

## Real Estate Finance: Colorado

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A Q&A guide to real estate finance law for borrowers and lenders in Colorado. This Q&A addresses state laws relating to security instruments, usury laws, limitations on personal liability, recording requirements and taxes, priority issues, mechanics' liens, landlord liens, title insurance matters, and foreclosure procedures primarily impacting lending transactions in a commercial context. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Real Estate Finance: State Q&A Tool).

### Instrument and Execution

#### 1. When real estate is part of the lender's collateral, is a mortgage commonly used in your jurisdiction or is a trustee appointed to hold a deed of trust (or a deed to secure debt) as security for the loan? If a deed of trust is more commonly used, who is typically designated as the trustee?

Almost all commercial real estate secured-loan transactions in Colorado are secured by a deed of trust designating the public trustee of the county in which the real property is located as trustee.

Colorado's public trustee system is unique in the US. The public trustee is a county official who handles the procedures and mechanics of all aspects of the foreclosure process, including:

- Conducting the foreclosure process.
- Mailing and publishing required notices.
- Holding foreclosure sales.
- Conducting mortgagee redemption mechanics.

(Colo. Rev. Stat. Ann. §§ 38-37-100.5 to 38-37-113.)

Mortgages and deeds of trust designating a private trustee are used in limited special circumstances, including various forms of municipal financings and particularly complicated financing transactions.

Deeds of trust in favor of the public trustee can be foreclosed by either:

- Non-judicial procedure known as a public trustee's sale.
- Judicial procedure (see *Bakers Park Mining & Milling Co. v. Dist. Court*, 662 P.2d 483 (Colo. 1983)).

Most foreclosures are public trustee's sales.

Judicial procedure is required for foreclosure of any of the following:

- Mortgages.
- Deeds of trust in favor of a private trustee.
- Deeds of trust in favor of the public trustee that secure performance obligations (for example, a guarantee of completion) or other obligations that are not the payment of a debt.

(Colo. Rev. Stat. Ann. § 38-39-101.)

Colorado is a lien theory state, and any instrument, including either a deed of trust or mortgage, intended to secure payment of an obligation affecting title to or an interest in real property is not considered a conveyance but a lien that must be foreclosed (Colo. Rev. Stat. Ann. § 38-35-117).

#### 2. Describe any laws that would limit a borrower's or guarantor's personal liability for debt secured by real property.

There are no Colorado laws that would limit a borrower's or guarantor's personal liability for debt secured by

real property in Colorado. A borrower or guarantor can, however, assert a defense to a deficiency if the lender submits a bid at the foreclosure sale that is not a good faith estimate of the fair market value of the real property, less the amount of:

- Any unpaid real estate taxes and prior liens.
- The estimated reasonable costs of holding, marketing, and selling the real estate.

(Colo. Rev. Stat. Ann. § 38-38-106(6).) Customary common law surety defenses are available unless waived by agreement.

### 3. Are there restrictions on interest rates charged for loans secured by real property?

The maximum rates of interest that can be charged in Colorado for loans secured by real property are:

- 12% annually for consumer loans secured by personal residences (Colo. Rev. Stat. Ann. § 5-2-201(1)).
- 45% annually for commercial loans, which includes fees and other charges considered to be interest (Colo. Rev. Stat. Ann. § 5-12-103(1)).

### 4. Are there any requirements for the execution of a mortgage or deed of trust? In particular, please consider if:

- Witnesses are required.
- Specified corporate officers (or members of a limited liability company) must execute the security instrument.
- The signatory's name and title must be specified on the signature page.
- A corporate seal is required.
- Signed resolutions must be presented with the security instrument for purposes of recording.
- There are any other important requirements in your state?

## Witnesses

Witnesses are not required to execute a deed of trust or mortgage that is to be recorded in Colorado.

## Specified Officers

Colorado law does not specify which officers of a corporation or members of a limited liability company must execute a security instrument other than to state that corporations may mortgage real property as otherwise provided by statute or by instrument under its common seal, subscribed by any of the following:

- President.
- Vice president.
- Other head officer.

(Colo. Rev. Stat. Ann. § 38-30-144(1).)

These security instruments are binding and conclusive on the corporation for persons relying on the security instrument (Colo. Rev. Stat. Ann. § 38-30-144(2)).

## Signatory's Name and Title

The signatory's name and title should be in the signature block and the notary's acknowledgment block of the security instrument.

## Corporate Seal

Corporate seals are not required to properly execute any conveyance affecting real property (Colo. Rev. Stat. Ann. § 38-30-118).

## Signed Resolutions

Signed resolutions are not required to be attached to a deed of trust or mortgage.

## Other Requirements

There are no other legal requirements for executing a deed of trust or mortgage. Signatures on deeds of trust and mortgages are customarily entitled to a presumption of authority and regularity. Title companies typically require the grantor to produce certain documents to evidence a grantor's authority, which can include:

- A limited liability company's operating agreement.
- A partnership agreement, trust agreement, or similar document.
- Resolutions.

- Certificates.
- A statement of authority under Colo. Rev. Stat. Ann. § 38-30-172(2)(d).

**5. Provide the statutory form of acknowledgment for:**

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

Acknowledgments for use in Colorado can be taken before a notary public and multiple other officials, both within and outside the US (Colo. Rev. Stat. Ann. §§ 38-30-126 to 38-30-135). Under Colo. Rev. Stat. Ann. § 38-35-101(2), the acknowledgment for an individual must specify if the individual is acting in a representative capacity. The forms of acknowledgment for entities provided below are also based on Section 38-35-101(2) of the Colorado Revised Statutes.

Colorado permits remote notarization, a process affected by emergency rules enacted during the COVID-19 pandemic. For more information on the requirements for remote notarization, see Question 17: Remote Online Notarization, Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart, and the Colorado secretary of state’s [Notary Public FAQs](#).

The forms of acknowledgment below are appropriate for in-person acknowledgments.

For Colorado notarizations performed using remote online notarization (RON), the online notarial certificate must both:

- Indicate that the notarial act was performed using audio-video communication technology.
- Otherwise satisfy standard notarial certificate requirements

(Colo. Rev. Stat. Ann. §§ 24-21-515 and 24-21-514.5(8).)

There are other detailed requirements for performing RON in Colorado. Reference should be made to the statute, any applicable emergency orders, and any rules promulgated by the applicable state authority to understand all RON requirements and conditions.

**Individual**

STATE OF [STATE] )  
 COUNTY OF [COUNTY] ) ss.  
 )

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by \_\_\_\_\_

Witness my hand and official seal.

[SEAL] \_\_\_\_\_  
 Notary Public

Expiration of Commission: [DATE] [if acknowledgment is taken by a notary public]

**Corporation**

STATE OF [STATE] )  
 COUNTY OF [COUNTY] ) ss.  
 )

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [NAME] as [TITLE] of [NAME OF CORPORATION], a [STATE] corporation.

Witness my hand and official seal.

[SEAL] \_\_\_\_\_  
 Notary Public

Expiration of Commission: [DATE] [if acknowledgment is taken by a notary public]

**Limited Liability Company**

STATE OF [STATE] )  
 COUNTY OF [COUNTY] ) ss.  
 )

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [NAME] as Manager [MANAGING MEMBER or MEMBER or SOLE MEMBER, AS APPROPRIATE] of [NAME OF LIMITED LIABILITY COMPANY], a [STATE] limited liability company.

Witness my hand and official seal.

[SEAL] \_\_\_\_\_  
Notary Public

Expiration of Commission: [DATE] [if acknowledgment is taken by a notary public]

### Limited Partnership

STATE OF [STATE] )  
COUNTY OF [COUNTY] ) ss.  
 )

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [NAME] as General Partner of [NAME OF LIMITED PARTNERSHIP], a [STATE] limited partnership.

Witness my hand and official seal.

[SEAL] \_\_\_\_\_  
Notary Public

Expiration of Commission: [DATE] [if acknowledgment is taken by a notary public]

### Trustee

STATE OF [STATE] )  
COUNTY OF [COUNTY] ) ss.  
 )

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [NAME] as Trustee of [NAME OF TRUST], a trust established under the laws of [STATE].

Witness my hand and official seal.

[SEAL] \_\_\_\_\_  
Notary Public

Expiration of Commission: [DATE] [if acknowledgment is taken by a notary public]

### Priority

#### 6. Describe the relevant statutes granting priority to mechanics' liens.

### Construction Lien Registry

Colorado law provides lien rights to those who provide labor and materials in any construction project in the state, including any of the following:

- Contractors.
- Laborers.
- Material suppliers.
- Any person who supplies:
  - laborers;
  - materials;
  - tools; or
  - equipment.

(Colo. Rev. Stat. Ann. § 38-22-101(1).)

Governmental agencies issuing building permits for construction on a commercial property or new residential construction (construction or the addition of living units on unimproved real property, or property previously used for non-residential purposes), or for residential property with more than four living units do not need to provide written notice that the property will be subject to Colorado mechanics' lien law (Colo. Rev. Stat. Ann. § 38-22-105.5.)

The priority of all mechanics' liens relates back to the time the work under the contract between the owner and the first contractor started, or, if the contract is not in writing, the time work started on the improvement (Colo. Rev. Stat. Ann. § 38-22-106(1)). This often means the priority of all mechanics' liens will relate back to when an architect, for example, started work on a project.

A lien claimant must serve a notice of intent to file a statement of lien ten days before the statement of lien is recorded. The notice must be served on both:

- The property owner or its agent.
- The principal contractor or its agent.

Service may be in person or by registered or certified mail, return receipt requested. An affidavit of service or mailing is recorded with the claimant's lien statement. (Colo. Rev. Stat. Ann. § 38-22-109(1) to (3).)

The lien statement must be recorded:

- Within two months after work on the improvement is completed for a laborer's lien (Colo. Rev. Stat. Ann. § 38-22-109(4)).

- Within four months after the last day on which labor is performed or laborers or materials are supplied for all other liens (Colo. Rev. Stat. Ann. § 38-22-109(5)).

The lien claimant can extend these recording periods by filing an additional notice. The extension will expire on the earlier of:

- Four months after work on the improvement is completed.
- Six months after date of filing of the additional notice.

(Colo. Rev. Stat. Ann. § 38-22-109(10).)

Mechanics' lien statements recorded before construction is completed expire after one year, unless the lien claimant records an affidavit within 30 days after the one-year period expires stating that the work is not completed (Colo. Rev. Stat. Ann. § 38-22-109(8)).

For certain single-family dwelling units, other than those owned by a builder and not occupied as the builder's primary residence, payment of the full contract price to the principal contractor or subcontractor is an affirmative defense to a mechanic's lien claim, even if that money was not used to pay other subcontractors or suppliers of material (Colo. Rev. Stat. Ann. § 38-22-102(3.5)).

When a tenant undertakes improvements on a property, the property's owner can protect its ownership interest in the property from a mechanics' lien claim by either:

- Serving notice on all who might be entitled to a mechanic's lien that its ownership interest cannot be subject to a lien.
- Posting notice in a conspicuous place on the land or building stating that its ownership interest cannot be subject to a lien.

(Colo. Rev. Stat. Ann. § 38-22-105(2).)

### 7. Are there liens which can supersede the priority of a lender's recorded lien?

In Colorado, any lien recorded before the lender's lien has priority unless it has been expressly subordinated to the lender's lien.

Mechanics' liens supersede the priority of a lender's recorded lien if the construction loan deed of trust is recorded after commencement of the work (Colo. Rev. Stat. Ann. § 38-22-106(1); *Howard v. Fisher*, 283 P. 1042 (Colo. 1929); see Question 6). Otherwise, a deed of trust or mortgage that secures a loan for acquisition or other

non-construction purposes will always be prior to a lien under the General Mechanics Lien law as to the land (as distinguished from the improvements) (Colo. Rev. Stat. Ann. § 38-22-103(2)).

If the work performed by the contractor is:

- New construction, the contractor will have priority on the improvements (but not the land) (Colo. Rev. Stat. Ann. § 38-22-103(2); *Powder Mountain Painting v. Peregrine Joint Venture*, 899 P.2d 279 (Colo. App. 1994)).
- Not new construction, the contractor will not have priority for the improvements or the land (*Lew Hammer, Inc. v. Dash, Inc.*, 599 P.2d 948 (1979)).

A lien claimant may be able to take advantage of the relation-back doctrine to establish that the commencement of their work occurred before the recording of the construction loan deed of trust (Colo. Rev. Stat. Ann. § 38-22-106(1); *Sontag v. Abbott*, 344 P.2d 961 (Colo. 1959)).

Additionally, the following liens have priority over a lender's lien, regardless of the time of recording:

- Liens for ad valorem real property taxes and assessments in favor of governmental entities, including various general and special improvement districts (Colo. Rev. Stat. Ann. § 39-1-107(2)).
- Homeowners' associations' liens for associations governed by the Colorado Common Interest Ownership Act in an amount up to six months' worth of regularly budgeted dues assessed by the association (Colo. Rev. Stat. Ann. § 38-33.3-316(2)).
- Local governments' liens for expenses and fees owed by landowners for services like weed control, graffiti removal, and fines and penalties if authorized by local ordinance (Colo. Rev. Stat. Ann. § 31-15-302(1)(e)).

### 8. How do lenders maintain the priority of their real property liens over superseding liens, such as real property tax liens and mechanics' liens? In particular, please consider:

- Permanent loans.
- Construction loans with future advances.
- Credit facilities with future advances under revolving lines of credit.

### Permanent Loans

The following types of liens in Colorado are always senior to liens securing permanent loans:

- Liens for *ad valorem* real property taxes and assessments (Colo. Rev. Stat. Ann. § 39-1-107(2)).
- Mechanics' liens, if the first work on the real property occurred before the deed of trust or mortgage securing the permanent loan was recorded (see Question 6).
- Certain homeowners' associations' super-priority liens (see Question 7).

For liens that are perfected by recording, lenders protect the priority of their real property liens by recording a deed of trust or mortgage. Many permanent lenders require a monthly payment of an amount equal to 1/12th of estimated real property taxes and assessments to an escrow, and mortgage lenders may pay these amounts if the borrower fails to pay (Colo. Rev. Stat. Ann. § 39-1-109).

Colorado law on future advance mortgages expressly provides that mortgages may secure both:

- Future advances of additional principal.
- So-called protective advances by the lender to pay taxes, insurance premiums, attorneys' fees, default interest, and the like.

(Colo. Rev. Stat. Ann. § 38-39-106(1), (2).)

Most deeds of trust and mortgages provide that future advances of principal and protective advances have the same priority as principal, dating generally from when the deed of trust or mortgage was recorded. This equal priority for protective advances is uniformly recognized in practice. This priority is recognized by statute for future advance loans meeting the statutory requirements. (Colo. Rev. Stat. Ann. § 38-39-106(2).)

The mechanics' lien statute described above governs the priority of mechanics' liens over all advances, including future advances of principal and protective advances, secured by a lender's deed of trust or mortgage (Colo. Rev. Stat. Ann. § 38-39-106(4)).

### Construction Loans

Construction loans have periodic advances of funds over time after the mortgage or deed of trust securing payment of the loan is recorded. Any mortgage or deed of trust can secure future advances up to a maximum principal amount stated in the mortgage or deed of trust. The priority of the lien securing the advances, whether

obligatory or optional, has the same effect and priority as if the total maximum principal amount had been fully disbursed on or before the date of recording. (Colo. Rev. Stat. Ann. § 38-39-106(1).)

Construction lenders sometimes use title companies to:

- Provide date-down endorsements.
- Review and collect lien waivers from contractors and subcontractors.
- Disburse loan advances in payment of construction draws.

Experienced construction lenders also commonly employ their own sophisticated loan administration to provide services, including:

- Property inspection.
- Conditional and unconditional lien waivers.
- Control of disbursement accounts.
- Title company date-downs.

### Credit Facilities

See Question 8: Construction Loans.

Revolving loan credit facilities that are secured by real estate have statutory protection of lien priority similar to that of future advances. After the advances made under a revolving credit facility cumulatively reach the maximum secured amount stated in the mortgage or deed of trust, any future revolving credit advances (or re-advances) will have the same priority as other future advances only if the mortgage or deed of trust clearly states that the advances are made under a revolving credit facility (Colo. Rev. Stat. Ann. § 38-39-106(3)).

#### 9. What are a landlord's legal rights to a tenant's personal property located in the leased premises? Are these rights governed by statute, common law, or contract?

Colorado does not have a statute granting a landlord a lien on its tenant's personal property. Colorado courts have not recognized a common law landlord's lien.

To obtain a landlord's lien on the tenant's personal property, the landlord must obtain either:

- A security interest in the tenant's personal property from the tenant, in which case the landlord should also file a UCC-1 Financing Statement under the Uniform Commercial Code (UCC).



- A judgment or other court order establishing the landlord's interest in the tenant's personal property.

Even though Colorado does not have a landlord lien statute, a tenant's lender may ask for a landlord lien waiver when the tenant's personal property is a significant part of the collateral for the loan. These landlord lien waivers are frequently part of a more complete landlord agreement about the tenant's lender's rights to the collateral under the UCC.

### Mortgage Recording Taxes

#### 10. Is there a mortgage recording tax (or similar tax)? If so:

- What is the rate and how is the tax calculated?
- Can a loan or refinance be structured to reduce the tax?
- Is the tax payable on making a loan secured by real property or perfecting a lien on real property?
- Is there any type of real property or transaction that is exempt from a mortgage recording tax (or similar tax)?
- Are there any other state or local taxes or fees imposed on the grant, perfection, or enforcement of a security interest in real property? Are there any exceptions?

There is no mortgage recording tax in Colorado.

Nominal per page charges are incurred to record mortgages and deeds of trust (Colo. Rev. Stat. Ann. § 30-1-103).

### Title Insurance

#### 11. Are title insurance premiums or service charges for lenders' title insurance policies regulated? Are the costs of title insurance negotiable within a specified range of rates? Are there any discounts available for reissued policies?

Title insurance companies must file premium schedules with the [Colorado Division of Insurance](#) (DOI) and adhere to those schedules. Title insurance premiums are somewhat negotiable for some title insurance policies issued in larger amounts by providing endorsements tied to particular circumstances that permit discounted

premiums. These endorsements must be on file with the DOI. For example, discounts (typically 50%) are available for developers who resell property within two to three years of purchasing it. Individual title companies should be consulted for specific rates and terms available.

When a lender's title insurance policy is issued simultaneously as an owner's policy, the premium for the lender's policy is nominal based on simultaneous issuance.

#### 12. Provide a list and brief description of the title insurance endorsements available to lenders?

Each underwriter has a list of endorsements it offers. Over the last ten years, Colorado has gradually moved from Colorado forms to American Land Title Association (ALTA) forms with title companies varying in the forms they use. Several Colorado-specific form endorsements, such as those dealing with the non-disturbance of surface estates in connection with mineral extraction, are still commonly used.

The most common endorsements include:

- ALTA 3-06 (Zoning - Unimproved Land).
- ALTA 3.1-06 (Zoning - Completed Structure).
- ALTA 6-06 (Variable Rate Mortgage).
- ALTA 8.1-06 (Environmental Protection Lien).
- ALTA 9.1-06, 9.2-06, and 9.3-06 (Restrictions, Encroachments, Minerals - Unimproved Land, Improved Land, and Loan Policy).
- ALTA 11-06 (Mortgage Modification).
- ALTA 12-06 (Aggregation - Loan Policy).
- ALTA 13.1-06 (Leasehold - Loan).
- ALTA Endorsements 14-06, 14.1-06, and 14.2-06 (Future Advance - Priority, Knowledge, and Letter of Credit).
- ALTA 15-06, 15.1-06, and 15.2-06 (Non-imputation - Full Equity Transfer, Additional Insured, and Partial Equity Transfer).
- ALTA 17-06 (Access and Entry).
- ALTA 18-06 and 18.1-06 (Tax Parcel - Single, Multiple).
- ALTA 19-06 and 19.1-06 (Contiguity - Multiple Parcels, Single Parcel).
- ALTA 25-06 (Survey).
- ALTA 26-06 (Subdivision).

- Colo. Form 100.29 (Mineral Endorsement – Damage to existing improvements including landscaping).
- Colo. Form 100.30 (Mineral Endorsement – Physical (but not aesthetic) damage to existing or future improvements).

Copies of these and other ALTA endorsement forms are available on the [ALTA website](#).

### 13. How is gap coverage (the time between closing the loan and actually recording the lien) typically handled by the title insurance companies?

The title company assumes gap coverage risk and requires the borrower to both:

- Provide an affidavit.
- Indemnify against intervening liens caused or permitted by the borrower.

[Colorado Division of Insurance](#) regulations require title companies that issue owner and lender title policies to provide gap coverage for closings handled by the title company.

Although not commonly done, title companies may require the borrower to record the mortgage or deed of trust several days to a week before loan disbursement and closing. The title company then reviews title records in the clerk and recorder's office to verify there were no liens recorded after the latest title search and before the mortgage or deed of trust was recorded.

## Foreclosure

### 14. Describe the foreclosure process available and the typical timing for the process. Do borrowers have a right of redemption? If so, what is the redemption period? Can lenders limit a borrower's right of redemption?

Most loans secured by real estate in Colorado are secured by a deed of trust naming the public trustee of the county where the real estate collateral is located as trustee (see Question 1).

To start foreclosure proceedings, the attorney for the lender delivers all of the following to the public trustee:

- A notice of the foreclosure, known as a "Notice of Election and Demand" (Colo. Rev. Stat. Ann. § 38-38-101(4)).

- A list of those required to receive notice of the foreclosure proceedings.
- The original promissory note or other original evidence of indebtedness, for example, a certified copy of a monetary judgment, a bond, or credit agreement.
- An original or certified copy of the deed of trust being foreclosed.
- If the note holder is not the loan servicer, a statement of the holder identifying, to the best of their knowledge, the name of the loan servicer.
- The "combined notice" and mailing list (Colo. Rev. Stat. Ann. § 38-38-103).

(Colo. Rev. Stat. Ann. § 38-38-101.)

Certain foreclosing lenders are classified as "qualified holders" and can start foreclosure proceedings without delivering the original evidence of debt. Qualified holders, by statute, indemnify the public trustee for any damages from the lender not being the actual holder of the evidence of debt and entitled to foreclose.

Qualified holders in Colorado include:

- Colorado-chartered banks.
- National banks with trust powers.
- Savings and loans.
- UCCC-supervised lenders.
- Certain agencies of the federal government and similar entities.
- Private companies originating, insuring, guaranteeing, or purchasing loans on behalf of a holder of evidence of debt secured by a deed of trust encumbering a timeshare estate with:

- a minimum of \$5 million in assets; or
- at least 1,000 active loans.

(Colo. Rev. Stat. Ann. § 38-38-100.3(20).)

If a promissory note is lost and the lender is not a qualified holder, the lender must submit both:

- An indemnity bond from a licensed surety.
- A copy of the evidence of debt secured by the deed of trust.

(Colo. Rev. Stat. Ann. § 38-38-101(1).)

