

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0823.01 Gregg Fraser x4325

HOUSE BILL 18-1254

HOUSE SPONSORSHIP

Van Winkle,

SENATE SPONSORSHIP

(None),

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE MODIFICATION OF THE FORECLOSURE PROCESS ON
102 PROPERTY THAT IS ENCUMBERED BY A DEED OF TRUST.

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>.)

The bill modifies and clarifies certain aspects of the foreclosure process on property encumbered by a deed of trust as follows:

- ! Eliminates the authority of the attorney for a holder of an evidence of debt (holder) to specify the newspaper used to publish foreclosure notices;
- ! Allows an amended combined notice to be omitted in a

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

- specified circumstances when the notice is provided by the sheriff or public trustee conducting the foreclosure (officer);
- ! Modifies the amount of the deposit required for the fees and costs of the public trustee;
- ! Omits a statement notifying borrowers of their ability to file a complaint if they believe a lender or servicer has violated certain requirements from the portions of a combined notice that must be published;
- ! Makes changes to the bid form used by holders;
- ! Clarifies the amount to be paid to the officer if the holder bids an amount that exceeds the amount due to the holder;
- ! Prorates the amount of insurance premiums that may be claimed as costs;
- ! Further specifies and modifies the procedures for restarting a foreclosure proceeding when a property is subject to a federal bankruptcy case or if a sale has been enjoined or set aside by a court;
- ! Specifies the interest and other amounts that may be charged by the holder of a certificate of purchase when property is redeemed; and
- ! Clarifies the procedure for junior subsequent lienors to redeem a property.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-38-100.3, **amend**
 3 the introductory portion and (19) as follows:

4 **38-38-100.3. Definitions.** As used in articles 37 to 39 of this title
 5 TITLE 38, unless the context otherwise requires:

6 (19) "Publish", "publication", "republish", or "republication"
 7 means the placement by an officer of a legal notice that meets the
 8 requirements set forth in section 24-70-103 ~~C.R.S.~~, containing a
 9 combined notice that complies with the requirements of section
 10 24-70-109 ~~C.R.S.~~, in a newspaper in the county or counties where the
 11 property to be sold is located. ~~Unless otherwise specified by the attorney~~
 12 ~~for the holder,~~ The officer shall select the newspaper.

1 **SECTION 2.** In Colorado Revised Statutes, 38-38-101, **amend**
2 (1)(d), (9), and (10)(a) as follows:

3 **38-38-101. Holder of evidence of debt may elect to foreclose.**

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

9 (d) A combined notice pursuant to section 38-38-103; except that
10 the combined notice may be omitted with the prior approval of the
11 officer; ~~because the officer will supply the combined notice;~~

12 (9) **Partial release from deed of trust.** At any time after the
13 recording of the notice of election and demand but prior to the sale, a
14 portion of the property may be released from the deed of trust being
15 foreclosed pursuant to section 38-39-102 or as otherwise provided by
16 order of a court of competent jurisdiction recorded in the county where
17 the property being released is located. Upon recording of the release or
18 court order, the holder of the evidence of debt or the attorney for the
19 holder shall pay the fee described in section 38-37-104 (1)(b)(IX), amend
20 the combined notice, and, in the case of a public trustee foreclosure,
21 amend the notice of election and demand to describe the property that
22 continues to be secured by the deed of trust or other lien being foreclosed
23 as of the effective date of the release or court order; EXCEPT THAT THE
24 AMENDED COMBINED NOTICE MAY BE OMITTED WITH THE PRIOR APPROVAL
25 OF THE PUBLIC TRUSTEE. The public trustee shall record the amended
26 notice of election and demand upon receipt. Upon receipt of the amended
27 combined notice, IF PROVIDED BY THE HOLDER OR THE ATTORNEY FOR THE

1 HOLDER, the public trustee shall republish and mail the amended
2 combined notice in the manner set forth in section 38-38-109 (1)(b). IF
3 THE AMENDED COMBINED NOTICE WAS OMITTED PURSUANT TO THIS
4 SUBSECTION (9), UPON RECORDATION OF THE AMENDED NOTICE OF
5 ELECTION AND DEMAND, THE PUBLIC TRUSTEE SHALL SUPPLY AN AMENDED
6 COMBINED NOTICE AND SHALL THEN REPUBLISH AND MAIL THE AMENDED
7 COMBINED NOTICE IN THE MANNER SET FORTH IN SECTION 38-38-109
8 (1)(b).

