

CHAPTER 408

PROPERTY

SENATE BILL 22-229

BY SENATOR(S) Story and Jaquez Lewis, Woodward;
also REPRESENTATIVE(S) Bernett and Gray, Amabile, Bird, Hooton, Jodeh, Lindsay, Pico, Ricks, Snyder.

AN ACT

CONCERNING THE CONDITIONS UNDER WHICH A PUBLIC TRUSTEE SHALL RELEASE A DEED OF TRUST.

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

SECTION 1. In Colorado Revised Statutes, 38-39-102, **amend** (1)(a) introductory portion, (1)(a)(IV), (1)(a)(V), (2), (3)(c), (9) introductory portion, and (9)(b); and **add** (3)(d) as follows:

38-39-102. When deed of trust shall be released - definitions. (1) (a) Except as otherwise provided in ~~paragraph (a) of subsection (3)~~ SUBSECTION (3)(a) of this section, ~~a deed of trust to the public trustee,~~ upon compliance with the provisions of the deed of trust, A PUBLIC TRUSTEE shall ~~be released by the public trustee~~ RELEASE A DEED OF TRUST upon the:

(IV) Receipt by the public trustee of a current address for the original grantor, assuming party, or current owner or either a notation on the request for release of the deed of trust or a written statement from the holder of the evidence of debt secured by the deed of trust, the title insurance company licensed ~~and qualified~~ in Colorado, or the holder of the original evidence of debt that ~~is a qualified holder, as defined in section 38-38-100.3 (20), that they have~~ THE HOLDER HAS no record of a current address that is different from the address of the property encumbered by the deed of trust being released; except that ~~it shall be within the public trustee's discretion to~~ THE PUBLIC TRUSTEE MAY release a deed of trust upon compliance with the provisions of the deed of trust if the public trustee has not received the information required pursuant to this ~~subparagraph (IV)~~ SUBSECTION (1)(a)(IV); and

(V) Production of A LEGIBLE COPY OF the original recorded deed of trust securing the evidence of debt. ~~or a legible copy thereof.~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(2) If the purpose of the deed of trust has been fully or partially satisfied and the indebtedness secured by ~~such~~ THE deed of trust has not been paid, the public trustee shall release the deed of trust as to all or portions of the property encumbered by the deed of trust pursuant to the provisions of subsection (1) of this section if the request to release certifies that the purpose of the deed of trust has been fully or partially satisfied and ~~if either the original evidence of debt is exhibited or BY the holder of the evidence of debt. is a qualified holder.~~

(3) (c) (I) Subject to the provisions of ~~subparagraph (II) of this paragraph (c),~~ SUBSECTION (3)(c)(II) OF THIS SECTION, with respect to either subsection (1) or (2) of this section, a title insurance company licensed ~~and qualified~~ in Colorado may request the release of a deed of trust without producing or exhibiting the original evidence of debt. A company that requests the release of a deed of trust pursuant to ~~this paragraph (c) shall be~~ SUBSECTION (3)(c) IS DEEMED TO HAVE AGREED TO INDEMNIFY AND DEFEND THE PUBLIC TRUSTEE AGAINST ANY CLAIM MADE WITHIN THE PERIOD DESCRIBED IN SUBSECTION (7) OF THIS SECTION FOR DAMAGES RESULTING FROM THE ACTION TAKEN BY THE PUBLIC TRUSTEE IN ACCORDANCE WITH THE REQUEST. THE INDEMNITY GRANTED BY ~~this paragraph (c)~~ SUBSECTION (3)(c) IS LIMITED TO ACTUAL ECONOMIC LOSS SUFFERED AND ANY COURT COSTS AND REASONABLE ATTORNEY FEES AND COSTS INCURRED IN DEFENDING A CLAIM BROUGHT AS A DIRECT AND PROXIMATE RESULT OF THE FAILURE TO PRODUCE THE ORIGINAL EVIDENCE OF DEBT, BUT THE INDEMNITY DOES NOT INCLUDE AND NO CLAIMANT IS ENTITLED TO ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXPECTATION, OR PUNITIVE DAMAGES. NO SEPARATE INDEMNIFICATION AGREEMENT ~~shall be~~ IS NECESSARY FOR THE AGREEMENT TO INDEMNIFY TO BE EFFECTIVE; HOWEVER, THE COMPANY SHALL PROVIDE TO THE PUBLIC TRUSTEE AN AFFIDAVIT EXECUTED BY AN OFFICER OF THE COMPANY STATING THAT THE COMPANY HAS CAUSED THE INDEBTEDNESS SECURED BY THE DEED OF TRUST TO BE SATISFIED IN FULL OR, IN THE CASE OF A PARTIAL RELEASE, TO THE EXTENT REQUIRED BY THE HOLDER OF THE INDEBTEDNESS.

(II) A title insurance company licensed ~~and qualified~~ in Colorado shall provide the public trustee with a current address for the original grantor, assuming party, or current owner when requesting a release of a deed of trust pursuant to ~~this paragraph (c)~~ SUBSECTION (3)(c).

(d) (I) SUBJECT TO THE REQUIREMENT DESCRIBED IN SUBSECTION (3)(d)(II) OF THIS SECTION, WITH RESPECT TO SUBSECTION (1) OR (2) OF THIS SECTION, A HOLDER OF THE ORIGINAL EVIDENCE OF DEBT MAY REQUEST THE RELEASE OF A DEED OF TRUST WITHOUT PRODUCING OR EXHIBITING THE ORIGINAL EVIDENCE OF DEBT. A HOLDER THAT REQUESTS THE RELEASE OF A DEED OF TRUST PURSUANT TO THIS SUBSECTION (3)(d) IS DEEMED TO HAVE AGREED TO INDEMNIFY AND DEFEND THE PUBLIC TRUSTEE AGAINST ANY CLAIM MADE WITHIN THE PERIOD DESCRIBED IN SUBSECTION (7) OF THIS SECTION FOR DAMAGES RESULTING FROM THE ACTION OF THE PUBLIC TRUSTEE TAKEN IN ACCORDANCE WITH THE REQUEST. THE INDEMNITY GRANTED BY THIS SUBSECTION (3)(d) IS LIMITED TO ACTUAL ECONOMIC LOSS SUFFERED AND ANY COURT COSTS AND REASONABLE ATTORNEY FEES AND COSTS INCURRED IN DEFENDING A CLAIM BROUGHT AS A DIRECT AND PROXIMATE RESULT OF THE FAILURE TO PRODUCE THE ORIGINAL EVIDENCE OF DEBT, BUT THE INDEMNITY DOES NOT INCLUDE, AND NO CLAIMANT IS ENTITLED TO, ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXPECTATION, OR PUNITIVE DAMAGES. NO SEPARATE INDEMNIFICATION AGREEMENT IS NECESSARY FOR THE AGREEMENT TO INDEMNIFY TO BE EFFECTIVE.

(II) A HOLDER OF THE EVIDENCE OF DEBT SHALL PROVIDE THE PUBLIC TRUSTEE A CURRENT ADDRESS FOR THE ORIGINAL GRANTOR, ASSUMING PARTY, OR CURRENT OWNER WHEN REQUESTING A RELEASE OF A DEED OF TRUST PURSUANT TO THIS SUBSECTION (3)(d).

(III) A HOLDER OF THE EVIDENCE OF DEBT THAT ELECTS TO REQUEST A RELEASE OF A DEED OF TRUST PURSUANT TO THIS SUBSECTION (3)(d) MUST ELECTRONICALLY FILE THE REQUEST FOR RELEASE OF DEED OF TRUST VIA THE COUNTY'S ELECTRONIC RECORDING SYSTEM.

(9) ~~For purposes of~~ AS USED IN this section, unless the context otherwise requires:

(b) "Current address" means the most recent address reflected in the records of a holder of the evidence of debt, a title insurance company licensed ~~and qualified~~ in Colorado, or a holder of the original evidence of debt that is a qualified holder, as defined in section 38-38-100.3 (20). If a holder of the evidence of debt, a title insurance company licensed ~~and qualified~~ in Colorado, or a holder of the original evidence of debt that is a qualified holder, as defined in section 38-38-100.3 (20), has no record of a current address, any requirement that a current address be provided shall be deemed satisfied by indicating that fact.

SECTION 2. In Colorado Revised Statutes, **amend** 38-39-108 as follows:

38-39-108. Form of written request for release of a deed of trust without production of the evidence of debt. A written request to a public trustee made pursuant to section 38-39-102 (1)(a) and (3) to release a deed of trust without production of the original canceled evidence of debt may be in substantially the following form:

Original Note and Deed of Trust Returned to:
When recorded return to:
Prepared/Received by:

REQUEST FOR FULL / PARTIAL
RELEASE OF DEED OF TRUST AND RELEASE BY
HOLDER OF THE EVIDENCE OF DEBT WITHOUT
PRODUCTION OF EVIDENCE OF DEBT PURSUANT TO
§ 38-39-102 (1)(a) and (3), COLORADO REVISED STATUTES

_____ Date
 _____ Original Grantor (Borrower)

 _____ Current Address of Original Grantor,
 _____ Assuming Party, or Current Owner
 Check here if current address is unknown.
 _____ Original Beneficiary (Lender)

 _____ Date of Deed of Trust
 _____ Date of Recording and/or
 _____ Re-Recording of Deed of Trust
 _____ Recording Information

County Rcpt. No. and/or Film No. and/or Book/Page No. and/or Torrens Reg. No.

TO THE PUBLIC TRUSTEE OF _____ COUNTY
(The County of the Public Trustee who is the appropriate grantee to whom the above Deed of Trust should grant an interest in the property described in the Deed of Trust)

PLEASE EXECUTE AND RECORD A RELEASE OF THE DEED OF TRUST DESCRIBED ABOVE. The indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied in regard to the property encumbered by the Deed of Trust as described ~~therein~~ IN THE DEED OF TRUST as to a full release or, in the event of a partial release, only that portion of the real property described as:

(IF NO LEGAL DESCRIPTION IS LISTED THIS WILL BE DEEMED A FULL RELEASE.)

Pursuant to § 38-39-102 (3), Colorado Revised Statutes, in support of this Request for Release of Deed of Trust, the undersigned, as the holder of the evidence of debt secured by the Deed of Trust described above, or as a title insurance company authorized to request the release of a Deed of Trust pursuant to § 38-39-102 (3)(c), Colorado Revised Statutes, in lieu of the production or exhibition of the original evidence of debt with this Request for Release, certifies as follows:

- 1. The purpose of the Deed of Trust has been fully or partially satisfied.
- 2. The original evidence of debt is not being exhibited or produced ~~herewith~~

WITH THIS REQUEST FOR RELEASE OF DEED OF TRUST.

3. It is one of the following entities (check applicable box):

a. The holder of the original evidence of debt that is a qualified holder, as specified in § 38-39-102 (3)(a), Colorado Revised Statutes, that agrees that it is obligated to indemnify the Public Trustee for any and all damages, costs, liabilities, and reasonable attorney fees incurred as a result of the action of the Public Trustee taken in accordance with this Request for Release;

b. The holder of the evidence of debt requesting the release of a Deed of Trust without producing or exhibiting the original evidence of debt that delivers to the Public Trustee a corporate surety bond as specified in § 38-39-102 (3)(b), Colorado Revised Statutes; ~~or~~

c. A title insurance company licensed ~~and qualified~~ in Colorado, as specified in § 38-39-102 (3)(c), Colorado Revised Statutes, that agrees that it is obligated to indemnify the Public Trustee pursuant to statute as a result of the action of the Public Trustee taken in accordance with this Request for Release and that has caused the indebtedness secured by the Deed of Trust to be satisfied in full, or in the case of a partial release, to the extent required by the holder of the indebtedness; OR

d. A HOLDER, AS SPECIFIED IN § 38-39-102 (3)(d)(I), COLORADO REVISED STATUTES, THAT AGREES THAT IT IS OBLIGATED TO INDEMNIFY THE PUBLIC TRUSTEE PURSUANT TO STATUTE AS A RESULT OF THE ACTION OF THE PUBLIC TRUSTEE TAKEN IN ACCORDANCE WITH THIS REQUEST FOR RELEASE AND THAT HAS CAUSED THE INDEBTEDNESS SECURED BY THE DEED OF TRUST TO BE SATISFIED IN FULL, OR IN THE CASE OF A PARTIAL RELEASE, TO THE EXTENT REQUIRED BY THE HOLDER OF THE INDEBTEDNESS.

Name and address of the holder of the evidence of debt secured by THE Deed of

Trust (lender) or name and address of the title insurance company authorized to request the release of a Deed of Trust.

Name, title, and address of officer, agent, or attorney of the holder of the evidence of debt secured by THE Deed of Trust (lender).

Signature _____ Signature _____
State of _____, County of _____

The foregoing Request for Release was acknowledged before me
on _____ (Date) by* _____ (Notary Seal)
Date Commission Expires _____

*If applicable, insert title of officer and name of current holder

Notary Public _____ Witness my hand and official seal

RELEASE OF DEED OF TRUST

WHEREAS, the Grantor(s) named above, by Deed of Trust, granted certain real property described in the Deed of Trust to the Public Trustee of the County referenced above, in the State of Colorado, to be held in trust to secure the payment of the indebtedness referred to ~~therein~~ IN THE DEED OF TRUST; and

WHEREAS, the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied according to the written request of the holder of the evidence of debt or title insurance company authorized to request the release of the Deed of Trust;

NOW THEREFORE, in consideration of the premises and the payment of the statutory sum, receipt of which is hereby acknowledged, I, as the Public Trustee in the County named above, do hereby fully and absolutely release, cancel, and forever discharge the Deed of Trust or that portion of the real property described above in the Deed of Trust, together with all privileges and appurtenances ~~thereto~~ belonging TO THE REAL PROPERTY.

Public Trustee

Deputy Public Trustee
(Public Trustee use only; use appropriate label)
(Public Trustee's seal)
(If applicable: Notary Seal)

(If applicable, name and address of person creating new legal description as required by § 38-35-106.5, Colorado Revised Statutes.)

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be

held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 7, 2022