 (Public Trustee) (Sheriff)

8 For the \_\_\_\_\_,  
9 County of \_\_\_\_\_,  
10 State of Colorado.

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

1 of subsection (4) of this section, one time only in a newspaper of general  
2 circulation in the county where the property is located.

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

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

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

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

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

26 **SECTION 13.** 38-38-111 (2), Colorado Revised Statutes, as it  
27 will become effective July 1, 2007, is amended, and the said 38-38-111,

1 as it will become effective July 1, 2007, is further amended BY THE  
2 ADDITION OF A NEW SUBSECTION, to read:

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

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

27 **SECTION 14.** Part 1 of article 38 of title 38, Colorado Revised

1 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW  
2 SECTIONS to read:

3 **38-38-113. Rescission of public trustee sale.** (1) IF THE  
4 SUCCESSFUL BIDDER AT A FORECLOSURE SALE IS THE HOLDER OF THE  
5 EVIDENCE OF DEBT FORECLOSING THE DEED OF TRUST OR OTHER LIEN,  
6 THEN SUCH SUCCESSFUL BIDDER, THE BIDDER'S ATTORNEY, THE  
7 ASSIGNEE OF THE SUCCESSFUL BIDDER PURSUANT TO SECTION 38-38-403,  
8 OR THE ASSIGNEE'S ATTORNEY MAY RESCIND THE SALE WITHOUT  
9 OBTAINING A COURT ORDER BY FILING WITH THE PUBLIC TRUSTEE NO  
10 LATER THAN EIGHT BUSINESS DAYS AFTER THE DATE OF THE SALE A  
11 NOTICE OF RESCISSION OF SALE STATING THAT THE SALE IS BEING  
12 RESCINDED, THE NUMBER AND DATE OF THE SALE, THE NAME OF THE  
13 PERSON TO WHOM THE CERTIFICATE OF PURCHASE WAS ISSUED, THE NAME  
14 OF THE ASSIGNEE, IF ANY, THE RECEPTION NUMBER OR BOOK AND PAGE  
15 NUMBER FOR THE RECORDED CERTIFICATE OF PURCHASE, AND THE LEGAL  
16 DESCRIPTION OF THE PROPERTY FORECLOSED. THE NOTICE SHALL BE  
17 SIGNED AND PROPERLY ACKNOWLEDGED BY THE SUCCESSFUL BIDDER OR  
18 ASSIGNEE, OR SIGNED BY THE BIDDER OR ASSIGNEE'S ATTORNEY. UPON  
19 RECEIPT OF THE NOTICE OF RESCISSION OF SALE, THE ORIGINAL  
20 CERTIFICATE OF PURCHASE, ANY ASSIGNMENT OF THE CERTIFICATE OF  
21 PURCHASE, THE PUBLIC TRUSTEE'S FEE FOR THE RESCISSION SPECIFIED IN  
22 SECTION 38-37-104, AND THE COSTS OF RECORDING THE NOTICE OF  
23 RESCISSION OF THE SALE, THE PUBLIC TRUSTEE SHALL RECORD THE NOTICE  
24 OF RESCISSION OF SALE IN THE COUNTY RECORDS.

25 (2) UPON RECORDING OF THE NOTICE OF RESCISSION OF SALE BY  
26 THE PUBLIC TRUSTEE, THE CERTIFICATE OF PURCHASE SHALL BE DEEMED  
27 CANCELED AS IF THE SALE HAD NOT OCCURRED, AND THE EVIDENCE OF

1 DEBT AND DEED OF TRUST SHALL BE DEEMED FULLY REINSTATED WITH THE  
2 SAME LIEN PRIORITY AS IF THE SALE HAD NOT OCCURRED. THE PUBLIC  
3 TRUSTEE SHALL CONFIRM THE REINSTATEMENT BY INDORSEMENT ON THE  
4 EVIDENCE OF DEBT AND DEED OF TRUST OR COPY THEREOF SUBMITTED  
5 PURSUANT TO SECTION 38-38-101.

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

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

21 (b) NO LATER THAN TEN CALENDAR DAYS AFTER RECEIVING  
22 NOTICE TO SCHEDULE A NEW DATE OF SALE, THE PUBLIC TRUSTEE SHALL  
23 MAIL A COMBINED NOTICE SETTING FORTH THE RESCHEDULED DATE OF  
24 SALE TO EACH PERSON WHO WAS ENTITLED TO RECEIVE THE  
25 SUPPLEMENTAL OR AMENDED COMBINED NOTICE.

26 (c) NO LATER THAN TWENTY CALENDAR DAYS AFTER RECEIVING  
27 NOTICE TO SCHEDULE A NEW DATE OF SALE, BUT NO LESS THAN TEN

1 CALENDAR DAYS PRIOR TO THE NEW DATE OF SALE, THE PUBLIC TRUSTEE  
2 SHALL PUBLISH THE SALE ONE TIME ONLY.

3 (d) ALL FEES AND COSTS OF THE PUBLIC TRUSTEE FOR ACTIONS  
4 PERFORMED UNDER THIS SECTION AND THE COST OF RECORDING THE  
5 NOTICE OF RESCISSION OF SALE SHALL BE PART OF THE FORECLOSURE  
6 COSTS.

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

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

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

18 (7) THE INDORSEMENT OF THE PUBLIC TRUSTEE PURSUANT TO  
19 SUBSECTION (2) OF THIS SECTION SHALL BE IN SUBSTANTIALLY THE  
20 FOLLOWING FORM:

21 THE UNDERSIGNED, AS PUBLIC TRUSTEE FOR THE COUNTY OF  
22 \_\_\_\_\_, STATE OF COLORADO, BY THIS INDORSEMENT, HEREBY  
23 CONFIRMS THE REINSTATEMENT OF THIS (EVIDENCE OF DEBT) (DEED OF  
24 TRUST) (LIEN) IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION  
25 38-38-113, COLORADO REVISED STATUTES.

26 DATE: \_\_\_\_\_

27 SIGNATURE:

1 PUBLIC TRUSTEE  
2 FOR THE COUNTY OF \_\_\_\_\_,  
3 STATE OF COLORADO.

4 **38-38-114. Unclaimed refunds - disposition under "Unclaimed**  
5 **Property Act".** MONEYS PAYABLE AS A REFUND FOR OVERPAYMENT OF  
6 A CURE OF DEFAULT PURSUANT TO SECTION 38-38-104 OR FOR  
7 OVERPAYMENT OF A REDEMPTION PURSUANT TO PART 3 OF THIS ARTICLE  
8 THAT REMAIN UNCLAIMED BY THE OWNER ONE YEAR AFTER THE MONEYS  
9 BECAME PAYABLE ARE PRESUMED ABANDONED AND SHALL BE REPORTED  
10 AND PAID TO THE STATE TREASURER IN ACCORDANCE WITH SECTIONS  
11 38-13-110 AND 38-13-112.

12 **SECTION 15.** The introductory portion to 38-38-302 (1) (d) and  
13 38-38-302 (1) (e), (3), (4) (a), (4) (c), and (4) (d), Colorado Revised  
14 Statutes, as they will become effective July 1, 2007, are amended to read:

15 **38-38-302. Redemption by lienor - procedure.**

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

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

22 (e) The lienor has attached to the notice of intent to redeem the  
23 original INSTRUMENT OR A CERTIFIED COPY THEREOF, or ~~copies~~ IN THE  
24 CASE OF A QUALIFIED HOLDER, A COPY of the ~~recorded instruments~~  
25 INSTRUMENT evidencing the ~~lien and any~~ assignment of the lien TO THE  
26 PERSON ATTEMPTING TO REDEEM. If THE original ~~instruments are~~  
27 INSTRUMENT IS delivered to the officer, ~~they shall be returned to the~~

1    ~~lienor, and a copy shall be retained by~~ the officer SHALL RETURN THE  
2    INSTRUMENT TO THE LIENOR AND RETAIN A COPY.

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

17            (b) If the holder of the certificate of purchase or the attorney for  
18   the holder fails to submit the initial written statement to the officer within  
19   ~~fifteen~~ THIRTEEN business days after the sale, the officer may calculate the  
20   amount necessary to redeem by adding to the successful bid the accrued  
21   interest from the sale through the redemption date. The accrued interest  
22   shall be calculated by multiplying the amount of the bid by the regular  
23   rate of annual interest specified in the evidence of debt, deed of trust, or  
24   other lien being foreclosed, divided by three hundred sixty-five and then  
25   multiplied by the number of days from the date of sale through the  
26   redemption date. The officer shall transmit by mail, facsimile, or other  
27   electronic means to the party filing the notice of intent to redeem,

1 promptly upon receipt, the statement filed by the holder, or if no such  
2 statement is filed, the officer's estimate of the redemption figure, which  
3 shall be transmitted no later than the commencement of the redemption  
4 period pursuant to paragraph (a) of subsection (4) of this section or each  
5 subsequent redemption period pursuant to paragraph (b) of subsection (4)  
6 of this section.

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

27 (c) If the statement described in paragraph (f) of subsection (1) of

1 this section so states, or upon other written authorization from the holder  
2 of the certificate of purchase or the then-current holder of the certificate  
3 of redemption or the attorney for either such holder, the officer may  
4 accept as a full redemption ~~any lesser~~ AN amount LESS than the amount  
5 specified in paragraph (a) of subsection (3) of this section.  
6 Notwithstanding the first sentence of this paragraph (c), the amount bid  
7 at sale shall determine the amount and extent of any deficiency remaining  
8 on the debt represented by the evidence of debt that is the subject of the  
9 foreclosure as stated in the bid pursuant to section 38-38-106 (2). Any  
10 redemption under this section shall constitute a full redemption and shall  
11 be deemed to be payment of all sums to which the holder of the certificate  
12 of purchase is entitled.

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

18 **SECTION 16.** The introductory portion to 38-38-402 (1),  
19 Colorado Revised Statutes, as it will become effective July 1, 2007, is  
20 amended, and the said 38-38-402 (1), is further amended BY THE  
21 ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

22 **38-38-402. Certificate of purchase - issuance.** (1) No sooner  
23 than fifteen business days following a sale but no later than five business  
24 days following an officer's receipt of ~~redemption~~ PURCHASE money paid  
25 under section 38-38-302, the officer shall execute and record in each  
26 county where the property or a portion thereof is located a certificate of  
27 ~~redemption~~ PURCHASE containing:

1 (f) AN ATTACHED EXHIBIT CONTAINING A COPY OF THE EXECUTED  
2 ORDER AUTHORIZING THE SALE THAT BEARS THE PUBLIC TRUSTEE SALE  
3 NUMBER OR CIVIL DOCKET NUMBER IN THE CASE OF A JUDICIAL  
4 FORECLOSURE; AND

5 (g) AN ATTACHED EXHIBIT CONTAINING A COPY OF THE INITIAL  
6 MAILING LIST AND ANY SUPPLEMENTAL OR AMENDED MAILING LIST THAT  
7 BEARS THE PUBLIC TRUSTEE SALE NUMBER OR CIVIL DOCKET NUMBER IN  
8 THE CASE OF A JUDICIAL FORECLOSURE.

9 **SECTION 17.** 38-38-403, Colorado Revised Statutes, is amended  
10 to read:

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

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

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

22 (c) A DESCRIPTION OF THE PROPERTY;

23 (d) THE NAME OF THE FORECLOSING HOLDER OF THE EVIDENCE OF  
24 DEBT; AND

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

27 **SECTION 18.** Part 4 of article 38 of title 38, Colorado Revised

1 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
2 read:

3 **38-38-401.5. Certificate - priority of lien.** THE LIEN  
4 REPRESENTED BY A CERTIFICATE OF PURCHASE SHALL HAVE THE SAME  
5 PRIORITY AS THE DEED OF TRUST OR OTHER LIEN FORECLOSED.

6 **SECTION 19.** 38-38-502, Colorado Revised Statutes, as it will  
7 become effective July 1, 2007, is amended to read:

8 **38-38-502. Form of confirmation deed for public trustee's sale.**

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

11 THIS DEED is made \_\_\_\_, 20\_\_, between \_\_\_\_\_ as  
12 the public trustee of the \_\_\_\_ County of \_\_\_\_, Colorado,  
13 and \_\_\_\_, grantee, (the holder of the certificate of  
14 purchase) (the holder of the certificate of redemption  
15 issued to the lienor last redeeming), whose legal address is  
16 \_\_\_\_\_.

17 WHEREAS, \_\_\_\_\_ did, by deed of trust dated\_\_\_\_,  
18 20\_\_, and recorded in the office of the clerk and recorder  
19 of the \_\_\_\_ County of \_\_\_\_, Colorado, on \_\_\_\_, 20\_\_, in  
20 Book \_\_, Page \_\_, (Film no. \_\_, Reception no. \_\_) convey  
21 to the public trustee, in trust, the property hereinafter  
22 described to secure the payment of the indebtedness  
23 provided in said deed of trust; and

24 WHEREAS, a violation was made in certain of the terms  
25 and covenants of said deed of trust as shown by the notice  
26 of election and demand for sale filed with the public  
27 trustee; ~~(a duplicate of which was recorded in the office of~~

1           ~~said county clerk and recorder~~); the said property was  
2           advertised for public sale at the place and in the manner  
3           provided by law and by said deed of trust; combined notice  
4           of sale and right to cure and redeem was given as required  
5           by law; said property was sold according to said combined  
6           notice; and a certificate of purchase thereof was made and  
7           recorded in the office of said county clerk and recorder;  
8           and

9           WHEREAS, all periods of redemption have expired.  
10          NOW, THEREFORE, the public trustee, pursuant to the  
11          power and authority vested by law and by the said deed of  
12          trust, confirms the foreclosure sale and sells and conveys to  
13          grantee the following described property located in the

                  County of \_\_\_\_\_, State of Colorado, to-wit:

                                  (describe property)

16          also known by street and number as \_\_\_\_\_ to have and to  
17          hold the same, with all appurtenances, forever.

18          **SECTION 20.** 38-38-504, Colorado Revised Statutes, is amended  
19          to read:

20                 **38-38-504. Deed evidence of compliance.** Any deed executed by  
21          ~~the public trustee or sheriff~~, AN OFFICER or other official under this article  
22          shall be prima facie evidence of compliance with all statutory  
23          requirements for the sale and execution of the deed and evidence of the  
24          truth of the recitals contained in ~~such~~ THE deed.

25                 **SECTION 21.** Part 1 of article 39 of title 38, Colorado Revised  
26          Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
27          read:

1           **38-39-100.5. Definitions.** THE DEFINITIONS IN SECTION  
2           38-38-100.3 APPLY TO THIS ARTICLE UNLESS THE CONTEXT OTHERWISE  
3           REQUIRES.

4           **SECTION 22.** 38-39-102 (1), (2), (3), and (3.5) and the  
5           introductory portion to 38-39-102 (5), Colorado Revised Statutes, are  
6           amended to read:

7           **38-39-102. When deed of trust shall be released.** (1) (a) Except  
8           as otherwise provided in ~~subsection (3.5)~~ PARAGRAPH (a) OF SUBSECTION  
9           (3) of this section, ~~liens of deeds~~ A DEED of trust to the public trustee,  
10          upon compliance with the provisions of ~~such deeds~~ THE DEED of trust,  
11          shall be released by the public trustee upon the:

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

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

22           (III) Receipt by the public trustee of the fee prescribed by section  
23          38-37-104 (1) (a) and the fee for recording the release.

