

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 17-0746.01 Ed DeCecco x4216

SENATE BILL 17-140

SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

Arndt and Becker J.,

Senate Committees
Local Government

House Committees
Local Government

A BILL FOR AN ACT

101 **CONCERNING THE TORRENS TITLE REGISTRATION SYSTEM.**

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://leg.colorado.gov>.)

Beginning January 1, 2018, the bill closes the Torrens title registration system to new applications to register land title in this state.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 38-36-101 as

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
3rd Reading Unamended
February 21, 2017

SENATE
2nd Reading Unamended
February 17, 2017

1 follows:

2 **38-36-101. Application to register title - by whom made.**

3 (1) PRIOR TO JANUARY 1, 2018, the owner of any estate or interest in
4 land, whether legal or equitable, except unpatented land, may apply as
5 provided in this ~~article~~ ARTICLE 36 to have the title of said land registered.
6 The application may be made by the applicant personally, or by an agent
7 thereunto lawfully authorized in writing, which authority shall be
8 executed and acknowledged in the same manner and form as is now
9 required as to a deed, and shall be recorded in the office of the county
10 clerk and recorder in the county in which the land, or the major portion
11 thereof, is situated before the making of the application by such agent. A
12 corporation may apply by its authorized agent, and an infant or any other
13 person under disability by his legal guardian. Joint tenants and tenants in
14 common shall join in the application. The person in whose behalf the
15 application is made shall be named as applicant.

16 (2) ON OR AFTER JANUARY 1, 2018, NO MORE APPLICATIONS TO
17 REGISTER TITLES UNDER THIS ARTICLE 36 MAY BE MADE.

18 **SECTION 2.** In Colorado Revised Statutes, 38-36-136, **amend**
19 (1) as follows:

20 **38-36-136. Registered land to remain under this article unless**
21 **removed from registration.** (1) Unless removed from registration in the
22 manner stated in this section, SECTION 38-36-204, OR SECTION 38-36-205,
23 the obtaining of a decree of registration and receiving of a certificate of
24 title shall be deemed an agreement running with the land and binding
25 upon the applicant and the successors in title that the land is and remains
26 registered land and subject to the provisions of this ~~article~~ ARTICLE 36 and
27 of all amendments thereto. All dealings with the land or any estate or

1 interest therein after the same has been brought under this ~~article~~ ARTICLE
2 36, and all liens, encumbrances, and charges upon the same shall be made
3 only subject to the terms of this ~~article~~ ARTICLE 36. The owner, or his
4 agent or attorney, of any real property registered under the terms of this
5 ~~article~~ ARTICLE 36 may, at any time, withdraw said real property
6 registration from the operation of this ~~article~~ ARTICLE 36 by surrendering
7 to the registrar his duplicate certificate of ownership, duly endorsed with
8 a signed and acknowledged request for such withdrawal.

9 **SECTION 3.** In Colorado Revised Statutes, **add** part 2 to article
10 36 of title 38 as follows:

11 **PART 2**

12 **TORRENS CONCLUSION**

13 **38-36-201. Short title.** THE SHORT TITLE OF THIS PART 2 IS "THE
14 CONCLUSION OF THE TORRENS TITLE REGISTRATION ACT".

15 **38-36-202. Definitions.** AS USED IN THIS PART 2, UNLESS THE
16 CONTEXT OTHERWISE REQUIRES:

17 (1) "ADVERSE INSTRUMENT" MEANS ANY DOCUMENT,
18 INSTRUMENT, PAPER, OR ORDER THAT ADVERSELY AFFECTS, BUT DOES NOT
19 CONVEY, THE FEE TITLE TO REGISTERED LAND, AND THE VALIDITY OF
20 WHICH IS NOT DEPENDENT UPON CONSENT BY AN OWNER OF THE
21 REGISTERED LAND OR SOME PERSON CLAIMING BY, THROUGH, OR UNDER
22 THAT OWNER.

23 (2) "CERTIFICATE OF TITLE" MEANS A CURRENT CERTIFICATE OF
24 TITLE ISSUED UNDER PART 1 OF THIS ARTICLE 36.

25 (3) "CONVEYANCE INSTRUMENT" MEANS ANY DOCUMENT,
26 INSTRUMENT, PAPER, OR ORDER THAT:

27 (a) CONVEYS THE FEE TITLE TO REGISTERED LAND; OR

1 (b) AFFECTS THE TITLE TO REGISTERED LAND AND THE VALIDITY
2 OF WHICH IS DEPENDENT UPON CONSENT BY AN OWNER OF THE
3 REGISTERED LAND OR SOME PERSON CLAIMING BY, THROUGH, OR UNDER
4 THAT OWNER.

