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HOUSE BILL 10-1249

BY REPRESENTATIVE(S) Labuda and Primavera, Apuan, Ferrandino, Fischer, Merrifield, Middleton, Miklosi, Peniston, Schafer S., Todd, Carroll T., Vigil;
also SENATOR(S) Johnston, Hudak, Boyd, Foster, Heath, Newell, Romer, Shaffer B., Steadman, White, Whitehead, Williams.

CONCERNING EXPEDITED RESIDENTIAL FORECLOSURE SALES.

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

SECTION 1. Article 38 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 9
EXPEDITED SALE OF
RESIDENTIAL PROPERTY

38-38-901. Definitions. AS USED IN THIS PART 9, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ELIGIBLE EVIDENCE OF DEBT" MEANS AN EVIDENCE OF DEBT THAT:

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

(a) CONSTITUTES A RESIDENTIAL MORTGAGE LOAN, AS DEFINED IN SECTION 12-61-902, C.R.S.; AND

(b) IS A FIRST LIEN UPON THE PROPERTY.

(2) "ELIGIBLE HOLDER" MEANS THE HOLDER OF AN ELIGIBLE EVIDENCE OF DEBT THAT IS SECURED BY A DEED OF TRUST THAT DOES NOT SPECIFY A LONGER PERIOD OF PUBLICATION THAN SET FORTH IN SECTION 38-38-904 (2) (g) (I).

(3) "EXPEDITED MAILING LIST" MEANS THE INITIAL MAILING LIST IN ACCORDANCE WITH SECTION 38-38-904 (2) (a) PROVIDED TO THE PUBLIC TRUSTEE BY THE HOLDER THAT INCLUDES THE NAMES AND ADDRESSES OF ALL PERSONS WHO ARE INCLUDED IN AN AMENDED MAILING LIST.

(4) "ORDER FOR EXPEDITED SALE" OR "ORDER" MEANS THE ORDER ISSUED BY A COURT OF COMPETENT JURISDICTION PURSUANT TO SECTION 38-38-903.

38-38-902. Expedited sale - how commenced - failure to file order. (1) (a) FOR A NOTICE OF ELECTION AND DEMAND RECORDED ON OR AFTER AUGUST 1, 2010, BUT PRIOR TO AUGUST 1, 2013, AN ELIGIBLE HOLDER MAY ELECT TO REQUIRE THE PUBLIC TRUSTEE TO HOLD AN EXPEDITED SALE BY FILING WITH THE PUBLIC TRUSTEE EITHER:

(I) A COPY OF THE ORDER FOR EXPEDITED SALE; OR

(II) A SEPARATE DOCUMENT NOTIFYING THE PUBLIC TRUSTEE OF THE ELECTION FOR AN EXPEDITED SALE.

(b) EXCEPT AS SET FORTH IN SECTION 38-38-904 (2) (b), THE ORDER OR SEPARATE DOCUMENT REQUIRED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL BE FILED TOGETHER WITH THE DOCUMENTS REQUIRED PURSUANT TO SECTION 38-38-101 (1).

(c) IF AN ELIGIBLE HOLDER FILES A SEPARATE DOCUMENT WITH THE PUBLIC TRUSTEE PURSUANT TO SECTION 38-38-101 (1) (h), THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION SHALL NOT APPLY.

(2) NOTWITHSTANDING THE PROVISIONS OF SECTION 38-38-108 (1)

(a), IF AN ELIGIBLE HOLDER FILES THE ORDER OR SEPARATE DOCUMENT REQUIRED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, THE PUBLIC TRUSTEE SHALL SET AN INITIAL DATE OF SALE OF THE PROPERTY THAT IS NO LESS THAN FORTY-FIVE CALENDAR DAYS NOR MORE THAN SIXTY-FIVE CALENDAR DAYS AFTER THE DATE OF RECORDING OF THE NOTICE OF ELECTION AND DEMAND.

(3) AN ELIGIBLE HOLDER WHO FILES THE SEPARATE DOCUMENT IDENTIFIED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION SHALL BE REQUIRED TO FILE A COPY OF THE ORDER FOR EXPEDITED SALE WITH THE PUBLIC TRUSTEE NO LATER THAN THIRTY CALENDAR DAYS AFTER THE DATE OF RECORDING OF THE NOTICE OF ELECTION AND DEMAND.

