

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

INTRODUCED

LLS NO. 22-1040.01 Richard Sweetman x4333

SENATE BILL 22-229

SENATE SPONSORSHIP

Story and Jaquez Lewis,

HOUSE SPONSORSHIP

Bennett and Gray,

Senate Committees
Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CONDITIONS UNDER WHICH A PUBLIC TRUSTEE**

102 **SHALL RELEASE 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>.)

Under current law, with limited exceptions, a public trustee must release a deed of trust upon the satisfaction of certain preconditions, one of which is the production of the original canceled evidence of debt such as a note or bond as evidence that the indebtedness secured by the deed of trust has been paid. To this requirement, **section 1** of the bill adds another exception. That is, a holder of the original evidence of debt may

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.

request the release of a deed of trust without producing or exhibiting the original evidence of debt if the holder:

- Agrees to indemnify and defend the public trustee against any claim for damages resulting from the action of the public trustee taken in accordance with the request;
- Provides the public trustee a current address for the original grantor, assuming party, or current owner when requesting the release of the deed of trust; and
- Files the request for the release of the deed of trust electronically via the county's electronic recording system.

Section 1 also removes language requiring a title insurance company to be "qualified" as well as licensed in Colorado for certain purposes relating to the release of a deed of trust.

Section 2 makes necessary changes to the statutory form that is used to request a deed of trust without producing the evidence of debt.

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

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

5 **38-39-102. When deed of trust shall be released - definitions.**

6 (1) (a) Except as otherwise provided in ~~paragraph (a) of subsection (3)~~
7 SUBSECTION (3)(a) of this section, ~~a deed of trust to the public trustee,~~
8 upon compliance with the provisions of the deed of trust, A PUBLIC
9 TRUSTEE shall ~~be released by the public trustee~~ RELEASE A DEED OF TRUST
10 upon the:

11 (IV) Receipt by the public trustee of a current address for the
12 original grantor, assuming party, or current owner or either a notation on
13 the request for release of the deed of trust or a written statement from the
14 holder of the evidence of debt secured by the deed of trust, the title
15 insurance company licensed ~~and qualified~~ in Colorado, or the holder of
16 the original evidence of debt that is ~~a qualified holder, as defined in~~
17 section ~~38-38-100.3 (20)~~, ~~that they have~~ THE HOLDER HAS no record of a

1 current address that is different from the address of the property
2 encumbered by the deed of trust being released; except that ~~it shall be~~
3 ~~within the public trustee's discretion to~~ THE PUBLIC TRUSTEE MAY release
4 a deed of trust upon compliance with the provisions of the deed of trust
5 if the public trustee has not received the information required pursuant to
6 this ~~subparagraph (IV)~~ SUBSECTION (1)(a)(IV); and

7 (V) Production of A COPY OF the original recorded deed of trust
8 securing the evidence of debt or a legible copy ~~thereof~~ OF THE ORIGINAL
9 RECORDED DEED OF TRUST.

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

18 (3) (c) (I) Subject to the provisions of ~~subparagraph (II) of this~~
19 ~~paragraph (c)~~, SUBSECTION (3)(c)(II) OF THIS SECTION, with respect to
20 either subsection (1) or (2) of this section, a title insurance company
21 licensed ~~and qualified~~ in Colorado may request the release of a deed of
22 trust without producing or exhibiting the original evidence of debt. A
23 company that requests the release of a deed of trust pursuant to this
24 ~~paragraph (c) shall be~~ SUBSECTION (3)(c) IS deemed to have agreed to
25 indemnify and defend the public trustee against any claim made within
26 the period described in subsection (7) of this section for damages
27 resulting from the action taken by the public trustee in accordance with

1 the request. The indemnity granted by this ~~paragraph (c)~~ SUBSECTION
2 (3)(c) is limited to actual economic loss suffered and any court costs and
3 reasonable attorney fees and costs incurred in defending a claim brought
4 as a direct and proximate result of the failure to produce the original
5 evidence of debt, but the indemnity does not include and no claimant is
6 entitled to any special, incidental, consequential, reliance, expectation, or
7 punitive damages. No separate indemnification agreement ~~shall be~~ is
8 necessary for the agreement to indemnify to be effective; however, the
9 company shall provide to the public trustee an affidavit executed by an
10 officer of the company stating that the company has caused the
11 indebtedness secured by the deed of trust to be satisfied in full or, in the
12 case of a partial release, to the extent required by the holder of the
13 indebtedness.

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

18 (d) (I) SUBJECT TO THE REQUIREMENT DESCRIBED IN SUBSECTION
19 (3)(d)(II) OF THIS SECTION, WITH RESPECT TO SUBSECTION (1) OR (2) OF
20 THIS SECTION, A HOLDER OF THE ORIGINAL EVIDENCE OF DEBT MAY
21 REQUEST THE RELEASE OF A DEED OF TRUST WITHOUT PRODUCING OR
22 EXHIBITING THE ORIGINAL EVIDENCE OF DEBT. A HOLDER THAT REQUESTS
23 THE RELEASE OF A DEED OF TRUST PURSUANT TO THIS SUBSECTION (3)(d)
24 IS DEEMED TO HAVE AGREED TO INDEMNIFY AND DEFEND THE PUBLIC
25 TRUSTEE AGAINST ANY CLAIM MADE WITHIN THE PERIOD DESCRIBED IN
26 SUBSECTION (7) OF THIS SECTION FOR DAMAGES RESULTING FROM THE
27 ACTION OF THE PUBLIC TRUSTEE TAKEN IN ACCORDANCE WITH THE

1 REQUEST. THE INDEMNITY GRANTED BY THIS SUBSECTION (3)(d) IS
2 LIMITED TO ACTUAL ECONOMIC LOSS SUFFERED AND ANY COURT COSTS
3 AND REASONABLE ATTORNEY FEES AND COSTS INCURRED IN DEFENDING A
4 CLAIM BROUGHT AS A DIRECT AND PROXIMATE RESULT OF THE FAILURE TO
5 PRODUCE THE ORIGINAL EVIDENCE OF DEBT, BUT THE INDEMNITY DOES
6 NOT INCLUDE, AND NO CLAIMANT IS ENTITLED TO, ANY SPECIAL,
7 INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXPECTATION, OR PUNITIVE
8 DAMAGES. NO SEPARATE INDEMNIFICATION AGREEMENT IS NECESSARY
9 FOR THE AGREEMENT TO INDEMNIFY TO BE EFFECTIVE.

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

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

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

20 (b) "Current address" means the most recent address reflected in
21 the records of a holder of the evidence of debt, a title insurance company
22 licensed ~~and qualified~~ in Colorado, or a holder of the original evidence of
23 debt that is a qualified holder, as defined in section 38-38-100.3 (20). If
24 a holder of the evidence of debt, a title insurance company licensed ~~and~~
25 ~~qualified~~ in Colorado, or a holder of the original evidence of debt that is
26 a qualified holder, as defined in section 38-38-100.3 (20), has no record
27 of a current address, any requirement that a current address be provided

1 shall be deemed satisfied by indicating that fact.

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

4 **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
5 a public trustee made pursuant to section 38-39-102 (1)(a) and (3) to
6 release a deed of trust without production of the original canceled
7 evidence of debt may be in substantially the following form:

9 Original Note and Deed of Trust Returned to:

10 When recorded return to:

11 Prepared/Received by:

12 REQUEST FOR FULL [] / PARTIAL []

13 RELEASE OF DEED OF TRUST AND RELEASE BY

14 HOLDER OF THE EVIDENCE OF DEBT WITHOUT

15 PRODUCTION OF EVIDENCE OF DEBT PURSUANT TO

16 § 38-39-102 (1)(a) and (3), COLORADO REVISED STATUTES

17 _____ Date

18 _____ Original Grantor (Borrower)

19 _____

20 _____ Current Address of Original Grantor,

21 _____ Assuming Party, or Current Owner

22 [] Check here if current address is unknown.

23 _____ Original Beneficiary (Lender)

24 _____

25 _____ Date of Deed of Trust

26 _____ Date of Recording and/or

27 _____ Re-Recording of Deed of Trust

1 _____ Recording Information
2 County Rcpt. No. and/or Film No. and/or Book/Page No. and/or Torrens
3 Reg. No.

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

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

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

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

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

1 **herewith** WITH THIS REQUEST FOR RELEASE OF DEED OF TRUST.

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

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

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

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

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

1 _____
2 Name and address of the holder of the evidence of debt secured by THE
3 Deed of Trust (lender) or name and address of the title insurance
4 company authorized to request the release of a Deed of Trust.

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

8 _____
9 Signature _____ Signature _____
10 State of _____, County of _____

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

13 _____ Date Commission Expires

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

15 _____

16 Notary Public Witness my hand and official seal

17 RELEASE OF DEED OF TRUST

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

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

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

7

8 Public Trustee

9

10 Deputy Public Trustee

11 (Public Trustee use only; use appropriate label)

12 (Public Trustee's seal)

13 (If applicable: Notary Seal)

14

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