

**Second Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

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

LLS NO. 12-0076.01 Ed DeCecco x4216

**SENATE BILL 12-030**

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**SENATE SPONSORSHIP**

**Jahn,**

**HOUSE SPONSORSHIP**

**(None),**

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**Senate Committees**  
Local Government

**House Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING ADMINISTRATIVE MATTERS RELATED TO A FORECLOSURE**  
102     **SALE.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries.>)*

**Section 1** of the bill requires an electronic payment to an account of a public trustee to be in compliance with conditions placed on the account by the public trustee for such transfer.

**Section 2** of the bill requires a holder of an evidence of debt (holder) or the attorney for a holder, when commencing a foreclosure, to

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.*

file a statement identifying the loan servicer of the evidence of debt, if any.

**Section 3** of the bill requires a public trustee to include in a combined notice the following statement, which shall be in bold: If a sale is continued, the deadline to file a notice of intent to cure by those parties entitled to cure may also be extended.

**Section 4** of the bill establishes a form for the cure statement, which is a statement of all sums necessary to cure the default that caused the foreclosure, and also modifies procedures related to the cure statement.

**Section 5** of the bill permits a rule 120 hearing notice, which relates to a court order authorizing a sale of the foreclosed property, to be presented to the occupant of the residential property. Currently, the notice may only be given by posting.

**Section 6** of the bill adds a line for a confirmation deed fee and a confirmation deed recording fee to the bid form submitted by a holder. Both are fees collected by the officer and would be paid to the officer from the proceeds of the foreclosure sale.

**Section 7** of the bill modifies foreclosure procedures for a property that is part of a bankruptcy proceeding.

**Section 8** of the bill modifies the calculation of excess proceeds from a foreclosure sale and shortens the deadline for an officer to transfer unclaimed excess proceeds to a county treasurer.

**Section 9** of the bill clarifies that an assignment of a lien must always be attached to the notice of intent to redeem by a lienor.

**Section 10** of the bill modifies when an officer is required to execute and record a confirmation deed and specifies the conditions under which an assignee must be listed as the grantee on the deed.

**Section 11** of the bill specifies the procedures for releasing a deed of trust that has been recorded in the wrong county.

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

2             **SECTION 1.** In Colorado Revised Statutes, **amend** 38-37-108 as  
3 follows:

4             **38-37-108. Payments to public trustee.** All moneys payable to  
5 a public trustee at any foreclosure sale under the provisions of this article  
6 or upon redemption or cure pursuant to article 38 of this title shall be in  
7 the form of cash, electronic transfer to an account of the public trustee  
8 available for such purpose AND IN COMPLIANCE WITH THE CONDITIONS

1 PLACED ON THE ACCOUNT BY THE PUBLIC TRUSTEE FOR SUCH ELECTRONIC  
2 TRANSFER, or certified check, cashier's check, teller's check, or draft  
3 denominated as an official check that is a teller's check or a cashier's  
4 check as those terms are defined in and governed by the "Uniform  
5 Commercial Code", title 4, C.R.S., made payable to the public trustee,  
6 and certified or issued by a state-chartered bank, savings and loan  
7 association, or credit union licensed to do business in the state of  
8 Colorado or a federally chartered bank, savings bank, or credit union.

9 **SECTION 2.** In Colorado Revised Statutes, 38-38-101, **add** (1)  
10 (f.5) as follows:

11 **38-38-101. Holder of evidence of debt may elect to foreclose.**

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

17 (f.5) IF THERE IS A LOAN SERVICER OF THE EVIDENCE OF DEBT  
18 DESCRIBED IN THE NOTICE OF ELECTION AND DEMAND AND THE LOAN  
19 SERVICER IS NOT THE HOLDER, A STATEMENT EXECUTED BY THE HOLDER  
20 OF THE EVIDENCE OF DEBT OR THE ATTORNEY FOR SUCH HOLDER,  
21 IDENTIFYING, TO THE BEST OF SUCH PERSON'S KNOWLEDGE, THE NAME OF  
22 THE LOAN SERVICER;

23 **SECTION 3.** In Colorado Revised Statutes, 38-38-103, **add** (4)  
24 (a) (II.5) as follows:

25 **38-38-103. Combined notice - publication - providing**  
26 **information.** (4) (a) The combined notices required to be mailed  
27 pursuant to subsections (1), (2), and (3) of this section shall contain the

1 following:

2 (II.5) THE STATEMENT, WHICH MUST BE IN BOLD: IF THE SALE  
3 DATE IS CONTINUED TO A LATER DATE, THE DEADLINE TO FILE A NOTICE OF  
4 INTENT TO CURE BY THOSE PARTIES ENTITLED TO CURE MAY ALSO BE  
5 EXTENDED;

6 **SECTION 4.** In Colorado Revised Statutes, 38-38-104, **amend**  
7 (2) (a), (2) (b), (5), and (7) as follows:

8 **38-38-104. Right to cure when default is nonpayment - right**  
9 **to cure for certain technical defaults.** (2) (a) (I) Promptly upon receipt  
10 of a notice of intent to cure by the officer, but no less than twelve  
11 calendar days prior to the date of sale, the officer shall transmit by mail,  
12 facsimile, or electronic means to the person executing the notice of  
13 election and demand a request for a statement of all sums necessary to  
14 cure the default. The CURE statement shall be filed with the officer by the  
15 attorney for the holder or, if none, by the holder of the evidence of debt  
16 and shall set forth the amounts necessary to cure as identified in  
17 ~~paragraph (b) of this subsection (2), with the same detail as required for~~  
18 ~~a bid pursuant to section 38-38-106~~ THE CURE STATEMENT. Upon receipt  
19 of the statement of the amounts needed to cure, the officer shall transmit  
20 the CURE statement in writing to the person filing the notice of intent to  
21 cure the default.

22 (II) IF A CURE STATEMENT IS REQUIRED PURSUANT TO  
23 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), THE HOLDER OF THE  
24 EVIDENCE OF DEBT SHALL SUBMIT A SIGNED AND ACKNOWLEDGED CURE  
25 STATEMENT, OR THE OFFICE OF THE ATTORNEY FOR THE HOLDER SHALL  
26 SUBMIT A SIGNED CURE STATEMENT, SPECIFYING THE FOLLOWING  
27 AMOUNTS, ITEMIZED IN SUBSTANTIALLY THE FOLLOWING CATEGORIES AND

1 IN SUBSTANTIALLY THE FOLLOWING FORM:

2 CURE STATEMENT

3 To:\_\_\_\_\_

4 PUBLIC TRUSTEE (OR SHERIFF) OF THE COUNTY (OR CITY AND COUNTY)

5 OF\_\_\_\_\_, STATE OF COLORADO (HEREINAFTER THE "OFFICER").

6 FORECLOSURE SALE NUMBER: \_\_\_\_\_

7 GRANTOR: \_\_\_\_\_

8 THE DATE THROUGH WHICH THE

9 CURE STATEMENT IS EFFECTIVE: \_\_\_\_\_

10 THE FOLLOWING IS AN ITEMIZATION OF ALL SUMS NECESSARY TO CURE THE

11 DEFAULT (ANY AMOUNT THAT IS BASED ON A GOOD FAITH ESTIMATE IS

12 INDICATED WITH AN ASTERISK):

13 PAYMENTS DUE UNDER THE EVIDENCE OF DEBT:

14 PAYMENTS OF \$ EACH

15 ACCRUED LATE CHARGES \_\_\_\_\_

16

17 OTHER AMOUNTS DUE UNDER THE EVIDENCE OF DEBT

18 (SPECIFY)

19 \_\_\_\_\_

20 \_\_\_\_\_

21 PROPERTY INSPECTIONS \_\_\_\_\_

22 PROPERTY, GENERAL LIABILITY,

23 AND CASUALTY INSURANCE \_\_\_\_\_

24 CERTIFICATE OF TAXES DUE \_\_\_\_\_

25 PROPERTY TAXES PAID BY THE HOLDER \_\_\_\_\_

26 OWNER ASSOCIATION

27 ASSESSMENT PAID BY THE HOLDER \_\_\_\_\_

1	PERMITTED AMOUNTS PAID ON	
2	PRIOR LIENS	_____
3	LESS IMPOUND/ESCROW ACCOUNT CREDIT	_____
4	PLUS IMPOUND/ESCROW ACCOUNT	
5	DEFICIENCY	_____
6	TITLE COSTS	_____
7	RULE 120 DOCKET FEE	_____
8	RULE 120 POSTING COSTS	_____
9	COURT COSTS	_____
10	POSTAGE/DELIVERY COSTS	_____
11	SERVICE/POSTING COSTS	_____
12	ATTORNEY FEES	_____
13	OTHER FEES AND COSTS (SPECIFY):	
14	_____	_____
15	_____	_____
16	<b>REINSTATEMENT TOTAL</b>	<b>\$ _____</b>
17	<b>(DOES NOT INCLUDE OFFICER'S FEES AND COSTS)</b>	
18	OFFICER'S FEES AND COSTS	<b>\$ _____</b>
19	<b>(TO BE ADDED BY OFFICER)</b>	
20	<b>TOTAL TO CURE</b>	<b>\$ _____</b>
21	<b>(TO BE ADDED BY OFFICER)</b>	
22	<b>IT MAY TAKE SEVERAL DAYS BEFORE THE CURE IS</b>	
23	<b>PROCESSED AND ENTERED INTO THE HOLDER'S RECORDS.</b>	
24	THE TOTAL TO CURE DOES NOT INCLUDE ANY FUTURE MONTHLY	
25	MORTGAGE PAYMENTS THAT MAY BE DUE.	
26	NAME OF THE HOLDER OF THE EVIDENCE OF DEBT	
27	AND THE ATTORNEY FOR THE HOLDER:	



1 indicated in the cure statement. The use of a good faith estimate IN THE  
2 CURE STATEMENT shall not change or extend the period or effective date  
3 of a cure statement.

4 (7) If the holder of the evidence of debt or the attorney for the  
5 holder receives a request for a cure statement under paragraph (a) of  
6 subsection (2) of this section and does not file a cure statement with the  
7 ~~public trustee~~ OFFICER by the earlier of ten business days after receipt of  
8 the request or ~~the close of operations in the public trustee's office on the~~  
9 eighth calendar day before the date of the sale, the officer shall continue  
10 the sale for one week. Thereafter and until the cure statement is filed, the  
11 officer shall continue the sale an additional week for each week that the  
12 holder fails to file the cure statement; except that the sale shall not be  
13 continued beyond the period of continuance allowed under section  
14 38-38-109 (1) (a). A CURE STATEMENT MUST BE RECEIVED BY 12 NOON ON  
15 THE DAY IT IS DUE IN ORDER TO MEET A DEADLINE SET FORTH IN THIS  
16 SUBSECTION (7).

17 **SECTION 5.** In Colorado Revised Statutes, 38-38-105, **amend**  
18 (3); and add (4) as follows:

19 **38-38-105. Court order authorizing sale mandatory - notice of**  
20 **hearing for residential properties - definition.** (3) Not less than ~~fifteen~~  
21 FOURTEEN days before the date set for the hearing pursuant to rule 120 or  
22 other rule of the Colorado rules of civil procedure, the holder or the  
23 attorney for the holder seeking an order authorizing sale under this  
24 section for a residential property shall cause a notice of hearing as  
25 described in rule 120 (b) of the Colorado rules of civil procedure to be  
26 == == posted in a conspicuous place on the property that is the subject  
27 of the sale. If possible, == the notice shall be posted on the front door of



1 the residence, but if access to the door is not possible or is restricted, the  
2 notice shall be posted at an alternative conspicuous location, such as a  
3 gate or similar impediment. If a person at the residence is impeding  
4 posting at the residence at the time of the attempted posting, the  
5 notice may be handed to that person to satisfy this posting  
6 requirement. The notice required by this subsection (3) is  
7 sufficient if it complies with the requirements of this section  
8 without regard to any requirements for service of process in a  
9 civil action required by court rule.

10 (4) As used in this section, "residential property" means  
11 any real property upon which a dwelling, as defined in section  
12 5-1-301 (18), C.R.S., is constructed and occupied.

13 **SECTION 6.** In Colorado Revised Statutes, 38-38-106, **amend**  
14 (1) and (2) as follows:

15 **38-38-106. Bid required - form of bid.** (1) The holder of the  
16 evidence of debt or the attorney for the holder shall submit a bid ~~to~~ THAT  
17 IS RECEIVED BY the officer no later than 12 noon on the second business  
18 day prior to the date of sale as provided in this section. The holder or the  
19 attorney for the holder need not personally attend the sale. If the bid is not  
20 ~~timely submitted~~ RECEIVED BY THE OFFICER BY THE DEADLINE, the officer  
21 shall continue the sale for one week and shall announce or post a notice  
22 of the continuance at the time and place designated for the sale.

23 (2) The holder of the evidence of debt shall submit a signed and  
24 acknowledged bid, or the attorney for the holder shall submit a signed  
25 bid, which shall specify the following amounts, itemized in substantially  
26 the following categories and in substantially the following form:

27 **BID**

1 To: \_\_\_\_\_  
2 Public Trustee (or Sheriff) of the County (or City and County)  
3 of \_\_\_\_\_, State of Colorado (hereinafter the "officer").  
4 Date: \_\_\_\_\_  
5 \_\_\_\_\_, whose mailing address is \_\_\_\_\_, bids the sum of  
6 \$\_\_\_\_\_ in your Sale No. \_\_\_\_\_ to be held on the \_\_\_\_\_ day of \_\_\_\_\_ ,  
7 20\_\_.  
8 The following is an itemization of all amounts due the holder of the  
9 evidence of debt secured by the deed of trust or other lien being  
10 foreclosed.  
11 Street address of property being  
12 foreclosed, if known: \_\_\_\_\_  
13 Regular [ ] / default [ ] rate of interest as of the date of  
14 sale: \_\_\_\_\_  
15 (Inapplicable items may be omitted):  
16 Amounts due under the evidence of debt:  
17 Principal \$ \_\_\_\_\_  
18 Interest \_\_\_\_\_  
19 Late charges \_\_\_\_\_  
20 Allowable prepayment penalties  
21 or premiums \_\_\_\_\_  
22 Other amounts due under the evidence of debt  
23 (specify) \_\_\_\_\_  
24 \_\_\_\_\_  
25 Category subtotal: \$ \_\_\_\_\_  
26 Other fees and costs advanced by the holder of evidence of debt:  
27 Property, general liability, and

1	casualty insurance	_____
2	Property inspections	_____
3	Appraisals	_____
4	Taxes and assessments	_____
5	Utility charges owed or incurred	_____
6	<del>Homeowner's</del> OWNER association	
7	assessment paid	_____
8	Permitted amounts paid on	
9	prior liens	_____
10	Permitted lease payments	_____
11	Less impound/escrow account	
12	credit	_____
13	Plus impound/escrow account	
14	deficiency	_____
15	Other (describe)	_____
16	Category subtotal:	\$ _____
17	Attorney fees and advances:	
18	Attorney fees	_____
19	Title commitments and insurances or	
20	abstractor charges	_____
21	Court docketing	_____
22	Statutory notice	_____
23	Postage	_____
24	Electronic transmissions	_____
25	Photocopies	_____
26	Telephone	_____
27	Other (describe)	_____



1 Attorney registration number: \_\_\_\_\_

2 Attorney address: \_\_\_\_\_

3 Attorney business telephone: \_\_\_\_\_

4 **SECTION 7.** In Colorado Revised Statutes, 38-38-109, **amend**  
5 (2) (b) as follows:

6 **38-38-109. Continuance of sale - effect of bankruptcy -**  
7 **withdrawal of sale. (2) Effect of bankruptcy proceedings.** (b) (I) If  
8 the publications of the combined notice prescribed by section 38-38-103  
9 (5) or 13-56-201 (1), C.R.S., have not been started or if all the  
10 publications have not been completed before THE DAY a bankruptcy  
11 petition has been filed that automatically stays the officer from  
12 conducting the sale, the officer shall immediately cancel any remaining  
13 publications of the combined notice and, on the date set for the sale,  
14 announce, post, or provide a notice that the sale has been enjoined or has  
15 been stayed by the automatic stay provisions of the federal bankruptcy  
16 code of 1978, title 11 of the United States Code, as amended. The sale  
17 shall not be continued under paragraph (a) of subsection (1) of this  
18 section.

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

1 (A) THE TERMINATION OF ANY INJUNCTION OR UPON THE ENTRY  
2 OF A BANKRUPTCY COURT ORDER DISMISSING THE BANKRUPTCY CASE,  
3 ABANDONING THE PROPERTY BEING FORECLOSED, CLOSING THE  
4 BANKRUPTCY CASE, OR GRANTING RELIEF FROM THE AUTOMATIC STAY  
5 PROVISIONS OF THE FEDERAL BANKRUPTCY CODE OF 1978, TITLE 11 OF THE  
6 UNITED STATES CODE, AS AMENDED; AND

7 (B) RECEIPT OF A REQUEST FROM THE HOLDER OF THE EVIDENCE  
8 OF DEBT OR THE ATTORNEY FOR THE HOLDER TO RESTART THE ACTION.  
9 THE PUBLIC TRUSTEE SHALL RERECORD THE NOTICE WITHIN TEN BUSINESS  
10 DAYS OF THE REQUEST.

11 (III) When the property is to be sold by the sheriff under any  
12 statutory or judicial foreclosure or upon execution and levy made  
13 pursuant to any court order or decree, upon the NOTIFICATION OF  
14 termination of any injunction or upon the entry of a bankruptcy court  
15 order dismissing the bankruptcy case, abandoning the property being  
16 foreclosed, closing the bankruptcy case, or granting relief from the  
17 automatic stay provisions of the federal bankruptcy code of 1978, title 11  
18 of the United States Code, as amended, the sheriff shall forthwith  
19 establish a new date of sale and republish a new combined notice  
20 pursuant to section 13-56-201 (1), C.R.S.

21 **SECTION 8.** In Colorado Revised Statutes, 38-38-111, **amend**  
22      (3) as follows:

23 **38-38-111. Treatment of excess proceeds. (3) UNLESS THE**  
24 **PROPERTY IS SOLD BY THE SHERIFF AND ALL THE PROCEEDS OF THE SALE**  
25 **ARE DEPOSITED INTO THE REGISTRY OF THE COURT, any unclaimed excess**  
26 **proceeds shall be transferred by the** officer to the county treasurer within  
27 ~~ninety~~ FORTY-FIVE calendar days after the expiration of all redemption

1 periods as provided in section 38-38-302 and held in escrow for five years  
2 from the date of sale. The county TREASURER shall be answerable for the  
3 funds without interest at any time within the five-year period to such  
4 persons as shall be legally entitled to the funds. Any interest earned on the  
5 escrowed funds shall be paid to the county at least annually. Any funds  
6 not claimed within five years from the date of sale shall be paid by the  
7 county treasurer to the general fund of the county. After the lapse of five  
8 years from the date of sale, no claim therefor having been made and  
9 established by any person entitled thereto, said moneys shall become the  
10 property of the county, and the county treasurer and officer shall be  
11 discharged from any further liability or responsibility for the moneys;  
12 except that, if the moneys exceed five hundred dollars and have not been  
13 claimed by any person entitled thereto within sixty calendar days from the  
14 expiration of all redemption periods as provided by section 38-38-302, the  
15 county treasurer, within ninety calendar days from the expiration of all  
16 redemption periods, shall commence publication of a notice for four  
17 weeks, which means publication once each week for five successive  
18 weeks in some newspaper of general circulation in the county where the  
19 subject property is located. The notice shall contain the name of the  
20 record owner as of the recording of the notice of election and demand or  
21 lis pendens, the owner's address as given in the recorded instrument  
22 evidencing the owner's interest, and the legal description and street  
23 address, if any, of the property sold at the sale and shall state that excess  
24 proceeds were realized from the sale and that, unless the funds are  
25 claimed by the record owner as of the recording of the notice of election  
26 and demand or lis pendens or other person entitled thereto within five  
27 years from the date of sale, the funds shall become the property of the

1 county in the manner provided in this subsection (3). The county treasurer  
2 shall also mail a copy of the notice to the record owner as of the recording  
3 of the notice of election and demand or lis pendens at the address  
4 provided in the recorded instrument evidencing his or her interest and at  
5 the property address. The fees and costs of publication and mailing shall  
6 be paid from the moneys escrowed by the county treasurer.

7 **SECTION 9.** In Colorado Revised Statutes, 38-38-302, **amend**  
8 (1) (e) as follows:

9 **38-38-302. Redemption by lienor - procedure.**

10 (1) **Requirements for redemption.** A lienor or assignee of a lien is  
11 entitled to redeem if the following requirements are met to the satisfaction  
12 of the officer:

13 (e) The lienor has attached to the notice of intent to redeem the  
14 original instrument AND ANY ASSIGNMENT OF THE LIEN TO THE PERSON  
15 ATTEMPTING TO REDEEM, or a certified ~~copy~~ COPIES thereof, or in the case  
16 of a qualified holder, a copy of the instrument evidencing the lien and any  
17 assignment of the lien to the person attempting to redeem. If the original  
18 instrument is delivered to the officer, the officer shall return the  
19 instrument to the lienor and retain a copy.

20 **SECTION 10.** In Colorado Revised Statutes, **amend** 38-38-501  
21 as follows:

22 **38-38-501. Title vests upon expiration of redemption periods**

23 **- confirmation deed.** (1) Upon the expiration of all redemption periods  
24 allowed to all lienors entitled to redeem under part 3 of this article or, if  
25 there are no redemption periods, upon the close of the officer's business  
26 day eight business days after the sale, title to the property sold shall vest  
27 in the holder of the certificate of purchase or in the holder of the last



1 certificate of redemption in the case of redemption. Subject to the right  
2 to cure and the right to redeem provisions of section 38-38-506 and  
3 subject to the provisions of section 38-41-212 (2), such title shall be free  
4 and clear of all liens and encumbrances junior to the lien foreclosed. ~~No~~  
5 ~~less than nine business days after the date of sale or, if later, the~~  
6 ~~expiration of all redemption periods and upon receipt of a written request~~  
7 ~~for issuance of the confirmation deed and receipt of~~ NO EARLIER THAN  
8 TEN BUSINESS DAYS NOR LATER THAN FIFTEEN BUSINESS DAYS AFTER  
9 BOTH THE TITLE VESTS AND THE OFFICER HAS RECEIVED all statutory fees  
10 and costs, the officer shall execute and record a confirmation deed  
11 pursuant to section 38-38-502 or 38-38-503 to the holder of the certificate  
12 of purchase or, in the case of redemption, to the holder of the last  
13 certificate of redemption confirming the transfer of title to the property;  
14 EXCEPT THAT THE OFFICER SHALL EXECUTE AND RECORD A CONFIRMATION  
15 DEED PRIOR TO THE TENTH BUSINESS DAY AFTER TITLE VESTS, IF THE  
16 OFFICER HAS RECEIVED ALL STATUTORY FEES AND COSTS AND NOTICE  
17 FROM THE APPROPRIATE HOLDER THAT THE CERTIFICATE WILL NOT BE  
18 ASSIGNED. But under no circumstances shall the officer be required to  
19 issue a confirmation deed unless the officer has received an order  
20 authorizing the sale that meets the requirements of section 38-38-105 (2)  
21 (a). Failure of the officer to execute and record such deed or to record the  
22 deed within the time specified shall not affect the validity of the deed or  
23 the vesting of title.

24 (2) NOTWITHSTANDING ANY PROVISION OF LAW TO THE  
25 CONTRARY, AN OFFICER MAY NOT INCLUDE AN ASSIGNEE AS A GRANTEE IN  
26 A CONFIRMATION DEED, UNLESS:

27 (a) THE OFFICER HAS RECEIVED A COPY OF THE ASSIGNMENT

1 EXECUTED IN ACCORDANCE WITH SECTION 38-38-403 WITHIN TEN  
2 BUSINESS DAYS AFTER TITLE VESTS; AND

3 (b) THE ASSIGNMENT WAS DATED, SIGNED, AND NOTARIZED OR  
4 RECORDED PRIOR TO THE TIME TITLE VESTS.

5 **SECTION 11.** In Colorado Revised Statutes, 38-39-102, **add**  
6 (8.5) as follows:

7 **38-39-102. When deed of trust shall be released - definitions.**

8 (8.5) IF A DEED OF TRUST IS IMPROPERLY RECORDED IN THE OFFICE OF THE  
9 CLERK AND RECORDER OF A COUNTY OTHER THAN THE COUNTY IN WHICH  
10 THE REAL PROPERTY IS LOCATED, THE DEED OF TRUST MUST BE RECORDED  
11 IN THE CORRECT COUNTY BEFORE THE PUBLIC TRUSTEE MAY RELEASE THE  
12 DEED OF TRUST. THE PUBLIC TRUSTEE OF A COUNTY OTHER THAN THE  
13 COUNTY WHEREIN THE REAL PROPERTY IS LOCATED SHALL NOT RELEASE  
14 THE DEED OF TRUST.

15 **SECTION 12. Act subject to petition - effective date -**  
16 **applicability.** (1) This act takes effect September 1, 2012; except that,  
17 if a referendum petition is filed pursuant to section 1 (3) of article V of  
18 the state constitution against this act or an item, section, or part of this act  
19 within the ninety-day period after final adjournment of the general  
20 assembly, then the act, item, section, or part will not take effect unless  
21 approved by the people at the general election to be held in November  
22 2012 and, in such case, will take effect on the date of the official  
23 declaration of the vote thereon by the governor.

24 (2) The provisions of this act apply to the foreclosure of any deed  
25 of trust or other lien with respect to which a notice of election and  
26 demand or lis pendens is recorded in the office of the clerk and recorder

- 1 of the county where the property or a portion of the property is located on
- 2 or after the applicable effective date of this act.