38-38-903. Court order for expedited sale. (1) ON AND AFTER AUGUST 1, 2010, WHENEVER A PUBLIC TRUSTEE FORECLOSES UPON A DEED OF TRUST UNDER THIS ARTICLE, AN ELIGIBLE HOLDER MAY FILE A MOTION FOR AN ORDER FOR EXPEDITED SALE WITH A COURT OF COMPETENT JURISDICTION TO ISSUE THE SAME PURSUANT TO RULE 120 OR OTHER RULE OF THE COLORADO RULES OF CIVIL PROCEDURE. THE MOTION SHALL STATE THAT:

(a) THE HOLDER OF THE EVIDENCE OF DEBT IS AN ELIGIBLE HOLDER;

(b) THE DEED OF TRUST SECURES AN ELIGIBLE EVIDENCE OF DEBT;
AND

(c) THE PROPERTY HAS BEEN ABANDONED OR, IN THE ALTERNATIVE, THE GRANTOR OF THE DEED OF TRUST REQUESTS THE ORDER FOR EXPEDITED SALE.

(2) THE HEARING RELATED TO THE MOTION FOR AN ORDER FOR EXPEDITED SALE SHALL BE COMBINED WITH THE PROCEEDING REQUIRED PURSUANT TO SECTION 38-38-105 (2). THE CLERK OF THE COURT SHALL FIX A TIME NOT LESS THAN TWENTY NOR MORE THAN THIRTY CALENDAR DAYS AFTER THE FILING OF THE MOTION AND A PLACE FOR THE HEARING OF THE COMBINED PROCEEDING. AT LEAST FIFTEEN CALENDAR DAYS PRIOR TO THE HEARING, NOTICE OF THE PROCEEDING IN ENGLISH AND IN SPANISH SHALL BE PERSONALLY SERVED ON THE GRANTOR OF THE DEED OF TRUST OR POSTED IN A CONSPICUOUS PLACE ON THE PROPERTY. IF NOTICE IS GIVEN THROUGH

POSTING, THE NOTICE SHALL BE POSTED ON THE FRONT DOOR OF THE RESIDENCE, BUT IF ACCESS TO THE DOOR IS NOT POSSIBLE OR IS RESTRICTED, THEN THE NOTICE SHALL BE POSTED AT AN ALTERNATIVE CONSPICUOUS LOCATION, SUCH AS A GUARD GATE OR SIMILAR IMPEDIMENT. NOTICE PROVIDED PURSUANT TO THIS SUBSECTION (2) SHALL BE IN ADDITION TO ANY OTHER SERVICE REQUIRED BY THE COLORADO RULES OF CIVIL PROCEDURE.

(3) THE COURT SHALL ENTER AN ORDER FOR EXPEDITED SALE IF CLEAR AND CONVINCING EVIDENCE IS PRESENTED PROVING THE ALLEGATIONS IN THE MOTION AND NO APPEARANCE IS MADE TO OPPOSE THE MOTION.

(4)(a) AN AFFIDAVIT THAT MEETS THE REQUIREMENTS SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (4) IS PRIMA FACIE EVIDENCE OF ABANDONMENT.

(b) (I) THE AFFIDAVIT SHALL BE SIGNED BY AND BASED ON THE PERSONAL KNOWLEDGE OF THE ELIGIBLE HOLDER, AN AGENT OF THE ELIGIBLE HOLDER, THE SHERIFF OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED, OR A BUILDING INSPECTOR OR OTHER MUNICIPAL OR COUNTY OFFICIAL HAVING JURISDICTION OVER THE PROPERTY, AND SHALL STATE THAT THE PROPERTY IS NOT ACTUALLY OCCUPIED AND THAT THE SIGNER HAS INSPECTED THE PROPERTY ON MORE THAN ONE OCCASION AND ON EACH OCCASION HAS DETERMINED THAT THE PROPERTY IS ABANDONED. THE AFFIDAVIT SHALL FURTHER SET FORTH AT LEAST TWO OF THE FOLLOWING SUPPORTING FACTS:

(A) WINDOWS OR ENTRANCES TO THE PROPERTY ARE BOARDED UP OR CLOSED OFF, OR MULTIPLE WINDOW PANES ARE BROKEN AND UNREPAIRED;