Effective August 10, 2022, a new exception removes the requirement for an indemnity bond in certain instances. A holder of the original evidence of debt (such as a



promissory note) may request a deed of trust be released without producing or exhibiting the original evidence of debt if the holder does all the following:

- Submits a copy, rather than the original, of the evidence of debt.
- Agrees to indemnify and defend the public trustee against any claim for damages resulting from the public trustee's action in accordance with the request.
- When requesting the release of the deed of trust, provides the public trustee with a current address for:
  - the original grantor;
  - the assuming party, or
  - the current owner.
- Files the request for the release of the deed of trust electronically using the county's electronic recording system.

(Colo. Rev. Stat. Ann. § 38-39-102(1)(d).)

The amendment 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 (Colo. Rev. Stat. Ann. § 38-39-102(3)(c)(II), (9)(b)).

After receiving the lender's Notice of Election and Demand (NED), the public trustee must also:

- Mail a combined notice of the foreclosure sale to specified interested parties no more than 20 days after the NED is recorded (Colo. Rev. Stat. Ann. § 38-38-103(1)(a)).
- Send a second combined notice to specified interested parties between 45 and 60 days before the first scheduled date of the foreclosure sale (Colo. Rev. Stat. Ann. § 38-38-103(1)(b)).
- Publish specified portions of the combined notice once each week for five consecutive weeks, in a newspaper or other publication of general circulation in the county where the property is located, between 45 and 60 days before the first scheduled date of sale (Colo. Rev. Stat. Ann. § 38-38-103(5)(a)).
- Set an initial date of sale:
  - between 110 and 125 days after the NED is recorded for most types of property; and
  - between 215 and 230 days after the NED is recorded for agricultural property.

(Colo. Rev. Stat. Ann. § 38-38-108(1).)

For a property to be classified as agricultural, no portion of it can be:

- The subject of a subdivision plat.
- Located within the limits of an incorporated city or town.
- Assessed other than as agricultural property.

(Colo. Rev. Stat. Ann. §§ 38-38-100.3(1) and 38-38-108(2).)

If the only default is nonpayment of amounts due under a deed of trust, certain persons are granted the right to cure the monetary defaults and terminate the foreclosure proceedings before the sale (Colo. Rev. Stat. Ann. § 38-38-104). These persons include:

- The owner of the property being foreclosed on.
- Various persons who are liable on the secured indebtedness.
- Holders of certain junior interests in the property

(Colo. Rev. Stat. Ann. § 38-38-104(1).)

To exercise the cure right, the person proposing to cure must provide to the public trustee both:

- A notice of intent to cure no later than 15 calendar days before the date of sale.
- Evidence of the person's right to cure.

(Colo. Rev. Stat. Ann. § 38-38-104(1).)

The public trustee will notify the foreclosing party of the filing at least 12 days before the date of the sale. The foreclosing party or its attorney must file a cure statement setting forth the amount necessary to cure with the public trustee in the form prescribed by statute. (Colo. Rev. Stat. Ann. § 38-38-104(2)(a)(I), (II).) If the cure amount is paid as provided by statute, the foreclosure sale will be terminated.

The cure amount, generally, is the sum of unpaid debt service installments, including default interest on the unpaid installments, other charges due under the deed of trust, the expenses of foreclosure, all as listed on the statutory cure statement (Colo. Rev. Stat. Ann. § 38-38-104(2)(a)(II)). If the cure amount is not paid before 12:00 noon on the day before the foreclosure sale is scheduled, the sale will proceed (Colo. Rev. Stat. Ann. § 38-38-104(2)(b)).

Before any foreclosure sale by the public trustee, the foreclosing party must deliver to the public trustee a court order authorizing the sale. This order is requested and issued under Colo. R. Civ. P. 120. The order must recite the date a court hearing was scheduled (if no hearing was held), or the date the hearing was completed (if a hearing

was held), and that date must be no later than the date on which a notice of intent to cure was required to be filed as described in the preceding paragraph (Colo R. Civ. P. 120(d)(2)).

Rule 120(a)(1) sets forth the requirements for a “Verified Motion for Order Authorizing a Foreclosure Sale under C.R.C.P. 120,” including exhibits. The court clerk will set a deadline of 21 to 35 days after the motion is filed (Colo. R. Civ. P. 120(a)(2)). The foreclosing lender must also provide a specified notice of the motion and the hearing date set by the court containing specified language. (Colo. R. Civ. P. 120(b)). Rule 120 also provides requirements regarding notice to various persons interested in the foreclosure at least 14 days before the response deadline (Colo. R. Civ. P. 120(b)(4)). The scope of the Rule 120 inquiry at the hearing is limited to:

- Determining the existence of a default authorizing the power of sale.
- Consideration of compliance with the Servicemembers Civil Relief Act, 50 U.S.C. § 3931.
- Whether the moving party is the real party in interest.
- Whether the status of any request for a loan modification agreement bars a foreclosure.

(Colo. R. Civ. P. 120(d)(1).)

Holders of junior liens, easements, and leases have certain rights to redeem from the foreclosure sale under specified notices, procedures, and filings with the public trustee (Colo. Rev. Stat. Ann. § 38-38-302). If any person exercises rights as a junior interest holder, the foreclosure process must be extended approximately one month for the first interest and one additional week for each additional interest exercising redemption rights (Colo. Rev. Stat. Ann. § 38-38-302(4)).

### 15. Describe any significant costs of or impediments to foreclosing a lien on real property.

The only significant costs or impediments to foreclosing a lien on real estate in Colorado are:

- The cost of publishing the notice of sale.
- The public trustee’s fee of:
  - 1/32nd of 1% of the original principal amount of the debt secured by the deed of trust if greater than \$480,000 but in no case less than \$150; or
  - \$150 if the original secured principal amount does not exceed \$480,000.

- Other generally nominal fees and expenses of the public trustee.

(Colo. Rev. Stat. Ann. § 38-37-104(1).)

## Foreign Entities

### 16. Are there any permissions, approvals, or licenses specifically required for foreign banks (or other foreign lenders) to make loans secured by real property?

There are no permissions, approvals, or licenses specifically required for foreign banks to make loans secured by real property if the foreign bank or lender has no other established business presence in Colorado.

## Electronic Signatures, Recording, and Notarization Laws

### 17. Has your state adopted laws permitting electronic signatures, electronic recording, and remote notarization? In particular, include information on whether:

- The Uniform Electronic Transactions Act (UETA) or another law giving electronic signatures legal effect has been adopted.
- The Uniform Real Property Electronic Recording Act (URPERA) or another law permitting the recording of electronic signatures has been adopted.
- The Revised Uniform Law on Notarial Acts (RULONA) or another law permitting remote online notarization (RON) has been permanently adopted and/or temporary remote online notarization is permitted on an emergency basis due to the coronavirus pandemic.

Despite Colorado’s adoption of the applicable electronic laws referred to below, the transaction parties or recording offices may not be required to accept documents executed or notarized electronically. Before relying on any of the below electronic laws for a particular transaction, counsel should confirm (as applicable) that:

- All parties to the transaction agree to accept electronic signatures and/or remotely notarized documents and intend to be bound by them.
- The applicable recording office accepts electronic signatures and remotely notarized documents for recording.

### Electronic Signatures

Colorado has adopted the UETA (Colo. Rev. Stat. Ann. §§ 24-71.3-101 to 24-71.3-121).

### Electronic Recording

Colorado has not adopted the URPERA.

### Remote Online Notarization

Colorado has adopted RON (Colo. Rev. Stat. Ann. §§ 24-21-501 to 24-21-540).

There are detailed requirements for performing RON in Colorado (for example, see Question 5). Reference should be made to the statute, any applicable emergency orders, and any rules promulgated by the secretary of state or other state authority to understand all RON requirements and conditions.

For a state-by-state chart covering key provisions of RON laws, emergency orders permitting RON during the coronavirus pandemic, and pending electronic recording and RON laws, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart](#).

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