

**Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 26-0489.01 Sam Anderson x4218

HOUSE BILL 26-1098

HOUSE SPONSORSHIP

Brooks and Stewart R.,

SENATE SPONSORSHIP

Frizell and Kipp,

House Committees

Transportation, Housing & Local Government

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE "COLORADO PUBLIC TRUSTEE**
102 **ACT" RELATED TO FORECLOSURE PROCEDURES.**

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 makes modifications related to foreclosure procedures in the "Colorado Public Trustee Act" to:

- Set the salary of the public trustee in counties where the county treasurer serves as the public trustee;
- Eliminate the requirement that a public trustee make certain statements to the board of county commissioners under

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

- oath;
- Repeal the requirement that a public trustee appointed by the governor be subject to the state "Procurement Code";
- Clarify the source of funds used to pay a public trustee;
- Repeal the definition of "certified copy" and references thereto;
- Define "nonmaterial misstatement";
- Clarify the date by which the public trustee or sheriff conducting a foreclosure (officer) must mail the combined notice of sale, right to cure, and right to redeem to persons on an amended mailing list;
- Clarify that a junior lienor is entitled to cure the default if the junior lienor files with the officer;
- Specify that unclaimed remaining amount for which a property is sold at a foreclosure sale that is in excess of the bid amount may be transferred to the state treasurer for disposition or held by the county treasurer pursuant to the terms of a county resolution regarding unclaimed funds;
- Add a requirement regarding redemption that specifies that if a lien is assigned, the holder's rights are valid only if the assignment of the lien is duly recorded at least 15 calendar days prior to the date of sale;
- Clarify an omitted party's rights after a foreclosure sale; and
- Specify when an omitted party's interest may be terminated.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-37-104, **amend**
 3 (2) and (3), and **repeal** (8) as follows:

4 **38-37-104. Duties of public trustees - fees, expenses, and**
 5 **salaries - reports - definition.**

6 (2) (a) ~~The salary of the public trustee in the different counties of~~
 7 ~~the state shall be fixed at the following amounts, to wit: In counties of the~~
 8 ~~second class, twenty-six thousand dollars per annum for full-time public~~
 9 ~~trustees and, in counties of the third class, six thousand five hundred~~
 10 ~~dollars per annum~~ FOR PUBLIC TRUSTEES IN ALL COUNTIES WHEREIN THE
 11 COUNTY TREASURER SERVES AS THE PUBLIC TRUSTEE, THE SALARY SHALL

1 BE FIXED AT TWELVE THOUSAND FIVE HUNDRED DOLLARS PER ANNUM.

2 (b) ~~For public trustees whose terms begin on or after July 1, 1998,~~
3 ~~but prior to January 1, 2003, the salary of the public trustee in the~~
4 ~~different counties of the state shall be fixed at the following amounts, to~~
5 ~~wit: In counties of the second class, thirty-two thousand dollars per~~
6 ~~annum for full-time public trustees and, in counties of the third class,~~
7 ~~eight thousand dollars per annum; except that, in the city and county of~~
8 ~~Broomfield, such salary shall be as set forth in its annual budget.~~

9 (b.3) (I) ~~For public trustees whose terms begin on or after January~~
10 ~~1, 2003, except as otherwise provided in subparagraph (H), (HH), or (IV)~~
11 ~~of this paragraph (b.3), the salary of the public trustee in the different~~
12 ~~counties of the state shall be fixed at the following amounts, to wit: In~~
13 ~~counties of the second class, forty-eight thousand five hundred dollars per~~
14 ~~annum, and in counties of the third class, twelve thousand five hundred~~
15 ~~dollars per annum.~~

16 (H) ~~For public trustees who are serving in office on or after March~~
17 ~~13, 2008, the salary of the public trustee in the different counties of the~~
18 ~~state shall be fixed at the following amounts, to wit: In counties of the~~
19 ~~second class, fifty-six thousand five hundred dollars per annum; and in~~
20 ~~counties of the third class, twelve thousand five hundred dollars per~~
21 ~~annum.~~

22 (HH) ~~For public trustees in counties of the second class who are~~
23 ~~serving in office on or after February 1, 2009, the salary shall be fixed at~~
24 ~~sixty-four thousand five hundred dollars per annum.~~

25 (IV) ~~For public trustees in counties of the second class who are~~
26 ~~serving in office on or after February 1, 2010, the salary shall be fixed at~~
27 ~~seventy-two thousand five hundred dollars per annum.~~

1 (V) ~~For public trustees in counties of the second class wherein the~~
2 ~~county treasurer serves as the public trustee, the salary shall be fixed at~~
3 ~~twelve thousand five hundred dollars per annum.~~

4 (b.5) Repealed.

5 (c) Such salaries shall be paid MONTHLY FROM THE GENERAL
6 FUND AS PART OF THE COUNTY'S STANDARD PAYROLL PROCESS. ON A
7 QUARTERLY BASIS, THE PUBLIC TRUSTEE SHALL REIMBURSE THE COUNTY
8 GENERAL FUND FOR THE MONTHLY SALARIES from the fees collected by
9 the public trustee as provided in this section ~~and not otherwise~~ OR FROM
10 THE PUBLIC TRUSTEE SPECIAL RESERVE ACCOUNT. IF THERE ARE NOT
11 SUFFICIENT FUNDS AVAILABLE, THEN THE PUBLIC TRUSTEE SHALL
12 REIMBURSE THE GENERAL FUND ACCOUNT AS SOON AS ENOUGH FEES HAVE
13 BEEN COLLECTED.

14 (3) The public trustee of each county shall quarterly make and file
15 with the board of county commissioners of the county a full ~~and complete~~
16 statement ~~under oath~~ of all transactions of the office of the public trustee
17 and shall, upon the approval of said report, pay to the county treasurer all
18 sums that the public trustee has received as fees in excess of the amount
19 of salary then due to the public trustee and in excess of all necessary and
20 reasonable expenses for staff wages and any benefits provided pursuant
21 to county personnel policy and other expenses incidental to the conduct
22 of the office of the public trustee for the quarter ending at the time of
23 such report, which ~~moneys~~ MONEY shall, by the county treasurer, be
24 placed to the credit of a fund to be known as the public trustee salary
25 fund. The public trustee shall, before remitting such excess funds, retain
26 such excess funds in a special reserve fund, which fund shall be
27 maintained in a separate interest-bearing account as permitted under

1 section 38-37-113, until such special reserve fund, including accrued
2 interest, reaches an amount equal to the public trustee's total operating
3 expenses and authorized salary for the previous fiscal year, as filed
4 pursuant to this subsection (3). If, in any particular quarter, the public
5 trustee's operating expenses and authorized salary exceed the fees
6 collected in the quarter, the public trustee may draw on the special reserve
7 fund to cover the public trustee's operating expenses and authorized salary
8 for that quarter. At such time as the special reserve fund has reached the
9 permitted amount, excess funds shall be paid to the county treasurer to be
10 placed in the public trustee salary fund. At the expiration of each year, the
11 county treasurer shall, out of any ~~moneys~~ MONEY in the public trustee
12 salary fund and not otherwise, pay to the public trustee such an amount,
13 if any, as may be still due to the public trustee on account of the public
14 trustee's salary for that year just expired, such payment to be made only
15 upon the certificate of the board stating the amount of such salary still
16 remaining due and unpaid, and the balance of said fund shall thereupon
17 be transferred to the general fund of the county.

18 (8) ~~Each public trustee who is appointed by the governor shall be~~
19 ~~subject to the state "Procurement Code", articles 101 to 112 of title 24,~~
20 ~~C.R.S., for any purchase of twenty thousand dollars or more and for any~~
21 ~~multiple year purchase agreement; except that, if the procurement rules~~
22 ~~established for the county in which the public trustee serves require an~~
23 ~~open and competitive bidding process, the public trustee may apply the~~
24 ~~county procurement rules.~~

25 **SECTION 2.** In Colorado Revised Statutes, 38-38-100.3, **repeal**
26 (3); and **add** (15.5) as follows:

27 **38-38-100.3. Definitions.**

1 As used in articles 37 to 39 of this title 38, unless the context
2 otherwise requires:

3 ~~(3) "Certified copy" means, with respect to a recorded document,~~
4 ~~a copy of the document certified by the clerk and recorder of the county~~
5 ~~where the document was recorded.~~

6 (15.5) "NONMATERIAL MISSTATEMENT" MEANS AN ERROR,
7 INACCURACY, OR OMISSION THAT IS MINOR OR INCONSEQUENTIAL AND
8 DOES NOT SIGNIFICANTLY AFFECT THE UNDERSTANDING, VALIDITY, OR
9 ENFORCEABILITY OF THE DOCUMENT.

10 **SECTION 3.** In Colorado Revised Statutes, 38-38-101, **amend**
11 (1)(b)(III), (1)(c)(I), (2), and (5) as follows:

12 **38-38-101. Holder of evidence of debt may elect to foreclose.**

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

18 (b) The original evidence of debt, including any modifications to
19 the original evidence of debt, together with the original indorsement or
20 assignment thereof, if any, to the holder of the evidence of debt or other
21 proper indorsement or assignment in accordance with subsection (6) of
22 this section or, in lieu of the original evidence of debt, one of the
23 following:

24 (III) A ~~certified~~ RECORDED copy of a monetary judgment entered
25 by a court of competent jurisdiction;

26 (c) The original recorded deed of trust securing the evidence of
27 debt and any original recorded modifications of the deed of trust or any

1 recorded partial releases of the deed of trust, or in lieu thereof, one of the
2 following:

3 (I) ~~Certified~~ Copies of the recorded deed of trust and any recorded
4 modifications of the deed of trust or recorded partial releases of the deed
5 of trust; or

6 (2) **Foreclosure by qualified holder without original evidence**
7 **of debt, original or recorded copy of deed of trust, or proper**
8 **indorsement.**

9 (a) A qualified holder, whether acting for itself or as agent,
10 nominee, or trustee under section 38-38-100.3 (20), that elects to
11 foreclose without the original evidence of debt pursuant to ~~subparagraph~~
12 ~~(II) of paragraph (b) of subsection (1)~~ SUBSECTION (1)(b)(II) of this
13 section, or without the original recorded deed of trust or a ~~certified~~
14 RECORDED copy thereof pursuant to ~~subparagraph (II) of paragraph (c) of~~
15 ~~subsection (1)~~ SUBSECTION (1)(c)(II) of this section, or without the proper
16 indorsement or assignment of an evidence of debt under ~~paragraph (b) of~~
17 ~~subsection (1)~~ SUBSECTION (1)(b) of this section shall, by operation of
18 law, be deemed to have agreed to indemnify and defend any person liable
19 for repayment of any portion of the original evidence of debt in the event
20 that the original evidence of debt is presented for payment to the extent
21 of any amount, other than the amount of a deficiency remaining under the
22 evidence of debt after deducting the amount bid at sale, and any person
23 who sustains a loss due to any title defect that results from reliance upon
24 a sale at which the original evidence of debt was not presented. The
25 indemnity granted by this subsection (2) ~~shall be~~ IS limited to actual
26 economic loss suffered together with any court costs and reasonable
27 attorney fees and costs incurred in defending a claim brought as a direct

1 and proximate cause of the failure to produce the original evidence of
2 debt, but such indemnity shall not include, and no claimant ~~shall be~~ IS
3 entitled to, any special, incidental, consequential, reliance, expectation,
4 or punitive damages of any kind. A qualified holder acting as agent,
5 nominee, or trustee ~~shall be~~ IS liable for the indemnity pursuant to this
6 subsection (2).

7 (b) In the event that a qualified holder or the attorney for the
8 holder commences a foreclosure without production of the original
9 evidence of debt, COPY OF RECORDED MODIFICATION, proper indorsement
10 or assignment, or the original recorded deed of trust or a ~~certified~~
11 RECORDED copy thereof, the qualified holder or the attorney for the holder
12 may submit the original evidence of debt, COPY OF RECORDED
13 MODIFICATION, proper indorsement or assignment, or the original
14 recorded deed of trust or a ~~certified~~ RECORDED copy thereof to the officer
15 prior to the sale. In such event, the sale ~~shall be~~ IS conducted and
16 administered as if the original evidence of debt, COPY OF RECORDED
17 MODIFICATION, proper indorsement or assignment, or the original
18 recorded deed of trust or a ~~certified~~ RECORDED copy thereof had been
19 submitted at the time of commencement of such proceeding, and any
20 indemnities deemed to have been given by the qualified holder under
21 ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION
22 ~~shall be null and~~ ARE void as to the instrument produced under this
23 ~~paragraph (b)~~ SUBSECTION (2)(b).

24 (c) In the event that a foreclosure is conducted where the original
25 evidence of debt, proper indorsement or assignment, or original recorded
26 deed of trust or ~~certified~~ RECORDED copy thereof has not been produced,
27 the only claims ~~shall be~~ ARE against the indemnitor as provided in

~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION
and not against the foreclosed property or the attorney for the holder of
the evidence of debt. Nothing in this section ~~shall preclude~~ PRECLUDES a
person liable for repayment of the evidence of debt from pursuing
remedies allowed by law.

(5) **Error in notice.** In the event that the amount of the
outstanding principal balance due and owing upon the secured
indebtedness OR ANY NONMATERIAL MISSTATEMENT is erroneously set
forth in the notice of election and demand or the combined notice, the
error shall not affect the validity of the notice of election and demand, the
combined notice, the publication, the sale, the certificate of purchase
described in section 38-38-401, the certificate of redemption described in
section 38-38-402, the confirmation deed as defined in section
38-38-100.3 (5), or any other document executed in connection therewith.

SECTION 4. In Colorado Revised Statutes, 38-38-103, **amend**
(2)(a) as follows:

**38-38-103. Combined notice - publication - providing
information.**

(2) (a) The holder of the evidence of debt or the attorney for the
holder shall deliver an amended mailing list to the officer as needed. If an
OFFICER RECEIVES AN amended mailing list ~~is received~~ after the officer
has sent the mailing described in ~~paragraph (b) of subsection (1)~~
SUBSECTION (1)(b) of this section, the officer shall continue the sale to no
less than sixty-five calendar days after receipt of the amended mailing
list. The officer shall send the notice pursuant to subsection (4) of this
section to the persons on the amended mailing list no less than forty-five
calendar days prior to the ~~actual~~ NEWLY SCHEDULED date of sale.

1 **SECTION 5.** In Colorado Revised Statutes, 38-38-104, **amend**
2 (1)(d) as follows:

3 **38-38-104. Right to cure when default is nonpayment - right**
4 **to cure for certain technical defaults.**

5 (1) Unless the order authorizing the sale described in section
6 38-38-105 contains a determination that there is a reasonable probability
7 that a default in the terms of the evidence of debt, deed of trust, or other
8 lien being foreclosed other than nonpayment of sums due thereunder has
9 occurred, any of the following persons is entitled to cure the default if the
10 person files with the officer, no later than fifteen calendar days prior to
11 the date of sale, a written notice of intent to cure together with evidence
12 of the person's right to cure to the satisfaction of the officer:

13 (d) ~~A holder of an interest junior to the lien being foreclosed by~~
14 ~~virtue of being a lienor or lessee of, or a holder of an easement or license~~
15 ~~on, the property or a contract vendee of the property, if the instrument~~
16 ~~evidencing the interest was recorded in the records prior to the date and~~
17 ~~time of the recording of the notice of election and demand or lis pendens.~~

18 A JUNIOR LIENOR, AS DEFINED IN SECTION 38-38-100.3. If, prior to the date
19 and time of the recording of the notice of election and demand or lis
20 pendens, a lien is recorded in an incorrect county, the holder's rights
21 under this section ~~shall~~ ARE only ~~be~~ valid if the lien is rerecorded in the
22 correct county at least fifteen calendar days prior to the actual date of
23 sale.

24 **SECTION 6.** In Colorado Revised Statutes, 38-38-106, **amend**
25 (7)(a)(II) as follows:

26 **38-38-106. Bid required - form of bid.**

27 (7) (a) (II) If the holder of the evidence of debt is the highest

1 bidder with a bid that exceeds the total amount due shown on the bid
2 pursuant to subsection (2) of this section, the holder of the evidence of
3 debt is only required to pay the excess of the amount bid over the amount
4 due the holder of the evidence of debt, as shown on the bid submitted
5 pursuant to subsection (2) of this section. THE HOLDER SHALL PAY THE
6 EXCESS OF THE AMOUNT BID TO THE OFFICE WITHIN THREE BUSINESS DAYS
7 AFTER THE SALE.

8 **SECTION 7.** In Colorado Revised Statutes, 38-38-108, **amend**
9 (2)(a)(I)(A) as follows:

10 **38-38-108. Date of sale.**

11 (2) (a) (I) If it is not evident from the legal description contained
12 in the deed of trust or other lien being foreclosed whether the property
13 described therein is agricultural property, the officer shall make that
14 determination no less than ten calendar days nor more than twenty
15 calendar days after the recording of the notice of election and demand;
16 except that the officer may make the determination at any earlier time
17 upon presentation of acceptable evidence that the property is not
18 agricultural property. The officer shall accept the following as evidence
19 that the property is not agricultural property:

20 (A) A ~~certified~~ copy of the subdivision plat containing the
21 property or any portion thereof recorded in the office of the clerk and
22 recorder of the county where the property or any portion thereof is
23 located; or

24 **SECTION 8.** In Colorado Revised Statutes, 38-38-109, **amend**
25 (1)(b) and (2)(a) as follows:

26 **38-38-109. Continuance of sale - effect of bankruptcy -**
27 **withdrawal of sale.**

1 **(1) Continuance.**

2 (b) At the request of the holder of the evidence of debt or the
3 attorney for the holder or upon the officer's own initiative, the officer
4 shall correct any errors in a published combined notice and shall continue
5 the then-scheduled date of sale to a future date within the period of
6 continuance allowed by ~~paragraph (a) of this subsection (1)~~ SUBSECTION
7 (1)(a) OF THIS SECTION to permit a corrected combined notice to be
8 published or the original combined notice to be republished pursuant to
9 section 38-38-103 (5). If the officer failed to publish the combined notice
10 as required by section 38-38-103 (5), the officer shall continue the
11 then-scheduled date of sale to a future date within the period of
12 continuance allowed by ~~paragraph (a) of this subsection (1)~~ SUBSECTION
13 (1)(a) OF THIS SECTION. The future date of sale to which the sale is
14 continued pursuant to this ~~paragraph (b)~~ SUBSECTION (1)(b) shall be no
15 later than thirty calendar days after the fifth publication of the corrected
16 combined notice or republished combined notice. The officer shall mail
17 a copy of the combined notice, or corrected combined notice if the
18 original combined notice was erroneous, to the persons and addresses on
19 the most recent amended mailing list no later than ten calendar days after
20 the first correct publication or republication and no less than forty-five
21 calendar days prior to the ~~actual~~ NEWLY SCHEDULED date of sale in the
22 same manner as set forth in section 38-38-103. If there is no amended
23 mailing list, the officer shall mail a copy of the combined notice, or
24 corrected combined notice if the original combined notice was erroneous,
25 to the persons as set forth in the mailing list.

26 **(2) Effect of bankruptcy proceedings.**

27 (a) If all publications of the combined notice prescribed by section

1 38-38-103 (5) or 13-56-201 (1) C.R.S., have been completed before a
2 ANY INJUNCTION OR bankruptcy petition has been filed that automatically
3 stays the officer from conducting the sale, the officer shall announce,
4 post, or provide notice of that fact on the then-scheduled date of sale, take
5 no action at the then-scheduled sale, and allow the sale to be
6 automatically continued from week to week in accordance with paragraph
7 (a) of subsection (1) SUBSECTION (1)(a) of this section, unless otherwise
8 requested in writing prior to any such date of sale by the holder of the
9 evidence of debt or the attorney for the holder.

10 **SECTION 9.** In Colorado Revised Statutes, 38-38-111, **amend**
11 (3)(a)(II) and (3)(b) as follows:

12 **38-38-111. Treatment of an overbid - agreements to assist in**
13 **recovery of overbid prohibited - penalty - definition.**

14 (3) (a) (II) When the property is sold by the public trustee, any
15 unclaimed remaining overbid from a foreclosure sale ~~shall be~~ IS held by
16 the public trustee in escrow. The remaining overbid ~~shall be~~ IS held for
17 six months from the date of the sale. The public trustee is answerable for
18 the funds without interest at any time within the six-month period to any
19 person legally entitled to the funds. Any interest earned on the escrowed
20 funds must be paid to the county at least annually. Unclaimed remaining
21 overbids that are less than twenty-five dollars and that are not claimed
22 within six months from the date of sale must be paid to the general fund
23 of the county, and such money paid to the general fund of the county
24 becomes the property of the county. Unclaimed remaining overbids that
25 are equal to or greater than twenty-five dollars and that are not claimed
26 within six months from the date of the sale ~~are~~ SHALL BE EITHER
27 unclaimed property for purposes of the "Revised Uniform Unclaimed

1 Property Act", article 13 of this title 38, ~~and~~ THAT must be transferred to
2 the ~~administrator~~ STATE TREASURER FOR DISPOSITION in accordance with
3 article 13 OR UNCLAIMED PROPERTY HELD BY THE COUNTY TREASURER
4 PURSUANT TO THE TERMS OF A COUNTY RESOLUTION REGARDING
5 UNCLAIMED FUNDS. After the unclaimed remaining overbids are
6 transferred to the administrator or to the general fund of the county, the
7 public trustee is discharged from any further liability or responsibility for
8 the money.

9 (b) If the unclaimed remaining overbids exceed five hundred
10 dollars and have not been claimed by any person entitled thereto within
11 sixty calendar days after the expiration of all redemption periods as
12 provided by section 38-38-302, the public trustee shall, within ninety
13 calendar days after the expiration of all redemption periods, commence
14 publication of a notice for four weeks, which means publication once
15 each week for five successive weeks, in a newspaper of general
16 circulation in the county where the subject property is located. The notice
17 must contain the name of the borrower, the borrower's address as given
18 in the recorded instrument evidencing the borrower's interest, and the
19 legal description and street address, if any, of the property sold at the sale
20 and must state that an overbid was realized from the sale and that, unless
21 the funds are claimed by the borrower or other person entitled thereto
22 within six months after the date of sale, the funds shall EITHER be
23 transferred to the state treasurer for disposition in accordance with the
24 "Revised Uniform Unclaimed Property Act", article 13 of this title 38 OR
25 HELD BY THE COUNTY TREASURER PURSUANT TO THE TERMS OF A COUNTY
26 RESOLUTION REGARDING UNCLAIMED FUNDS. The public trustee shall also
27 mail a copy of the notice to the borrower at the best available address.

1 **SECTION 10.** In Colorado Revised Statutes, 38-38-302, **add**
2 (1)(c.5) as follows:

3 **38-38-302. Redemption by lienor - procedure - definition.**

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

7 (c.5) IF A LIEN IS ASSIGNED, THE HOLDER'S RIGHTS UNDER THIS
8 SECTION ARE VALID ONLY IF THE ASSIGNMENT OF THE LIEN IS DULY
9 RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF THE COUNTY
10 AT LEAST FIFTEEN CALENDAR DAYS PRIOR TO THE ACTUAL DATE OF SALE.

11 **SECTION 11.** In Colorado Revised Statutes, **amend** 38-38-405
12 as follows:

13 **38-38-405. Certificate as prima facie evidence.**

14 A certificate of purchase, certificate of redemption, confirmation
15 deed, or a ~~certified~~ RECORDED copy thereof shall be deemed to be prima
16 facie evidence of all statements or recitals contained therein.

17 **SECTION 12.** In Colorado Revised Statutes, 38-38-506, **amend**
18 (2)(a), (2)(d), and (3) as follows:

19 **38-38-506. Omitted parties - definitions.**

20 (2) (a) The interest of an omitted party in the property that is the
21 subject of a sale may be terminated if the omitted party, or anyone
22 claiming by, through, or under an omitted party, in a civil action
23 commenced ~~at any time~~ WITHIN THREE HUNDRED SIXTY-FIVE CALENDAR
24 DAYS OF THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND OR
25 ONE HUNDRED EIGHTY CALENDAR DAYS AFTER THE ACTUAL FORECLOSURE
26 SALE, WHICHEVER IS GREATER, by any interested person as defined in
27 ~~paragraph (c) of this subsection~~ (2) SUBSECTION (2)(c) OF THIS SECTION,

1 by an omitted party, or by anyone claiming by, through, or under an
2 omitted party, ~~is afforded rights of cure if the omitted party would have~~
3 ~~been entitled to cure pursuant to section 38-38-104, or~~ is afforded
4 redemption rights if the omitted party would have been entitled to redeem
5 pursuant to section 38-38-302, upon such terms as the court may deem
6 equitable under the circumstances, which terms shall not, however, be
7 more favorable than the person's statutory rights. The court shall give full
8 consideration to whether the omitted party or anyone claiming by,
9 through, or under an omitted party was given or had actual notice ~~or~~
10 ~~knowledge~~ OR CONSTRUCTIVE NOTICE of the foreclosure and was given
11 an opportunity to exercise statutory rights to ~~cure or~~ redeem.

12 (d) An omitted party, or anyone claiming by, through, or under an
13 omitted party, shall not have a remedy to ~~cure or~~ redeem, except as set
14 forth in this subsection (2). An interested party shall not be able to
15 extinguish an omitted party's interest except as set forth in this subsection
16 (2) or by written waiver or agreement signed by the omitted party or
17 anyone claiming by, through, or under an omitted party.

18 (3) If an interested person files with the officer ~~at any time~~ WITHIN
19 THREE HUNDRED SIXTY-FIVE CALENDAR DAYS OF THE RECORDING OF THE
20 NOTICE OF ELECTION AND DEMAND OR ONE HUNDRED EIGHTY CALENDAR
21 DAYS AFTER THE ACTUAL FORECLOSURE SALE, WHICHEVER IS GREATER, a
22 document affirming an omitted party's interest in the property, subject to
23 the terms, conditions, and provisions of the recorded instrument from
24 which such omitted party's interest is derived, or in the case of an omitted
25 party that is a lessee, subject to the terms and conditions of the lease,
26 whether written or oral, the interest of such omitted party in the property
27 shall not be affected by the foreclosure, and such omitted party shall have

1 no right to ~~cure or~~ redeem.

2 **SECTION 13.** In Colorado Revised Statutes, 38-39-102, **amend**

3 (1)(b) as follows:

4 **38-39-102. When deed of trust shall be released - definitions.**

5 (1) (b) ~~Immediately~~ Upon execution of the release of the deed of
6 trust by the public trustee, the public trustee shall cause, AS SOON AS
7 PRACTICABLE, the release to be recorded in the records of the county clerk
8 and recorder.

9 **SECTION 14. Effective date.** This act takes effect July 1, 2026.

10 **SECTION 15. Safety clause.** The general assembly finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, or safety or for appropriations for
13 the support and maintenance of the departments of the state and state
14 institutions.