(B) DOORS TO THE PROPERTY ARE SMASHED THROUGH, BROKEN OFF, UNHINGED, OR CONTINUOUSLY UNLOCKED;

(C) GAS, ELECTRIC, AND WATER SERVICE TO THE PROPERTY HAVE BEEN TERMINATED FOR A PERIOD OF AT LEAST THIRTY DAYS;

(D) THE POLICE OR SHERIFF'S OFFICE HAS RECEIVED AT LEAST TWO REPORTS OF TRESPASSERS ON THE PROPERTY, OR OF VANDALISM OR OTHER ILLEGAL ACTS BEING COMMITTED ON THE PROPERTY; OR

(E) THE PROPERTY IS DETERIORATING AND IS EITHER BELOW OR IS IN IMMINENT DANGER OF FALLING BELOW MINIMUM LOCAL GOVERNMENT STANDARDS FOR PUBLIC SAFETY AND SANITATION.

(II) PHOTOGRAPHIC OR OTHER DOCUMENTARY EVIDENCE THAT DEMONSTRATES THE SUPPORTING FACTS SET FORTH IN THE AFFIDAVIT SHALL BE ATTACHED TO THE AFFIDAVIT.

(c) A SIGNED AFFIDAVIT BY THE GRANTOR OF THE DEED OF TRUST THAT SECURES AN ELIGIBLE EVIDENCE OF DEBT REQUESTING AN ORDER FOR EXPEDITED SALE IS PRIMA FACIE EVIDENCE OF THE SAME.

(d) NOTHING IN SUB-SUBPARAGRAPH (C) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (4) SHALL BE CONSTRUED TO REQUIRE A PUBLIC UTILITY TO DISCLOSE ANY INFORMATION ABOUT A CUSTOMER.

38-38-904. Modification of foreclosure proceedings. (1) IF THE PUBLIC TRUSTEE SETS AN EXPEDITED SALE PURSUANT TO SECTION 38-38-902 (2), THE PROVISIONS OF PARTS 1 AND 8 OF THIS ARTICLE SHALL BE MODIFIED AS SET FORTH IN SUBSECTION (2) OF THIS SECTION.

(2) (a) THE ELIGIBLE HOLDER SHALL NOT BE REQUIRED TO FILE A MAILING LIST PURSUANT TO SECTION 38-38-101 (1) (e). THE ELIGIBLE HOLDER SHALL FILE AN EXPEDITED MAILING LIST NO LATER THAN FIFTEEN CALENDAR DAYS AFTER THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND.

(b) THE ELIGIBLE HOLDER SHALL NOT BE REQUIRED TO FILE THE SEPARATE DOCUMENT PURSUANT TO SECTION 38-38-101 (1) (h).

(c) THE PUBLIC TRUSTEE SHALL NOT BE REQUIRED TO MAIL THE COMBINED NOTICE PURSUANT TO SECTION 38-38-103 (1) (a).

(d) THE PUBLIC TRUSTEE SHALL MAIL THE COMBINED NOTICE REQUIRED PURSUANT TO SECTION 38-38-103 (1) (b) TO THE PERSONS SHOWN ON THE EXPEDITED MAILING LIST NO MORE THAN TWENTY-FIVE CALENDAR DAYS AFTER RECORDING OF THE NOTICE OF ELECTION AND DEMAND.

(e) THE DEADLINE FOR DELIVERING AN AMENDED MAILING LIST PURSUANT TO SECTION 38-38-103 (2) (a) SHALL BE NO LATER THAN THIRTY

CALENDAR DAYS AFTER THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND. THE PUBLIC TRUSTEE SHALL SEND THE NOTICE PURSUANT TO SECTION 38-38-103 (4) TO THE PERSONS ON THE AMENDED MAILING LIST NO LATER THAN FIVE BUSINESS DAYS FROM THE RECEIPT OF THE AMENDED MAILING LIST. IF THE NOTICE IS SENT LESS THAN TWENTY-ONE CALENDAR DAYS PRIOR TO THE ACTUAL DATE OF SALE, THE PUBLIC TRUSTEE SHALL CONTINUE THE SALE FOR ONE WEEK. IF A SALE IS CONTINUED PURSUANT TO THIS PARAGRAPH (e), THE MAXIMUM NUMBER OF WEEKS THAT A SALE MAY BE CONTINUED PURSUANT TO PARAGRAPH (h) OF THIS SUBSECTION (2) SHALL BE THREE.