5 (4) "REGISTERED LAND" MEANS REAL PROPERTY AND AN INTEREST
6 IN REAL PROPERTY, THE TITLE TO WHICH HAS BEEN REGISTERED UNDER
7 PART 1 OF THIS ARTICLE 36.

8 (5) "REGISTRAR" MEANS A CLERK AND RECORDER OF A COUNTY
9 WHO IS A REGISTRAR OF TITLE IN HIS OR HER RESPECTIVE COUNTY IN
10 ACCORDANCE WITH SECTION 38-36-109.

11 **38-36-203. Registration - adverse instruments.** ON AND AFTER
12 THE EFFECTIVE DATE OF THIS PART 2 AND BEFORE JANUARY 1, 2020, THE
13 REGISTRAR SHALL ONLY ACCEPT AN ADVERSE INSTRUMENT FOR
14 REGISTRATION ON REGISTERED LAND UNDER PART 1 OF THIS ARTICLE 36.

15 **38-36-204. Registration - conveyance instruments - recording.**

16 (1) ON AND AFTER THE EFFECTIVE DATE OF THIS PART 2 AND BEFORE
17 JANUARY 1, 2020, THE REGISTRAR SHALL REFUSE TO ACCEPT A
18 CONVEYANCE INSTRUMENT FOR REGISTRATION UNDER PART 1 OF THIS
19 ARTICLE 36. INSTEAD OF ACCEPTING THE CONVEYANCE INSTRUMENT FOR
20 REGISTRATION, THE REGISTRAR SHALL RECORD IN THE OFFICE OF THE
21 COUNTY CLERK AND RECORDER UNDER ARTICLE 35 OF THIS TITLE 38:

22 (a) EACH CERTIFICATE OF TITLE, WITH ALL NOTATIONS,
23 CERTIFICATIONS, MEMORIALS, AND ENDORSEMENTS THEREON, TO ALL
24 LANDS AFFECTED BY THE CONVEYANCE INSTRUMENT; AND

25 (b) THE CONVEYANCE INSTRUMENT, IF THE RELATED RECORDING
26 FEES HAVE BEEN PAID.

27 (2) IN THE ABSENCE OF EXTENUATING CIRCUMSTANCES, THE
28 REGISTRAR SHALL RECORD THE CERTIFICATE OF TITLE AND CONVEYANCE

1 INSTRUMENT AS SET FORTH IN SUBSECTION (1) OF THIS SECTION WITHIN
2 THREE BUSINESS DAYS OF RECEIVING THE CONVEYANCE INSTRUMENT.
3 BEFORE RECORDING THE CERTIFICATE OF TITLE, THE REGISTRAR SHALL
4 MEMORIALIZE ON THE CERTIFICATE ANY INSTRUMENTS, DOCUMENTS,
5 PAPERS, OR ORDERS THAT HAVE BEEN FILED WITH THE REGISTRAR AND
6 THAT HAVE NOT YET BEEN MEMORIALIZED.

7 **38-36-205. Certificate of title - recording - notice.** (1) ON OR
8 BEFORE JANUARY 1, 2020, THE REGISTRAR SHALL REMOVE ALL THE
9 REMAINING REGISTERED LAND FROM REGISTRATION BY RECORDING IN THE
10 OFFICE OF THE COUNTY CLERK AND RECORDER UNDER ARTICLE 35 OF THIS
11 TITLE 38 A CERTIFICATE OF TITLE, WITH ALL NOTATIONS, CERTIFICATIONS,
12 MEMORIALS, AND ENDORSEMENTS THEREON, FOR EACH PARCEL OF
13 REGISTERED LAND WITHIN THE COUNTY.

14 (2) (a) AT LEAST NINETY DAYS PRIOR TO RECORDING A
15 CERTIFICATE OF TITLE UNDER THIS SECTION, A REGISTRAR SHALL MAIL A
16 NOTICE TO EACH OWNER AT THE RESIDENCE OF THE OWNER IDENTIFIED ON
17 THE CERTIFICATE OF TITLE OR TO THE ADDRESS FOR THE OWNER IN THE
18 RECORDS MAINTAINED BY THE COUNTY ASSESSOR. IF THERE IS NO KNOWN
19 ADDRESS FOR THE OWNER OR IF THE NOTICE IS RETURNED AS
20 UNDELIVERABLE, THE REGISTRAR SHALL PLACE A LEGAL NOTICE THAT
21 MEETS THE REQUIREMENTS SET FORTH IN SECTION 24-70-103 IN A
22 NEWSPAPER IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

23 (b) THE REGISTRAR SHALL INCLUDE THE FOLLOWING INFORMATION
24 IN THE NOTICE REQUIRED UNDER SUBSECTION (2)(a) OF THIS SECTION:

- 25 (I) A DESCRIPTION OF THE REGISTERED LAND;
- 26 (II) THE NAME OF EACH OWNER OF THE REGISTERED LAND THAT IS
27 LISTED ON THE CERTIFICATE OF TITLE;
- 28 (III) THE CERTIFICATE OF TITLE NUMBER;

1 (IV) A STATEMENT THAT THE TORRENS TITLE REGISTRATION
2 SYSTEM IS BEING REPEALED AND THAT, ON OR BEFORE JANUARY 1, 2020,
3 THE REGISTERED LAND WILL BE REMOVED FROM THE TORRENS TITLE
4 REGISTRATION SYSTEM AND RECORDED WITH THE CLERK AND RECORDER,
5 BUT PRIOR TO THE REMOVAL, THE OWNER MAY REMOVE THE REGISTERED
6 LAND UNDER SECTION 38-36-136; AND

7 (V) THE ADDRESS AND TELEPHONE NUMBER FOR THE REGISTRAR'S
8 OFFICE.

9 (3) BEFORE RECORDING A CERTIFICATE OF TITLE UNDER THIS
10 SECTION, THE REGISTRAR SHALL MEMORIALIZE ON THE CERTIFICATE ANY
11 INSTRUMENTS, DOCUMENTS, PAPERS, OR ORDERS THAT HAVE BEEN FILED
12 WITH THE REGISTRAR AND THAT HAVE NOT YET BEEN MEMORIALIZED.

13 **38-36-206. Recording fees - waived.** A REGISTRAR SHALL NOT
14 CHARGE ANY FEES FOR RECORDING A CERTIFICATE OF TITLE UNDER
15 SECTION 38-36-204 OR 38-36-205.

16 **38-36-207. New chain of record.** (1) THE RECORDING OF A
17 CERTIFICATE OF TITLE UNDER SECTION 38-36-204 OR 38-36-205 REMOVES
18 THE LAND DESCRIBED IN THE CERTIFICATE FROM THIS ARTICLE 36 WITH
19 THE SAME EFFECT AS WITHDRAWAL PURSUANT TO SECTION 38-36-136.
20 AFTER THE RECORDING, THE RECORDED CERTIFICATE OF TITLE
21 CONSTITUTES A NEW CHAIN OF RECORD TITLE IN THE REGISTERED OWNER
22 OF ANY ESTATE OR INTEREST AS SHOWN ON THE CERTIFICATE, SUBJECT
23 ONLY TO ESTATES, MORTGAGES, LIENS, CHARGES, AND INTERESTS AS MAY
24 BE NOTED ON THE CERTIFICATE, AND FREE FROM ALL OTHERS EXCEPT THE
25 FOLLOWING:

26 (a) ANY EXISTING LEASE FOR A PERIOD NOT EXCEEDING THREE
27 YEARS, WHEN THERE IS ACTUAL OCCUPATION OF THE PREMISES UNDER THE
28 LEASE;

1 (b) ALL PUBLIC HIGHWAYS EMBRACED IN THE DESCRIPTION OF THE
2 LAND INCLUDED IN THE CERTIFICATES ARE DEEMED TO BE EXCLUDED FROM
3 THE CERTIFICATE, AND ANY SUBSISTING RIGHT-OF-WAY OR OTHER
4 EASEMENT FOR DITCHES OR WATER RIGHTS UPON, OVER, OR IN RESPECT TO
5 THE LAND;

6 (c) ANY TAX OR SPECIAL ASSESSMENT FOR WHICH A SALE OF THE
7 LAND HAS NOT BEEN HAD AT THE DATE OF THE CERTIFICATE OF TITLE; AND

8 (d) LIENS, CLAIMS, OR RIGHTS, IF ANY, ARISING OR EXISTING
9 UNDER THE CONSTITUTION OR LAWS OF THE UNITED STATES, AND WHICH
10 THE STATUTES OF THIS STATE CANNOT OR DO NOT REQUIRE TO APPEAR OF
11 RECORD IN THE OFFICE OF THE COUNTY CLERK AND RECORDER.

12 (2) AFTER A REGISTRAR RECORDS A CERTIFICATE OF TITLE UNDER
13 SECTION 38-36-204 OR 38-36-205, TITLE TO LANDS IS CONVEYED OR
14 ENCUMBERED IN THE SAME MANNER AS TITLE TO UNREGISTERED LANDS.
15 ALL INSTRUMENTS SHOWN AS MEMORIALS ON THE CERTIFICATES OF TITLE
16 SO RECORDED HAVE THE SAME FORCE AND EFFECT AS IF THEY WERE FILED
17 WITH THE CLERK AND RECORDER AT THE TIME THEY WERE FILED OR WERE
18 OTHERWISE MEMORIALIZED ON THE CERTIFICATES. NO INSTRUMENT THAT
19 WAS FILED OR RECORDED IN ANY OTHER PUBLIC OFFICE BEFORE THE
20 RECORDING AS PROVIDED IN THIS PART 2, BUT THAT WAS NOT DULY
21 REGISTERED, IS EFFECTIVE OR CONSTITUTES PUBLIC NOTICE AS TO THOSE
22 LANDS AS A RESULT OF THE RECORDING; EXCEPT THAT THE INSTRUMENT
23 MAY BE RECORDED THEREAFTER.

24 **38-36-208. Effect of recording.** (1) RECORDING OF A
25 CERTIFICATE OF TITLE UNDER SECTION 38-36-204 OR 38-36-205 HAS NO
26 EFFECT ON ANY PROCEEDINGS UNDER THE REGISTRY SYSTEM WHERE THE
27 QUESTION OF TITLE TO THE REAL PROPERTY HAS BEEN DETERMINED. ALL
28 PROCEEDINGS CONDUCTED IN CONNECTION WITH THE REGISTERING OF

1 TITLE THAT RELATE TO THE SETTLEMENT OR DETERMINATION OF THE TITLE
2 BEFORE THE RECORDING AND ALL PROVISIONS OF PART 1 OF THIS ARTICLE
3 36 THAT RELATE TO THE STATUS OF THE TITLE, INCLUDING SECTION
4 38-36-137, HAVE CONTINUING FORCE AND EFFECT WITH RESPECT TO THE
5 PERIOD OF TIME THAT TITLE REMAINED UNDER THE REGISTRY SYSTEM.

6 (2) ANY PROVISION OF PART 1 OF THIS ARTICLE 36 THAT GIVES RISE
7 TO A RIGHT OF ACTION FOR DAMAGES AGAINST THE COUNTY TREASURER
8 HAS CONTINUING FORCE AND EFFECT WITH RESPECT TO THE PERIOD OF
9 TIME THAT TITLE REMAINED UNDER THE REGISTRY SYSTEM.

10 **38-36-209. Rights.** (1) NOTHING CONTAINED IN THIS ACT
11 TERMINATES, DIMINISHES, OR IMPAIRS ANY EXISTING RIGHT IN OR
12 PERTAINING TO REGISTERED LAND, AND THAT RIGHT MAY BE ASSERTED
13 AND ENFORCED IN THE SAME MANNER, TO THE SAME EXTENT, AND
14 SUBJECT TO THE SAME LIMITATIONS AS PROVIDED IN PART 1 OF THIS
15 ARTICLE 36. THE RECORDING OF A CERTIFICATE OF TITLE UNDER SECTION
16 38-36-204 OR 38-36-205 DOES NOT CHANGE THE DATE FROM WHICH A
17 RIGHT TO BRING AN ACTION OR PROCEEDING FIRST ACCRUES UNDER
18 SECTION 38-36-190 FOR A PRIOR DEPRIVATION, LOSS, OR DAMAGE.

19 (2) IF THE OWNER OF REGISTERED LAND IS A VENDOR WHO HOLDS
20 AFTER-ACQUIRED TITLE IN TRUST FOR A VENDEE AS PROVIDED IN SECTION
21 38-30-104, THE RECORDING OF A CERTIFICATE OF TITLE UNDER SECTION
22 38-36-204 OR 38-36-205 DOES NOT AFFECT THE RIGHTS OF THE VENDEE OR
23 THE DUTIES OF THE VENDOR UNDER SECTION 38-30-104.

24 **38-36-210. Voluntary withdrawals.** AT ANY TIME PRIOR TO
25 REGISTERED LAND BEING RECORDED UNDER SECTION 38-36-204 OR
26 38-36-205, AN OWNER MAY WITHDRAW THE REGISTERED LAND FROM
27 REGISTRATION UNDER THE PROCEDURES SET FORTH IN SECTION 38-36-136.

28 **38-36-211. Maintenance of records.** AFTER RECORDING A

1 CERTIFICATE OF TITLE UNDER SECTION 38-36-205 OR 38-36-206, A
2 REGISTRAR SHALL CONTINUE TO PRESERVE AND MAINTAIN ALL RECORDS
3 THAT HAVE BEEN RECEIVED UNDER THIS ARTICLE 36.

4 **SECTION 4. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly (August
7 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
8 referendum petition is filed pursuant to section 1 (3) of article V of the
9 state constitution against this act or an item, section, or part of this act
10 within such period, then the act, item, section, or part will not take effect
11 unless approved by the people at the general election to be held in
12 November 2018 and, in such case, will take effect on the date of the
13 official declaration of the vote thereon by the governor.