24           (b) Immediately upon execution of the release of the ~~lien of deed~~  
25          of trust by the public trustee, the public trustee shall cause ~~such~~ THE  
26          release to be recorded in the ~~office~~ RECORDS of the county clerk and  
27          recorder. ~~of the county in which the property described in such release is~~

1     ~~located.~~

2             (2) If the purpose of the deed of trust has been fully or partially  
3     satisfied and the indebtedness secured by such deed of trust has not been  
4     paid, the public trustee shall release ~~the lien~~ of the deed of trust as to all  
5     or portions of the property encumbered by the deed of trust pursuant to  
6     the provisions of subsection (1) of this section if the request to release  
7     certifies that the purpose of the deed of trust has been fully or partially  
8     satisfied and if either the original evidence of debt is exhibited or the  
9     ~~owner~~ HOLDER OF THE EVIDENCE OF DEBT is ~~an entity described in~~  
10    ~~paragraph (b) of subsection (3.5) of this section~~ A QUALIFIED HOLDER that  
11    has made, in the ~~owner's~~ QUALIFIED HOLDER'S request for release or  
12    partial release, the certification contemplated in paragraph (a) of  
13    ~~subsection (3.5)~~ SUBSECTION (3) of this section.

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

17             ~~(a) An indemnification agreement accompanied by a certified~~  
18    ~~copy of an authorizing resolution passed by the board of directors of a~~  
19    ~~bank, as defined in section 11-101-401 (5), C.R.S., an industrial bank, as~~  
20    ~~provided for in article 108 of title 11, C.R.S., a savings and loan~~  
21    ~~association licensed to do business in Colorado, a federal housing~~  
22    ~~administration approved mortgagee, or a federally chartered credit union~~  
23    ~~operating in Colorado or a state-chartered credit union, as defined in~~  
24    ~~section 11-30-101, C.R.S., or an indemnification agreement that has been~~  
25    ~~duly authorized by any agency of the federal government or by any~~  
26    ~~federally created corporation that originates, guarantees, or purchases~~  
27    ~~loans indemnifying the public trustee against claims for issuing a release~~

1 ~~under this subsection (3) made within the time period described in~~  
2 ~~subsection (7) of this section, which indemnification agreement is~~  
3 ~~satisfactory to the public trustee;~~ A HOLDER OF THE ORIGINAL EVIDENCE  
4 OF DEBT THAT [REDACTED] IS A QUALIFIED HOLDER, AS DEFINED IN SECTION  
5 38-38-100.3 (20), [REDACTED] MAY REQUEST THE RELEASE OF A DEED OF TRUST  
6 WITHOUT PRODUCING OR EXHIBITING THE ORIGINAL EVIDENCE OF DEBT. A  
7 HOLDER THAT REQUESTS THE RELEASE OF A DEED OF TRUST PURSUANT TO  
8 THIS PARAGRAPH (a) SHALL BE DEEMED TO HAVE AGREED TO INDEMNIFY  
9 AND DEFEND THE PUBLIC TRUSTEE AGAINST ANY CLAIM MADE WITHIN THE  
10 PERIOD DESCRIBED IN SUBSECTION (7) OF THIS SECTION FOR DAMAGES  
11 RESULTING FROM [REDACTED] THE ACTION OF THE PUBLIC TRUSTEE TAKEN IN  
12 ACCORDANCE WITH THE REQUEST. THE INDEMNITY GRANTED BY THIS  
13 PARAGRAPH (a) IS LIMITED TO ACTUAL ECONOMIC LOSS SUFFERED AND  
14 ANY COURT COSTS AND REASONABLE ATTORNEY FEES AND COSTS  
15 INCURRED IN DEFENDING A CLAIM BROUGHT AS A DIRECT AND PROXIMATE  
16 RESULT OF THE FAILURE TO PRODUCE THE ORIGINAL EVIDENCE OF DEBT,  
17 BUT THE INDEMNITY DOES NOT INCLUDE AND NO CLAIMANT IS ENTITLED  
18 TO ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXPECTATION,  
19 OR PUNITIVE DAMAGES. NO SEPARATE INDEMNIFICATION AGREEMENT  
20 SHALL BE NECESSARY FOR THE AGREEMENT TO INDEMNIFY TO BE  
21 EFFECTIVE.

22 (b) ~~A~~ WITH RESPECT TO EITHER SUBSECTION (1) OR (2) OF THIS  
23 SECTION, THE HOLDER OF THE EVIDENCE OF DEBT MAY REQUEST THE  
24 RELEASE OF A DEED OF TRUST WITHOUT PRODUCING OR EXHIBITING THE  
25 ORIGINAL EVIDENCE OF DEBT. A HOLDER THAT REQUESTS THE RELEASE OF  
26 A DEED OF TRUST PURSUANT TO THIS PARAGRAPH (b) SHALL DELIVER TO  
27 THE PUBLIC TRUSTEE A corporate surety bond ~~issued by a company~~

1 authorized to issue such bonds in the state of Colorado with the public  
2 trustee as obligee, conditioned against the delivery of any such original  
3 evidence of debt to the damage of the public trustee and in a sum IN AN  
4 AMOUNT equal to ONE AND ONE-HALF TIMES the original principal amount  
5 recited in such THE deed of trust, which corporate surety bond shall  
6 remain in full force and effect for the time period described in subsection  
7 (7) of this section; or

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

1        ~~AGREEMENT TO INDEMNIFY TO BE EFFECTIVE; HOWEVER, THE COMPANY~~  
2        ~~SHALL PROVIDE TO THE PUBLIC TRUSTEE an affidavit executed by an~~  
3        ~~officer of the title insurance company stating that the title insurance~~  
4        ~~company has caused the indebtedness secured by the deed of trust to be~~  
5        ~~satisfied in full or, in the case of a partial release, to the extent required~~  
6        ~~by the holder of the indebtedness.~~

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

27            ~~(b) Only the following financial institutions shall be entitled to~~

1 submit a certification pursuant to paragraph (a) of this subsection (3.5):

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

3 (H) ~~An industrial bank, as defined in section 11-108-101 (1),~~  
4 ~~C.R.S.;~~

5 (HH) ~~A savings and loan association licensed to do business in~~  
6 ~~Colorado;~~

7 (IV) ~~A supervised lender, as defined in section 5-1-301 (46),~~  
8 ~~C.R.S., that is licensed to make supervised loans pursuant to section~~  
9 ~~5-2-302, C.R.S., and that is either:~~

10 (A) ~~A public entity, as defined in paragraph (c) of this subsection~~  
11 ~~(3.5); or~~

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

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

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

20 (VII) ~~A federally chartered credit union doing business in~~  
21 ~~Colorado or a state chartered credit union, as defined in section~~  
22 ~~11-30-101, C.R.S.;~~

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

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

26 (c) ~~For purposes of this subsection (3.5), "public entity" means an~~  
27 ~~entity that has issued voting securities that are listed on a national~~

1 securities exchange registered under the federal "Securities Exchange Act  
2 of 1934".

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

8 **SECTION 23. Repeal.** 38-38-305 (4), Colorado Revised  
9 Statutes, is repealed.

10 **SECTION 24. Effective date.** This act shall take effect July 1,  
11 2007.

12 **SECTION 25. Safety clause.** The general assembly hereby finds,  
13 determines, and declares that this act is necessary for the immediate  
14 preservation of the public peace, health, and safety.