9 (10) **Deposit.** (a) The public trustee may require the holder or
10 servicer to make a deposit of up to ~~six hundred fifty~~ FIVE HUNDRED
11 dollars ~~or~~ PLUS the amount of the fee permitted pursuant to section
12 38-37-104 (1)(b)(I), ~~whichever is greater~~, at the time the notice of
13 election and demand is filed, to be applied against the fees and costs of
14 the public trustee.

15 **SECTION 3.** In Colorado Revised Statutes, 38-38-103, **amend**
16 (5)(a) as follows:

17 **38-38-103. Combined notice - publication - providing**
18 **information.** (5) (a) No more than sixty calendar days nor less than
19 forty-five calendar days prior to the first scheduled date of sale, unless a
20 longer period of publication is specified in the deed of trust or other lien
21 being foreclosed, a deed of trust or other lien being foreclosed ~~shall be~~ IS
22 deemed to require the officer to commence publication of the combined
23 notice, omitting both the statements under ~~subparagraphs (II) and (III) of~~
24 ~~paragraph (a) of subsection (4)~~ SUBSECTIONS (4)(a)(II), (4)(a)(III), AND
25 (4)(a)(IX) of this section and the copies of the statutes under ~~paragraph~~
26 ~~(b) of subsection (4)~~ SUBSECTION (4)(b) of this section and adding the
27 first and last publication dates if not already specified in the combined

1 notice, for four weeks, which means publication once each week for five
2 consecutive weeks.

3 **SECTION 4.** In Colorado Revised Statutes, 38-38-106, **amend**
4 (2) and (7)(a) as follows:

5 **38-38-106. Bid required - form of bid.** (2) The holder of the
6 evidence of debt shall submit a signed and acknowledged bid, or the
7 attorney for the holder shall submit a signed bid, which ~~shall~~ MUST
8 specify the following amounts, itemized in substantially the following
9 categories and in substantially the following form:

10 **BID**

11 To: _____
12 Public Trustee (or Sheriff) of the County (or City and County) of _____,
13 State of Colorado (hereinafter the "officer").

14 Date: _____
15 _____, whose mailing address is _____, bids the
16 sum of \$ ____ in your Sale No. ____ to be held on the ____ day of ____ ,
17 20__ .

18 The following is an itemization of all amounts due the holder of the
19 evidence of debt secured by the deed of trust or other lien being
20 foreclosed.

21 Street address of property being
22 foreclosed, if known: _____
23 Regular [] / default [] rate of interest as of the date of
24 sale: _____

25 (Inapplicable items may be omitted):

26 Amounts due under the evidence of debt:
27 Principal \$ _____

1 Interest _____
 2 Late charges _____
 3 Allowable prepayment penalties
 4 or premiums _____
 5 Other amounts due under the evidence of debt
 6 (specify) _____
 7 _____
 8 Category subtotal: \$ _____
 9 Other fees and costs advanced by the holder of evidence of debt:
 10 Property, general liability, and
 11 casualty insurance _____
 12 Property inspections _____
 13 Appraisals _____
 14 Taxes and assessments _____
 15 Utility charges owed or
 16 incurred _____
 17 Owner association
 18 assessment paid _____
 19 Permitted amounts paid on
 20 prior liens _____
 21 Permitted lease payments _____
 22 Less impound/escrow
 23 account credit _____
 24 Plus impound/escrow
 25 account deficiency _____
 26 Other (describe) _____
 27 Category subtotal: \$ _____

1 Attorney fees and advances:
 2 Attorney fees _____
 3 Title commitments and insurances or abstractor
 4 charges _____
 5 Court docketing _____
 6 Statutory notice _____
 7 Postage _____
 8 Electronic transmissions _____
 9 Photocopies _____
 10 Telephone _____
 11 Other (describe) _____
 12 Category subtotal: \$ _____
 13 Officer fees and costs:
 14 Officer statutory fee _____
 15 Publication charges _____
 16 CERTIFICATE OF PURCHASE
 17 RECORDING FEE _____
 18 Confirmation deed fee _____
 19 Confirmation deed
 20 recording fee _____
 21 Other (describe) _____
 22 Category subtotal: \$ _____
 23 Total due holder of the
 24 evidence of debt _____
 25 Initial Bid \$ _____
 26 Deficiency \$ _____
 27 **Maximum Bid**

1 (applies to
2 electronic
3 bids only) \$ _____

4 I enclose herewith the following:

- 5 1. Order authorizing sale.
- 6 2. Check (if applicable) to your order in the sum of \$ _____ covering
7 the balance of your fees and costs.
- 8 3. Other: _____.

9 Please send us the following:

- 10 1. Promissory note with the deficiency, if any, noted thereon
- 11 2. Refund for overpayment of officer's fees and costs, if any
- 12 3. Other: _____.

13 Name of the holder of the evidence of debt
14 and the attorney for the holder:
15 Holder: _____
16 Attorney: _____
17 By: _____
18 Attorney registration number: _____
19 Attorney address: _____
20 Attorney business telephone: _____

21 (7) (a) (I) Other than a bid by the holder of the evidence of debt
22 not exceeding the total amount due shown on the bid pursuant to
23 subsection (2) of this section, the payment of any bid amount at sale must
24 be received by the officer no later than the date and time of the sale, or at
25 an alternative time after the sale and on the day of the sale, as specified
26 in writing by the officer. The payment ~~shall~~ MUST be in the form specified
27 in section 38-37-108. If the officer has not received full payment of the

1 bid amount from the highest bidder at the sale pursuant to this subsection
2 (7), the next highest bidder who has timely tendered the full amount of
3 the bid under this subsection (7) ~~shall be~~ IS deemed the successful bidder
4 at the sale.

5 (II) IF THE HOLDER OF THE EVIDENCE OF DEBT IS THE HIGHEST
6 BIDDER WITH A BID THAT EXCEEDS THE TOTAL AMOUNT DUE SHOWN ON
7 THE BID PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE HOLDER OF
8 THE EVIDENCE OF DEBT SHALL ONLY PAY THE OFFICER THE AMOUNT OF
9 THEIR HIGHEST BID, WHICH IS THE AMOUNT EXCEEDING THE BID
10 SUBMITTED.

11 **SECTION 5.** In Colorado Revised Statutes, 38-38-107, **amend**
12 (3)(b)(III) as follows:

13 **38-38-107. Fees and costs - definitions.** (3) Fees and costs
14 include but are not limited to the following amounts that have been paid
15 or incurred:

16 (b) Reasonable attorney fees and the costs incurred by the holder
17 or the attorney for the holder in enforcing the evidence of debt, the deed
18 of trust, or other lien being foreclosed or in defending, protecting, and
19 insuring the holder's interest in the foreclosed property or any
20 improvements on the property, including but not limited to:

21 (III) The premiums on any property, casualty, general liability, or
22 title insurance acquired to protect the holder's interest in the property or
23 improvements on the property, PRORATED TO INCLUDE ONLY THE TIME
24 FRAME BEGINNING WHEN THE INSURANCE IS ACQUIRED AND ENDING AT
25 THE POINT WHEN THE PAYOR NO LONGER HOLDS OR WILL NO LONGER HOLD
26 AN INTEREST IN THE PROPERTY;

27 **SECTION 6.** In Colorado Revised Statutes, 38-38-109, **amend**

1 (2)(b)(II), (2)(c), and (2)(d) as follows:

2 **38-38-109. Continuance of sale - effect of bankruptcy -**
3 **withdrawal of sale. (2) Effect of bankruptcy proceedings.**

4 ~~(b) (II) (A) When the property is to be sold by the public trustee, the~~
5 ~~public trustee shall rerecord the notice of election and demand and~~
6 ~~proceed with all additional foreclosure procedures provided by this~~
7 ~~article, as though the foreclosure had just been commenced, upon: UPON~~
8 ~~THE TERMINATION OF ANY INJUNCTION OR UPON THE ENTRY OF A~~
9 ~~BANKRUPTCY COURT ORDER DISMISSING THE BANKRUPTCY CASE,~~
10 ~~ABANDONING THE PROPERTY BEING FORECLOSED, CLOSING THE~~
11 ~~BANKRUPTCY CASE, OR GRANTING RELIEF FROM THE AUTOMATIC STAY~~
12 ~~PROVISIONS OF THE FEDERAL BANKRUPTCY CODE OF 1978, TITLE 11 OF THE~~
13 ~~UNITED STATES CODE, AS AMENDED, AND UPON RECEIPT OF A REQUEST~~
14 ~~FROM THE HOLDER OF THE EVIDENCE OF DEBT OR THE ATTORNEY FOR THE~~
15 ~~HOLDER TO RESTART THE ACTION, THE PUBLIC TRUSTEE SHALL RERECORD~~
16 ~~THE NOTICE OF ELECTION AND DEMAND AND PROCEED WITH ALL~~
17 ~~ADDITIONAL FORECLOSURE PROCEDURES PROVIDED BY THIS ARTICLE 38 AS~~
18 ~~THOUGH THE FORECLOSURE HAD JUST BEEN COMMENCED.~~

19 ~~(A) The termination of any injunction or upon the entry of a~~
20 ~~bankruptcy court order dismissing the bankruptcy case, abandoning the~~
21 ~~property being foreclosed, closing the bankruptcy case, or granting relief~~
22 ~~from the automatic stay provisions of the federal bankruptcy code of~~
23 ~~1978, title 11 of the United States Code, as amended; and~~

24 ~~(B) Receipt of a request from the holder of the evidence of debt~~
25 ~~or the attorney for the holder to restart the action. The public trustee shall~~
26 ~~rerecord the notice within ten business days of the request IF THE~~
27 ~~REQUEST IS NOT RECEIVED BY THE PUBLIC TRUSTEE WITHIN ONE YEAR~~

1 FROM THE DATE OF THE TERMINATION OF ANY INJUNCTION OR 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 THE FORECLOSURE SHALL BE WITHDRAWN ACCORDING TO SUBSECTION
6 (3)(b) OF THIS SECTION.

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

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

1 of section 38-38-109 (2)(c)(I), Colorado Revised Statutes.

2 Date:

3 _____
Signature

4 _____
(Public Trustee) (Sheriff)

5 For the _____,

6 County of _____,

7 State of Colorado.

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

26 (III) IF THE HOLDER OF THE EVIDENCE OF DEBT, DEED OF TRUST, OR
27 OTHER LIEN REINSTATED PURSUANT THIS SUBSECTION (2)(c) OR THE

1 ATTORNEY FOR THE HOLDER DOES NOT NOTIFY THE OFFICER IN WRITING OF
2 THE ENTRY OF AN ORDER DISMISSING THE BANKRUPTCY CASE,
3 ABANDONING THE PROPERTY BEING FORECLOSED, CLOSING THE
4 BANKRUPTCY CASE, OR GRANTING RELIEF FROM THE AUTOMATIC STAY
5 PROVIDED BY THE FEDERAL BANKRUPTCY CODE OF 1978, TITLE 11 OF THE
6 UNITED STATES CODE, AS AMENDED, WITHIN SIXTY CALENDAR DAYS OF
7 THE DATE ON WHICH THE FORECLOSED PROPERTY IS NO LONGER SUBJECT
8 TO THE AUTOMATIC STAY, THE OFFICER SHALL ADMINISTRATIVELY
9 WITHDRAW THE SALE PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION
10 UPON RECEIPT OF THE ORDER DISMISSING THE BANKRUPTCY CASE,
11 ABANDONING THE PROPERTY BEING FORECLOSED, CLOSING THE
12 BANKRUPTCY CASE, OR GRANTING RELIEF FROM THE AUTOMATIC STAY
13 PROVIDED BY THE FEDERAL BANKRUPTCY CODE OF 1978, TITLE 11 OF THE
14 UNITED STATES CODE, AS AMENDED.

15 ~~(HH)~~ (IV) All fees and costs of providing and publishing the
16 amended combined notice and publication shall be part of the foreclosure
17 costs.

18 (d) If a sale is enjoined or set aside by court order, UNLESS THE
19 COURT ORDER SPECIFIES OTHERWISE, ~~the same~~ FOLLOWING procedures ~~as~~
20 ~~set forth in paragraphs (a), (b), and (c) of this subsection (2) shall apply~~
21 ~~unless the court order specifies otherwise. The fees prescribed in section~~
22 ~~38-37-104 (1)(b)(VII) and (1)(b)(VIII) shall apply to the procedures~~
23 ~~described in this subsection (2)~~ APPLY:

24 (I) UPON RECEIPT OF THE COURT ORDER, THE PUBLIC TRUSTEE'S
25 FEE SPECIFIED IN SECTION 38-37-104 (1)(b)(XI), AND THE COSTS OF
26 RECORDING THE COURT ORDER AS SPECIFIED IN THIS SUBSECTION (2)(d),
27 THE PUBLIC TRUSTEE SHALL ATTACH TO THE ORDER A COPY OF THE

1 CERTIFICATE OF PURCHASE, ANY ASSIGNMENTS THEREOF, AND, IF
2 APPLICABLE, THE CONFIRMATION DEED, EACH MARKED "NULL AND VOID",
3 AND RECORD THE ORDER TOGETHER WITH THESE DOCUMENTS.

4 (II) UPON RECORDATION OF THE COURT ORDER, THE CERTIFICATE
5 OF PURCHASE SHALL BE DEEMED CANCELED AS IF THE SALE HAD NOT
6 OCCURRED, AND THE EVIDENCE OF DEBT AND DEED OF TRUST ARE DEEMED
7 FULLY REINSTATED WITH THE SAME LIEN PRIORITY AS IF THE SALE HAD
8 NOT OCCURRED. THE PUBLIC TRUSTEE SHALL CONFIRM THE
9 REINSTATEMENT BY INDORSEMENT ON THE EVIDENCE OF DEBT AND DEED
10 OF TRUST OR COPY THEREOF SUBMITTED PURSUANT TO SECTION
11 38-38-101.

12 (III) WITHIN TEN CALENDAR DAYS AFTER RECEIPT OF ALL
13 DOCUMENTS, FEES, AND COSTS SPECIFIED IN SUBSECTION (2)(d)(I) OF THIS
14 SECTION, THE PUBLIC TRUSTEE SHALL MAIL A COPY OF THE COURT ORDER
15 TO EACH PERSON ENTITLED TO RECEIVE THE COMBINED NOTICE PURSUANT
16 TO SECTION 38-38-103.

17 (IV) (A) AFTER THE RECORDING OF THE COURT ORDER, THE
18 HOLDER OF THE EVIDENCE OF DEBT OR THE HOLDER'S ASSIGNEE OR THE
19 ATTORNEY FOR THE HOLDER OR THE ATTORNEY FOR THE ASSIGNEE MAY
20 NOTIFY THE PUBLIC TRUSTEE IN WRITING TO RESCHEDULE THE SALE. THE
21 PUBLIC TRUSTEE SHALL SET A NEW DATE OF SALE AT LEAST THIRTY
22 CALENDAR DAYS BUT NOT MORE THAN FORTY-FIVE CALENDAR DAYS
23 AFTER THE DATE ON WHICH THE PUBLIC TRUSTEE RECEIVES NOTICE TO
24 SCHEDULE A NEW DATE OF SALE SUBJECT TO THE REQUIREMENTS OF
25 SECTION 38-38-109 (2).

26 (B) NO LATER THAN TEN CALENDAR DAYS AFTER RECEIVING
27 NOTICE TO SCHEDULE A NEW DATE OF SALE, THE PUBLIC TRUSTEE SHALL

1 MAIL A COMBINED NOTICE SETTING FORTH THE RESCHEDULED DATE OF
2 SALE TO EACH PERSON ENTITLED TO RECEIVE THE COMBINED NOTICE
3 PURSUANT TO SECTION 38-38-103.

4 (C) NO LATER THAN TWENTY CALENDAR DAYS AFTER RECEIVING
5 NOTICE TO SCHEDULE A NEW DATE OF SALE, BUT NO LESS THAN TEN
6 CALENDAR DAYS PRIOR TO THE NEW DATE OF SALE, THE PUBLIC TRUSTEE
7 SHALL PUBLISH THE SALE ONE TIME ONLY. SUCH PUBLICATION MUST BE IN
8 THE FORMAT SPECIFIED FOR PUBLICATION BY SECTION 38-38-103.

9 (D) ALL FEES AND COSTS OF THE PUBLIC TRUSTEE FOR ACTIONS
10 PERFORMED UNDER THIS SECTION AND THE COST OF RECORDING THE
11 COURT ORDER AND DOCUMENTS INCORPORATED INTO THE COURT ORDER
12 BY ATTACHMENT ARE PART OF THE FORECLOSURE COSTS.

13 (E) AFTER A SALE HAS BEEN ENJOINED OR SET ASIDE AND
14 SUBSEQUENTLY RESCHEDULED PURSUANT TO THIS SUBSECTION (2)(d)(IV),
15 THE SALE MAY BE CONTINUED IN ACCORDANCE WITH SECTION 38-38-109
16 (1)(a).

17 (V) NOTHING IN THIS SECTION PREVENTS THE FORECLOSING
18 LENDER FROM SEEKING A RESCISSION OF SALE PURSUANT TO SECTION
19 38-38-113 IF THE REQUIREMENTS WITHIN SECTION 38-38-113 (1) ARE MET.

20 (VI) CLAIMS FOR DAMAGES BY ANY PERSON ARISING OUT OF AN
21 ENJOINED OR SET ASIDE SALE PURSUANT TO THIS SECTION ARE LIMITED TO
22 THE REASONABLE ACTUAL EXPENSES OF THE PERSON AND SHALL NOT
23 INCLUDE ANY SPECULATIVE OR EXPECTATION DAMAGES, AWARDS, OR
24 CLAIMS OF ANY KIND, WHETHER LEGAL OR EQUITABLE.

25 **SECTION 7.** In Colorado Revised Statutes, 38-38-111, **amend**
26 (3) as follows:

27 **38-38-111. Treatment of an overbid - agreements to assist in**

1 **recovery of overbid prohibited - penalty - definition.** (3) (a) (I) When
2 the property is sold by the sheriff, all of the sale proceeds must be
3 deposited into the registry of the court.

4 (II) WHEN THE PROPERTY IS SOLD BY THE PUBLIC TRUSTEE, any
5 unclaimed remaining overbid from a foreclosure sale ~~held prior to~~
6 ~~September 1, 2012, shall be transferred by the officer to the county~~
7 ~~treasurer within ninety calendar days after the expiration of all~~
8 ~~redemption periods as provided in section 38-38-302 and held in escrow,~~
9 ~~and any unclaimed remaining overbid from a foreclosure sale held on or~~
10 ~~after September 1, 2012, shall be held by the officer~~ PUBLIC TRUSTEE in
11 escrow. ~~In either case,~~ The remaining overbid shall be held for six months
12 from the date of the sale. The ~~county treasurer or officer, whomever holds~~
13 ~~the remaining overbid in escrow, shall be~~ PUBLIC TRUSTEE IS answerable
14 for the funds without interest at any time within the six-month period to
15 any person legally entitled to the funds. Any interest earned on the
16 escrowed funds ~~shall~~ MUST be paid to the county at least annually.
17 Unclaimed remaining overbids that are less than twenty-five dollars and
18 that are not claimed within six months from the date of sale ~~shall~~ MUST
19 be paid to the general fund of the county, and such ~~moneys~~ MONEY paid
20 to the general fund of the county ~~become~~ BECOMES the property of the
21 county. Unclaimed remaining overbids that are equal to or greater than
22 twenty-five dollars and that are not claimed within six months from the
23 date of the sale are unclaimed property for purposes of the "Unclaimed
24 Property Act", article 13 of this ~~title~~ TITLE 38, and ~~shall~~ MUST be
25 transferred to the administrator in accordance with ~~that article~~ ARTICLE
26 13. After the unclaimed remaining overbids are transferred to the
27 administrator or to the general fund of the county, the ~~county treasurer~~

1 ~~and officer are~~ PUBLIC TRUSTEE IS discharged from any further liability or
2 responsibility for the ~~moneys~~ MONEY.

3 (b) If the unclaimed remaining overbids exceed five hundred
4 dollars and have not been claimed by any person entitled thereto within
5 sixty calendar days after the expiration of all redemption periods as
6 provided by section 38-38-302, the ~~county treasurer or officer~~ PUBLIC
7 TRUSTEE shall, within ninety calendar days after the expiration of all
8 redemption periods, commence publication of a notice for four weeks,
9 which means publication once each week for five successive weeks, in a
10 newspaper of general circulation in the county where the subject property
11 is located. ~~The county treasurer is responsible for the notice of an overbid~~
12 ~~from a foreclosure sale held prior to September 1, 2012, and the officer~~
13 ~~is responsible for the notice of an overbid from a foreclosure sale held on~~
14 ~~or after September 1, 2012.~~ The notice must contain the name of the
15 owner, the owner's address as given in the recorded instrument
16 evidencing the owner's interest, and the legal description and street
17 address, if any, of the property sold at the sale and must state that an
18 overbid was realized from the sale and that, unless the funds are claimed
19 by the owner or other person entitled thereto within six months after the
20 date of sale, the funds shall be transferred to the state treasurer as part of
21 the "Unclaimed Property Act". ~~The county treasurer or officer, whomever~~
22 ~~holds the remaining overbid in escrow,~~ PUBLIC TRUSTEE shall also mail
23 a copy of the notice to the owner at the best available address.

24 (c) The fees and costs of publication and mailing required
25 pursuant to this subsection (3) ~~shall~~ MUST be paid from the ~~moneys~~
26 MONEY escrowed by the ~~county treasurer or officer, whomever holds the~~
27 ~~remaining overbid in escrow~~ PUBLIC TRUSTEE.

1 **SECTION 8.** In Colorado Revised Statutes, 38-38-113, **amend**
2 (3); and **add** (4)(f) as follows:

3 **38-38-113. Rescission of public trustee sale.** (3) Within ten
4 calendar days after receipt of all documents and fees and costs specified
5 in subsection (1) of this section, the public trustee shall mail a copy of the
6 notice of rescission of sale to each person who was entitled to receive the
7 combined notice pursuant to section 38-38-103. ~~The person rescinding the~~
8 ~~sale shall provide addressed and stamped envelopes to the public trustee~~
9 ~~for mailing the copies.~~

10 (4) (f) IF A WRITTEN REQUEST TO RESCHEDULE THE SALE IS NOT
11 RECEIVED BY THE PUBLIC TRUSTEE WITHIN ONE YEAR OF THE RECORDING
12 OF THE NOTICE OF RESCISSION, THE FORECLOSURE MUST BE WITHDRAWN
13 ACCORDING TO SECTION 38-38-109 (3) (b).

14 **SECTION 9.** In Colorado Revised Statutes, 38-38-302, **amend**
15 (3)(a), (4)(a), (4)(b)(I) introductory portion, (4)(b)(I)(A), and (6) as
16 follows:

17 **38-38-302. Redemption by lienor - procedure.** (3) **Statement**
18 **of redemption.** (a) Upon receipt of notice that an intent to redeem was
19 filed, the holder of a certificate of purchase shall submit a signed and
20 acknowledged statement, or the attorney for the holder shall submit a
21 signed statement, to the officer, no later than thirteen business days
22 following the sale, specifying ~~all sums necessary to redeem as of the date~~
23 ~~of the statement, the amount of per diem interest accruing thereafter, and~~
24 ~~the interest rate on which the amount is based~~ INTEREST CALCULATED
25 THROUGH THE DATE OF THE SALE, THE AMOUNT OF PER DIEM INTEREST
26 ACCRUING THEREAFTER, THE INTEREST RATE ON WHICH THE AMOUNT IS
27 BASED, AND ALL OTHER SUMS NECESSARY TO REDEEM AS OF THE DATE OF

1 THE STATEMENT. INTEREST ON THE AMOUNT FOR WHICH THE PROPERTY
2 WAS SOLD MUST BE CHARGED AT THE DEFAULT RATE SPECIFIED IN THE
3 EVIDENCE OF DEBT, DEED OF TRUST, OR OTHER LIEN BEING FORECLOSED
4 OR, IF NOT SO SPECIFIED, AT THE REGULAR RATE SPECIFIED IN THE
5 EVIDENCE OF DEBT, DEED OF TRUST, OR OTHER LIEN BEING FORECLOSED.
6 IF DIFFERENT INTEREST RATES ARE SPECIFIED IN THE EVIDENCE OF DEBT,
7 DEED OF TRUST, OR OTHER LIEN BEING FORECLOSED, THE INTEREST RATE
8 SPECIFIED IN THE EVIDENCE OF DEBT PREVAILS. IF THE EVIDENCE OF DEBT
9 DOES NOT SPECIFY AN INTEREST RATE, INCLUDING A DEFAULT INTEREST
10 RATE, THE APPLICABLE INTEREST RATE AS SPECIFIED IN THE DEED OF
11 TRUST OR OTHER LIEN BEING FORECLOSED APPLIES. A holder of the
12 certificate of purchase that is not a qualified holder, or the attorney for the
13 holder, shall also submit to the officer receipts, invoices, evidence of
14 electronic account-to-account transfers, or copies of loan servicing
15 computer screens evidencing the fees and costs and verifying that the fees
16 and costs were actually incurred as of the date of the statement, along
17 with the per diem amounts that accrue after the date of sale. The holder
18 or the attorney for the holder may amend the statement from time to time
19 to reflect additional sums advanced as allowed by law, but the statement
20 shall not be amended later than two business days prior to the
21 commencement of the redemption period pursuant to ~~paragraph (a) of~~
22 ~~subsection (4)~~ SUBSECTION (4)(a) of this section or each subsequent
23 redemption period pursuant to ~~paragraph (b) of subsection (4)~~
24 SUBSECTION (4)(b) of this section.

25 (4) **Redemption period.** (a) No sooner than fifteen business days
26 nor later than nineteen business days after a sale under this ~~article~~
27 ARTICLE 38, the junior lienor having the most senior recorded lien on the

1 sold property or any portion thereof, according to the records, having first
2 complied with the requirements of subsection (1) of this section, may
3 redeem the property sold by paying to the officer, no later than 12 noon
4 on the last day of the lienor's redemption period, in the form specified in
5 section 38-37-108, the amount for which the property was sold with
6 interest from the date of sale, together with all sums allowed under
7 section 38-38-301. Interest on the amount for which the property was sold
8 shall be charged at the default rate specified in the evidence of debt, deed
9 of trust, or other lien being foreclosed or, if not so specified, at the regular
10 rate specified in the evidence of debt, deed of trust, or other lien being
11 foreclosed. If different interest rates are specified in the evidence of debt,
12 deed of trust, or other lien being foreclosed, the interest rate specified in
13 the evidence of debt shall prevail. If the evidence of debt does not specify
14 an interest rate, including a default interest rate, applicable interest rate
15 as specified in the deed of trust or other lien being foreclosed shall apply
16 SHOWN ON THE STATEMENT OF REDEMPTION.

17 (b) (I) Each subsequent lienor entitled to redeem shall, in
18 succession, have an additional period of five business days to redeem.
19 The right to redeem shall be in priority of such liens according to the
20 records. The redeeming lienor shall ~~redeem~~ REDEEMS by paying to the
21 officer, on or before 12 noon of the last day of the lienor's redemption
22 period:

23 (A) ~~The redemption amount paid by the prior redeeming lienor,~~
24 ~~with interest at the rate specified in paragraph (a) of this subsection (4),~~
25 ~~plus the amount claimed in the statement delivered by the immediately~~
26 ~~prior redeeming lienor pursuant to subsection (6) of this section,~~
27 ~~including the per diem amounts through the date on which the payment~~

1 ~~is made~~ THE REDEMPTION AMOUNT SPECIFIED ON THE NEW STATEMENT OF
2 REDEMPTION; or

3 (6) **Certificate of lienor.** (a) A redeeming lienor shall pay to the
4 officer the amount required to redeem and shall deliver to the officer a
5 signed and properly acknowledged statement by the lienor or a signed
6 statement by the lienor's attorney showing the amount owing on such lien,
7 including per diem interest and fees and costs actually incurred that are
8 permitted by subsection (7) of this section and for which the lienor has
9 submitted to the officer receipts, invoices, evidence of electronic
10 account-to-account transfers, or copies of loan servicing computer screens
11 evidencing the fees and costs and verifying that the fees and costs were
12 actually incurred as of the date of the statement of redemption with the
13 per diem amounts that accrue thereafter. At any time before the expiration
14 of a redeeming lienor's redemption period, the redeeming lienor may
15 submit a revised or corrected certificate, or the attorney for the lienor may
16 submit a revised or corrected statement.

17 (b) THE CERTIFICATE OF LIENOR, OR THE INFORMATION CONTAINED
18 THEREIN, SHALL BE TRANSMITTED BY THE OFFICER TO THE LIENOR WHO
19 HAS THE NEXT PERIOD OF REDEMPTION. IF THAT LIENOR FAILS TO REDEEM,
20 THE CERTIFICATE OF LIENOR SHALL BE TRANSMITTED BY THE OFFICER TO
21 EACH SUBSEQUENT LIENOR PRIOR TO THEIR DESIGNATED REDEMPTION
22 PERIOD UNTIL SUCH TIME AS A REDEMPTION OCCURS AND THERE IS A NEW
23 CERTIFICATE OF LIENOR OR ALL REDEMPTIONS PERIODS HAVE EXPIRED.

24 **SECTION 10.** In Colorado Revised Statutes, **amend** 38-38-306
25 as follows:

26 **38-38-306. Rights of other lienors to redeem.** (1) A judgment
27 creditor whose judgment has been made a lien of record, WHOSE LIEN HAS

1 NOT EXPIRED, and who has complied with the other conditions of a lienor
2 required by this ~~article~~ ARTICLE 38 may redeem as a lienor.

3 (2) A mechanic's lien claimant or any other person claiming the
4 right to a statutory lien on real property shall have the right to redeem as
5 a lienor despite the fact that the claim has not been reduced to judgment,
6 if the lien or lien claim has been recorded as required or permitted by
7 statute and the holder thereof has complied with the other conditions
8 required of a lienor by this ~~article~~ ARTICLE 38 AND THE LIEN HAS NOT
9 EXPIRED. If another lienor redeems after such lien claimant, that portion
10 of the redemption amount attributable to the claim of such lien claimant,
11 as evidenced by such claimant's recorded lien, shall be held in escrow by
12 the officer until a final judgment has been entered in favor of such
13 claimant confirming the claimant's right to a lien and all periods for
14 appeal have expired, whereupon there shall be paid to such claimant from
15 the escrow the amount of the lien claim as established by the judgment,
16 with any interest earned thereon, and the balance, if any, shall be refunded
17 to the owner of the property as of the date of the sale, so long as the last
18 redeeming lienor has otherwise been satisfied. If the claimant releases the
19 lien or fails to establish a right to the lien, the entire escrow shall be paid
20 to the owner of the property as of the date of the sale, so long as the last
21 redeeming lienor has otherwise been satisfied. Lien claimants of equal
22 priority, for the purposes of this subsection (2), may act in concert and be
23 deemed to represent one claim in which they share pro rata. The right of
24 the owner of the property as of the date of the sale to excess sale proceeds
25 pursuant to a homestead exemption under section 38-41-201 is
26 subordinate to the right of a subsequent deed of trust beneficiary for
27 whose benefit the owner waived the homestead exemption.

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