(f) A LEGIBLE COPY OF THIS SECTION SHALL BE ADDED TO THE SECTIONS THAT ARE SENT PURSUANT TO SECTION 38-38-103 (4) (b).

(g) THE REQUIREMENTS RELATED TO THE PUBLICATION OF THE COMBINED NOTICE SET FORTH IN SECTION 38-38-103 (5) SHALL BE MODIFIED AS FOLLOWS:

(I) THE NOTICE SHALL BE PUBLISHED ONCE EACH WEEK FOR FOUR CONSECUTIVE WEEKS;

(II) THE LAST DATE THAT THE NOTICE IS PUBLISHED SHALL BE MORE THAN FIVE CALENDAR DAYS PRIOR TO THE FIRST SCHEDULED DATE OF SALE; AND

(III) THE PROVISIONS OF SECTION 38-38-103 (5) (d) SHALL NOT APPLY.

(h) A SALE MAY NOT BE CONTINUED MORE THAN FOUR WEEKS PURSUANT TO SECTION 38-38-109 (1) (a). THIS PARAGRAPH (h) SHALL NOT AFFECT THE ALLOWABLE PERIOD FOR A CONTINUANCE PURSUANT TO SECTION 38-38-104 (7) OR 38-38-109 (1) (b).

(i) THE ELIGIBLE HOLDER SHALL NOT BE REQUIRED TO POST THE NOTICE REQUIRED PURSUANT TO SECTION 38-38-802.

38-38-905. Withdrawal of notice of election and demand.

(1) (a) A FORECLOSURE SHALL BE DEEMED WITHDRAWN AND THE ELIGIBLE HOLDER SHALL HAVE FORTY-FIVE CALENDAR DAYS WITHIN WHICH TO FILE A WRITTEN WITHDRAWAL OF THE NOTICE OF ELECTION AND DEMAND, IF THE

ELIGIBLE HOLDER:

(I) FAILS TO FILE A COPY OF THE ORDER FOR EXPEDITED SALE WITH THE PUBLIC TRUSTEE AS REQUIRED BY SECTION 38-38-902 (3);

(II) FAILS TO FILE AN EXPEDITED MAILING LIST AS REQUIRED BY SECTION 38-38-904 (2) (a); OR

(III) DELIVERS AN AMENDED MAILING LIST AFTER THE DEADLINE SET FORTH IN SECTION 38-38-904 (2) (e).

(b) THE PUBLIC TRUSTEE SHALL RECORD A WRITTEN WITHDRAWAL OF THE NOTICE OF ELECTION AND DEMAND FILED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1).

(2) IF THE PUBLIC TRUSTEE DOES NOT RECEIVE A WRITTEN WITHDRAWAL OF THE NOTICE OF ELECTION AND DEMAND AS REQUIRED BY PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, THE PUBLIC TRUSTEE SHALL TRANSMIT BY MAIL OR ELECTRONIC TRANSMISSION TO THE ELIGIBLE HOLDER A NOTICE REQUESTING THE HOLDER TO FILE THE WRITTEN WITHDRAWAL. IF THE WRITTEN WITHDRAWAL IS NOT FILED WITHIN THIRTY CALENDAR DAYS AFTER THE NOTICE IS TRANSMITTED, THE PUBLIC TRUSTEE MAY RECORD AT ANY TIME A WITHDRAWAL OF THE NOTICE OF ELECTION AND DEMAND.

(3) IF A FORECLOSURE IS DEEMED WITHDRAWN PURSUANT TO THIS SECTION, THE PUBLIC TRUSTEE SHALL COLLECT FROM THE ELIGIBLE HOLDER ALL FEES AND COSTS ACTUALLY INCURRED BY THE PUBLIC TRUSTEE TOGETHER WITH A WITHDRAWAL FEE IN THE AMOUNT AUTHORIZED UNDER SECTION 38-37-104 (1) (b) (V).

38-38-906. Nonapplicability to judicial foreclosures. THE PROVISIONS OF THIS PART 9 SHALL NOT APPLY TO A JUDICIAL FORECLOSURE.

38-38-907. Repeal of part. THIS PART 9 IS REPEALED, EFFECTIVE JULY 1, 2014.

SECTION 2. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO