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SENATE BILL 12-030

BY SENATOR(S) Jahn, Aguilar, Bacon, Boyd, Carroll, Foster, Giron, Grantham, Guzman, Heath, Hodge, Hudak, Johnston, King S., Lambert, Lundberg, Mitchell, Morse, Neville, Newell, Nicholson, Schwartz, Steadman, Tochtrop, White, Williams S.;  
also REPRESENTATIVE(S) Liston, Fischer, Kerr J., Labuda, Tyler, Williams A., Wilson.

CONCERNING ADMINISTRATIVE MATTERS RELATED TO A FORECLOSURE SALE.

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

**SECTION 1.** In Colorado Revised Statutes, **amend** 38-13-108.2 as follows:

**38-13-108.2. Property held by courts and public agencies.**

(1) EXCEPT AS SET FORTH IN SUBSECTION (2) OF THIS SECTION, intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than one year after becoming payable or distributable is presumed abandoned.

(2) ANY OVERBID, AS DEFINED IN SECTION 38-38-100.3, C.R.S., THAT IS EQUAL TO OR GREATER THAN TWENTY-FIVE DOLLARS AND THAT REMAINS

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

UNCLAIMED FOR FIVE YEARS FROM THE DATE OF SALE IS PRESUMED ABANDONED.

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

**38-37-108. Payments to public trustee.** All moneys payable to a public trustee at any foreclosure sale under the provisions of this article or upon redemption or cure pursuant to article 38 of this title shall be in the form of cash, electronic transfer to an account of the public trustee available for such purpose AND IN COMPLIANCE WITH THE CONDITIONS PLACED ON THE ACCOUNT BY THE PUBLIC TRUSTEE FOR SUCH ELECTRONIC TRANSFER, or certified check, cashier's check, teller's check, or draft denominated as an official check that is a teller's check or a cashier's check as those terms are defined in and governed by the "Uniform Commercial Code", title 4, C.R.S., made payable to the public trustee, and certified or issued by a state-chartered bank, savings and loan association, or credit union licensed to do business in the state of Colorado or a federally chartered bank, savings bank, or credit union.

**SECTION 3.** In Colorado Revised Statutes, 38-38-100.3, **add** (17.3) as follows:

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

(17.3) "OVERBID" MEANS THE AMOUNT A PROPERTY IS SOLD FOR AT A FORECLOSURE SALE THAT IS IN EXCESS OF THE WRITTEN OR AMENDED BID AMOUNT EXECUTED BY THE HOLDER OF THE EVIDENCE OF DEBT SECURED BY THE DEED OF TRUST OR OTHER LIEN BEING FORECLOSED.

**SECTION 4.** In Colorado Revised Statutes, 38-38-101, **amend** (10); and **add** (1) (f.5) as follows:

**38-38-101. Holder of evidence of debt may elect to foreclose.**  
(1) **Documents required.** Whenever a holder of an evidence of debt declares a violation of a covenant of a deed of trust and elects to publish all or a portion of the property therein described for sale, the holder or the attorney for the holder shall file the following with the public trustee of the county where the property is located:

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

(10) **Deposit.** The public trustee may require a deposit of up to six hundred fifty dollars or the amount of the fee permitted pursuant to section 38-37-104 (1) (b) (I), whichever is greater, at the time the notice of election and demand is filed, to be applied against the fees and costs of the public trustee. The public trustee may allow the attorney for the holder of the evidence of debt to establish one or more accounts with the public trustee, which the public trustee may use to pay the fees and costs of the public trustee in any foreclosure filed by the holder or the attorney for the holder, or through which the public trustee may transmit refunds or cures, ~~excess proceeds~~ OVERBIDS, or redemption proceeds.

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

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

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

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

**38-38-104. Right to cure when default is nonpayment - right to cure for certain technical defaults.** (2) (a) (I) Promptly upon receipt of a notice of intent to cure by the officer, but no less than twelve calendar days prior to the date of sale, the officer shall transmit by mail, facsimile, or electronic means to the person executing the notice of election and demand a request for a statement of all sums necessary to cure the default. The CURE statement shall be filed with the officer by the attorney for the holder or, if none, by the holder of the evidence of debt and shall set forth the amounts

necessary to cure as identified in ~~paragraph (b) of this subsection (2), with the same detail as required for a bid pursuant to section 38-38-106~~ THE CURE STATEMENT. Upon receipt of the statement of the amounts needed to cure, the officer shall transmit the CURE statement in writing to the person filing the notice of intent to cure the default.

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

### CURE STATEMENT

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

PUBLIC TRUSTEE (OR SHERIFF) OF THE COUNTY (OR CITY AND COUNTY) OF \_\_\_\_\_, STATE OF COLORADO (HEREINAFTER THE "OFFICER").

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

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

THE DATE THROUGH WHICH THE CURE STATEMENT IS EFFECTIVE: \_\_\_\_\_

THE FOLLOWING IS AN ITEMIZATION OF ALL SUMS NECESSARY TO CURE THE DEFAULT (ANY AMOUNT THAT IS BASED ON A GOOD FAITH ESTIMATE IS INDICATED WITH AN ASTERISK):

PAYMENTS DUE UNDER THE EVIDENCE OF DEBT:

\_\_\_\_\_ PAYMENTS OF \$ \_\_\_\_\_ EACH

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

OTHER AMOUNTS DUE UNDER THE EVIDENCE OF DEBT

(SPECIFY)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PROPERTY INSPECTIONS

\_\_\_\_\_

PROPERTY, GENERAL LIABILITY,  
AND CASUALTY INSURANCE

\_\_\_\_\_

CERTIFICATE OF TAXES DUE

\_\_\_\_\_

PROPERTY TAXES PAID BY THE HOLDER

\_\_\_\_\_

OWNER ASSOCIATION

ASSESSMENT PAID BY THE HOLDER

\_\_\_\_\_

PERMITTED AMOUNTS PAID ON  
PRIOR LIENS

\_\_\_\_\_

LESS IMPOUND/ESCROW ACCOUNT CREDIT

\_\_\_\_\_

PLUS IMPOUND/ESCROW ACCOUNT  
DEFICIENCY

\_\_\_\_\_

TITLE COSTS

\_\_\_\_\_

RULE 120 DOCKET FEE

\_\_\_\_\_

RULE 120 POSTING COSTS

\_\_\_\_\_

COURT COSTS

\_\_\_\_\_

POSTAGE/DELIVERY COSTS

\_\_\_\_\_

SERVICE/POSTING COSTS

\_\_\_\_\_

ATTORNEY FEES

\_\_\_\_\_

OTHER FEES AND COSTS (SPECIFY):

\_\_\_\_\_

\_\_\_\_\_

**REINSTATEMENT TOTAL** \$ \_\_\_\_\_

**(DOES NOT INCLUDE OFFICER'S FEES AND COSTS)**

OFFICER'S FEES AND COSTS \$ \_\_\_\_\_

(TO BE ADDED BY OFFICER)

TOTAL TO CURE \$ \_\_\_\_\_

(TO BE ADDED BY OFFICER)

**IT MAY TAKE SEVERAL DAYS BEFORE THE CURE IS PROCESSED AND ENTERED INTO THE HOLDER'S RECORDS.**

THE TOTAL TO CURE DOES NOT INCLUDE ANY FUTURE MONTHLY MORTGAGE PAYMENTS THAT MAY BE DUE.

NAME OF THE HOLDER OF THE EVIDENCE OF DEBT AND THE ATTORNEY FOR THE HOLDER:

HOLDER: \_\_\_\_\_

ATTORNEY: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

ATTORNEY ADDRESS: \_\_\_\_\_

ATTORNEY BUSINESS TELEPHONE: \_\_\_\_\_

(b) No later than 12 noon on the day before the sale, the person

desiring to cure the default shall pay to the officer all sums that are due and owing under the evidence of debt and deed of trust or other lien being foreclosed and all fees and costs of the holder of the evidence of debt ~~including but not limited to all fees and costs of the attorney for the holder~~ allowable under the evidence of debt, deed of trust, or other lien being foreclosed through the effective date THAT ARE set forth in the cure statement; except that any principal that would not have been due in the absence of acceleration shall not be included in such sums due.

(5) A cure statement pursuant to paragraph (a) of subsection (2) of this section shall state the period for which it is effective. The cure statement shall be effective for at least ten calendar days after the date of the cure statement IS RECEIVED BY THE OFFICER or until the last day to cure under paragraph (b) of subsection (2) of this section, whichever occurs first. The cure statement shall be effective for no more than thirty calendar days after the date of the cure statement IS RECEIVED BY THE OFFICER or until the last day to cure under paragraph (b) of subsection (2) of this section, whichever occurs first. The use of good faith estimates in the cure statement with respect to interest and fees and costs is specifically authorized by this article, so long as the cure statement states that it is a good faith estimate effective through the last day to cure as indicated in the cure statement. The use of a good faith estimate IN THE CURE STATEMENT shall not change or extend the period or effective date of a cure statement.

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

**SECTION 7.** In Colorado Revised Statutes, 38-38-105, **amend** (3); and **add** (4) as follows:

**38-38-105. Court order authorizing sale mandatory - notice of hearing for residential properties - definition.** (3) Not less than fifteen FOURTEEN days before the date set for the hearing pursuant to rule 120 or other rule of the Colorado rules of civil procedure, the holder or the attorney for the holder seeking an order authorizing sale under this section for a residential property shall cause a notice of hearing as described in rule 120 (b) of the Colorado rules of civil procedure to be posted in a conspicuous place on the property that is the subject of the sale. If possible, the notice shall be posted on the front door of the residence, but if access to the door is not possible or is restricted, the notice shall be posted at an alternative conspicuous location, such as a gate or similar impediment. IF A PERSON AT THE RESIDENCE IS IMPEDING POSTING AT THE RESIDENCE AT THE TIME OF THE ATTEMPTED POSTING, THE NOTICE MAY BE HANDED TO THAT PERSON TO SATISFY THIS POSTING REQUIREMENT. THE NOTICE REQUIRED BY THIS SUBSECTION (3) IS SUFFICIENT IF IT COMPLIES WITH THE REQUIREMENTS OF THIS SECTION WITHOUT REGARD TO ANY REQUIREMENTS FOR SERVICE OF PROCESS IN A CIVIL ACTION REQUIRED BY COURT RULE.

(4) AS USED IN THIS SECTION, "RESIDENTIAL PROPERTY" MEANS ANY REAL PROPERTY UPON WHICH A DWELLING, AS DEFINED IN SECTION 5-1-301 (18), C.R.S., IS CONSTRUCTED AND OCCUPIED.

**SECTION 8.** In Colorado Revised Statutes, 38-38-106, **amend** (1) and (2) as follows:

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

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

BID



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

Public Trustee (or Sheriff) of the County (or City and County)  
of \_\_\_\_\_, State of Colorado (hereinafter the "officer").

Date: \_\_\_\_\_

\_\_\_\_\_, whose mailing address is \_\_\_\_\_, bids the sum of  
\$\_\_\_\_\_ in your Sale No. \_\_\_\_\_ to be held on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

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

Street address of property being  
foreclosed, if known: \_\_\_\_\_

Regular [ ] / default [ ] rate of interest as of the date of  
sale: \_\_\_\_\_

(Inapplicable items may be omitted):

Amounts due under the evidence of debt:

Principal \$ \_\_\_\_\_

Interest \_\_\_\_\_

Late charges \_\_\_\_\_

Allowable prepayment penalties  
or premiums \_\_\_\_\_

Other amounts due under the evidence of debt  
(specify)

\_\_\_\_\_  
\_\_\_\_\_

Category subtotal: \$ \_\_\_\_\_

Other fees and costs advanced by the holder of evidence of debt:

Property, general liability, and  
casualty insurance \_\_\_\_\_

Property inspections \_\_\_\_\_

Appraisals \_\_\_\_\_

Taxes and assessments \_\_\_\_\_

Utility charges owed or incurred \_\_\_\_\_

Homeowner's OWNER association  
assessment paid \_\_\_\_\_

Permitted amounts paid on  
prior liens \_\_\_\_\_

Permitted lease payments \_\_\_\_\_

Less impound/escrow account  
credit \_\_\_\_\_

Plus impound/escrow account  
deficiency \_\_\_\_\_

Other (describe) \_\_\_\_\_

Category subtotal: \$ \_\_\_\_\_

Attorney fees and advances:

Attorney fees \_\_\_\_\_

Title commitments and insurances or  
abstractor charges \_\_\_\_\_

|   |                     |
|---|---------------------|
| Court docketing                             | _____               |
| Statutory notice                            | _____               |
| Postage                                     | _____               |
| Electronic transmissions                    | _____               |
| Photocopies                                 | _____               |
| Telephone                                   | _____               |
| Other (describe)                            | _____               |
| Category subtotal:                          | \$ _____            |
| Officer fees and costs:                     |                     |
| Officer statutory fee                       | _____               |
| Publication charges                         | _____               |
| CONFIRMATION DEED FEE                       | _____               |
| CONFIRMATION DEED<br>RECORDING FEE          | _____               |
| Other (describe)                            | _____               |
| Category subtotal:                          | \$ _____            |
| Total due holder of the<br>evidence of debt | _____               |
|   | Bid \$ _____        |
|   | Deficiency \$ _____ |

I enclose herewith the following:

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

Please send us the following:

1. Promissory note with the deficiency, if any, noted thereon.
2. Refund for overpayment of officer's fees and costs, if any.
3. Other: \_\_\_\_\_.

Name of the holder of the evidence of debt  
and the attorney for the holder:

Holder: \_\_\_\_\_

Attorney: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

**SECTION 9.** In Colorado Revised Statutes, 38-38-109, **amend** (2) (b) as follows:

**38-38-109. Continuance of sale - effect of bankruptcy - withdrawal of sale. (2) Effect of bankruptcy proceedings.** (b) (I) If the publications of the combined notice prescribed by section 38-38-103 (5) or 13-56-201 (1), C.R.S., have not been started or if all the publications have not been completed before THE DAY a bankruptcy petition has been filed that automatically stays the officer from conducting the sale, the officer shall immediately cancel any remaining publications of the combined notice

and, on the date set for the sale, announce, post, or provide a notice that the sale has been enjoined or has been stayed by the automatic stay provisions of the federal bankruptcy code of 1978, title 11 of the United States Code, as amended. The sale shall not be continued under paragraph (a) of subsection (1) of this section.

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

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

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

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

**SECTION 10.** In Colorado Revised Statutes, 38-38-111, **amend** (1), (2), and (3); and **add** (2.5) and (5) as follows:

**38-38-111. Treatment of an overbid - definition.** (1) ~~If, at a sale, the property is sold for an amount in excess of the written or amended bid amount executed by the holder of the evidence of debt secured by the deed of trust or other lien being foreclosed, such excess proceeds~~ AN OVERBID shall be first applied to any deficiency as indicated in the holder's bid, and then paid to the officer to be held in escrow until the end of all redemption periods as provided in section 38-38-302.

(2) Upon the expiration of all redemption periods provided in section 38-38-302, any remaining ~~excess proceeds~~ OVERBID shall be paid in order of recording priority to junior lienors, determined as of the recording date of the notice of election and demand or lis pendens according to the records, who have duly filed a notice of intent to redeem and whose liens have not been redeemed pursuant to section 38-38-302, in each case up to the unpaid amount of each such lienor's lien plus fees and costs. A lienor holding a lien that is not entitled to redeem by virtue of being recorded after the notice of election and demand, a lienor that has not timely filed a notice of intent to redeem pursuant to section 38-38-302, or a lienor who accepts less than a full redemption pursuant to section 38-38-302 (4) (c) shall not have any claim to any portion of the ~~excess proceeds~~ OVERBID. After payment to all lienors and the holder entitled to receive ~~excess proceeds~~ A PORTION OF THE OVERBID pursuant to this section, any remaining ~~excess proceeds~~ OVERBID shall be paid to the owner. ~~of the property as of the date and time of the recording of the notice of election and demand or lis pendens.~~

(2.5) (a) IF A PUBLIC TRUSTEE MAINTAINS A WEB SITE FOR HIS OR HER OFFICE, THE PUBLIC TRUSTEE SHALL INCLUDE THE FOLLOWING STATEMENT ON SUCH WEB SITE:

**NOTICE TO AN OWNER IN FORECLOSURE:** IF YOUR PROPERTY GOES TO FORECLOSURE AUCTION SALE AND IS PURCHASED FOR MORE THAN THE TOTAL OWED TO THE LENDER AND TO ALL OTHER LIEN HOLDERS, PLEASE CONTACT THE PUBLIC TRUSTEE'S OFFICE AFTER THE SALE BECAUSE YOU MAY HAVE FUNDS DUE TO YOU.

(b) IN ORDER TO PAY THE OWNER OF THE PROPERTY AS REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION, A PUBLIC TRUSTEE SHALL SEND A NOTICE TO THE OWNER. IF THE AMOUNT OF REMAINING OVERBID IS

EQUAL TO OR GREATER THAN TWENTY-FIVE DOLLARS, THE PUBLIC TRUSTEE SHALL MAKE REASONABLE EFFORTS TO IDENTIFY THE OWNER'S CURRENT ADDRESS. THE PUBLIC TRUSTEE SHALL MAIL THE OWNER A NOTICE REGARDING THE REMAINING OVERBID TO THE BEST AVAILABLE ADDRESS NO LATER THAN THIRTY DAYS AFTER THE EXPIRATION OF ALL REDEMPTION PERIODS AS PROVIDED IN SECTION 38-38-302.

(3) (a) UNLESS THE PROPERTY IS SOLD BY THE SHERIFF AND ALL THE PROCEEDS OF THE SALE ARE DEPOSITED INTO THE REGISTRY OF THE COURT, any unclaimed ~~excess proceeds~~ REMAINING OVERBID FROM A FORECLOSURE SALE HELD PRIOR TO SEPTEMBER 1, 2012, shall be transferred by the officer to the county treasurer within ninety calendar days after the expiration of all redemption periods as provided in section 38-38-302 and held in escrow, ~~for five years from the date of sale~~ AND ANY UNCLAIMED REMAINING OVERBID FROM A FORECLOSURE SALE HELD ON OR AFTER SEPTEMBER 1, 2012, SHALL BE HELD BY THE OFFICER IN ESCROW. IN EITHER CASE, THE REMAINING OVERBID SHALL BE HELD FOR FIVE YEARS FROM THE DATE OF THE SALE. The county TREASURER OR OFFICER, WHOMEVER HOLDS THE REMAINING OVERBID IN ESCROW, shall be answerable for the funds without interest at any time within the five-year period to such persons as shall be legally entitled to the funds. Any interest earned on the escrowed funds shall be paid to the county at least annually. ~~Any funds~~ UNCLAIMED REMAINING OVERBIDS THAT ARE LESS THAN TWENTY-FIVE DOLLARS AND THAT ARE not claimed within five years from the date of sale shall be paid ~~by the county treasurer~~ to the general fund of the county, ~~After the lapse of five years from the date of sale, no claim therefor having been made and established by any person entitled thereto, said~~ AND SUCH moneys PAID TO THE GENERAL FUND OF THE COUNTY shall become the property of the county. ~~and~~ UNCLAIMED REMAINING OVERBIDS THAT ARE EQUAL TO OR GREATER THAN TWENTY-FIVE DOLLARS AND THAT ARE NOT CLAIMED WITHIN FIVE YEARS FROM THE DATE OF THE SALE SHALL BE PRESUMED TO BE UNCLAIMED PROPERTY FOR PURPOSES OF THE "UNCLAIMED PROPERTY ACT" AND TRANSFERRED TO THE ADMINISTRATOR IN ACCORDANCE WITH SUCH ACT. AFTER THE UNCLAIMED REMAINING OVERBIDS ARE TRANSFERRED TO THE ADMINISTRATOR OR TO THE GENERAL FUND OF THE COUNTY, the county treasurer and officer shall be discharged from any further liability or responsibility for the moneys. ~~except that;~~

(b) If the ~~moneys~~ UNCLAIMED REMAINING OVERBIDS exceed five hundred dollars and have not been claimed by any person entitled thereto

within sixty calendar days from the expiration of all redemption periods as provided by section 38-38-302, the county treasurer OR OFFICER SHALL, within ninety calendar days from the expiration of all redemption periods, ~~shall~~ commence publication of a notice for four weeks, which means publication once each week for five successive weeks in some newspaper of general circulation in the county where the subject property is located. THE COUNTY TREASURER IS RESPONSIBLE FOR THE NOTICE OF AN OVERBID FROM A FORECLOSURE SALE HELD PRIOR TO SEPTEMBER 1, 2012, AND THE OFFICER IS RESPONSIBLE FOR THE NOTICE OF AN OVERBID FROM A FORECLOSURE SALE HELD ON OR AFTER SEPTEMBER 1, 2012. The notice shall contain the name of the ~~record~~ owner, ~~as of the recording of the notice of election and demand or lis pendens~~; the owner's address as given in the recorded instrument evidencing the owner's interest, and the legal description and street address, if any, of the property sold at the sale and shall state that ~~excess proceeds were~~ AN OVERBID WAS realized from the sale and that, unless the funds are claimed by the ~~record~~ owner ~~as of the recording of the notice of election and demand or lis pendens~~ or other person entitled thereto within five years from the date of sale, the funds shall ~~become the property of the county in the manner provided in this subsection~~ (3) BE TRANSFERRED TO THE STATE TREASURER AS PART OF THE "UNCLAIMED PROPERTY ACT". The county treasurer OR OFFICER, WHOMEVER HOLDS THE REMAINING OVERBID IN ESCROW, shall also mail a copy of the notice to the ~~record~~ owner ~~as of the recording of the notice of election and demand or lis pendens~~ at the BEST AVAILABLE address. ~~provided in the recorded instrument evidencing his or her interest and at the property address.~~

(d) The fees and costs of publication and mailing REQUIRED PURSUANT TO THIS SUBSECTION (3) shall be paid from the moneys escrowed by the county treasurer OR OFFICER, WHOMEVER HOLDS THE REMAINING OVERBID IN ESCROW.

(5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "OWNER" MEANS THE RECORD OWNER OF THE PROPERTY AS OF THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND OR LIS PENDENS.

**SECTION 11.** In Colorado Revised Statutes, 38-38-302, **amend** (1) (e) as follows:

**38-38-302. Redemption by lienor - procedure. (1) Requirements**



**for redemption.** A lienor or assignee of a lien is entitled to redeem if the following requirements are met to the satisfaction of the officer:

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

**SECTION 12.** In Colorado Revised Statutes, **amend** 38-38-501 as follows:

**38-38-501. Title vests upon expiration of redemption periods - confirmation deed.** (1) Upon the expiration of all redemption periods allowed to all lienors entitled to redeem under part 3 of this article or, if there are no redemption periods, upon the close of the officer's business day eight business days after the sale, title to the property sold shall vest in the holder of the certificate of purchase or in the holder of the last certificate of redemption in the case of redemption. Subject to the right to cure and the right to redeem provisions of section 38-38-506 and subject to the provisions of section 38-41-212 (2), such title shall be free and clear of all liens and encumbrances junior to the lien foreclosed. ~~No less than nine business days after the date of sale or, if later, the expiration of all redemption periods and upon receipt of a written request for issuance of the confirmation deed and receipt of~~ NO EARLIER THAN TEN BUSINESS DAYS NOR LATER THAN FIFTEEN BUSINESS DAYS AFTER BOTH THE TITLE VESTS AND THE OFFICER HAS RECEIVED all statutory fees and costs, the officer shall execute and record a confirmation deed pursuant to section 38-38-502 or 38-38-503 to the holder of the certificate of purchase or, in the case of redemption, to the holder of the last certificate of redemption confirming the transfer of title to the property; EXCEPT THAT THE OFFICER SHALL EXECUTE AND RECORD A CONFIRMATION DEED PRIOR TO THE TENTH BUSINESS DAY AFTER TITLE VESTS, IF THE OFFICER HAS RECEIVED ALL STATUTORY FEES AND COSTS AND NOTICE FROM THE APPROPRIATE HOLDER THAT THE CERTIFICATE WILL NOT BE ASSIGNED. But under no circumstances shall the officer be required to issue a confirmation deed unless the officer has received an order authorizing the sale that meets the requirements of section 38-38-105 (2) (a). Failure of the officer to execute and record such deed or to record the

deed within the time specified shall not affect the validity of the deed or the vesting of title.

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

(a) THE OFFICER HAS RECEIVED A COPY OF THE ASSIGNMENT EXECUTED IN ACCORDANCE WITH SECTION 38-38-403 WITHIN TEN BUSINESS DAYS AFTER TITLE VESTS; AND

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

**SECTION 13.** In Colorado Revised Statutes, 38-39-102, **add** (8.5) as follows:

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

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

**SECTION 14. Act subject to petition - effective date - applicability.**

(1) This act takes effect September 1, 2012; 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 the ninety-day period after final adjournment of the general assembly, 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 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) Excluding the provisions of sections 1, 3, and 10 of this act and section 38-38-101 (10), Colorado Revised Statutes, as amended in section 4 of this act, the provisions of this act apply to the foreclosure of any deed of trust or other lien with respect to which a notice of election and demand

or lis pendens is recorded in the office of the clerk and recorder of the county where the property or a portion of the property is located on or after the applicable effective date of this act.

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Brandon C. Shaffer  
PRESIDENT OF  
THE SENATE

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Frank McNulty  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

---

Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_

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John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO