

**REQUIREMENTS FOR STARTING A FORECLOSURE
IN THE SAN MIGUEL COUNTY PUBLIC TRUSTEE OFFICE**

Notice: THE PUBLIC TRUSTEE IS NOT AN ATTORNEY AND CAN NOT GIVE LEGAL ADVICE. If you have questions regarding the foreclosure process or your rights in foreclosure, it is recommended you seek legal advice from a competent attorney experienced in foreclosure matters.

A minimum deposit is required in the amount of \$650.00 or equal to of the public trustee fee permitted by statute if permitted fee exceeds \$650.00. This would be a standard \$650 deposit for outstanding loan balances up to \$2,080,000. For loan balances over \$2,080,000, take the outstanding loan balance times .0003125 to calculate the deposit required.

In addition to the required deposit, the following documents must be provided to the public trustee for examination before the public trustee's office can open a foreclosure file. Documents must be satisfactory to the public trustee or the foreclosure will be rejected. If rejected by the public trustee, foreclosure action may still be taken through the court system.

Colorado Revised Statutes 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:

(a) A notice of election and demand signed and acknowledged by the holder of the evidence of debt or signed by the attorney for the holder;

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

(I) A corporate surety bond in the amount of one and one-half times the face amount of the original evidence of debt;

(II) A copy of the evidence of debt and a certification signed and properly acknowledged by a holder of an evidence of debt acting for itself or as agent, nominee, or trustee under subsection (2) of this section or a statement signed by the attorney for such holder, citing the paragraph of [section 38-38-100.3 \(20\)](#) under which the holder claims to be a qualified holder and certifying or stating that the copy of the evidence of debt is true and correct and that the use of the copy is subject to the conditions described in paragraph (a) of subsection (2) of this section; or

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

(c) The original recorded deed of trust securing the evidence of debt and any original recorded modifications of the deed of trust or any recorded partial releases of the deed of trust, or in lieu thereof, one of the following:

(I) Certified copies of the recorded deed of trust and any recorded modifications of the deed of trust or

recorded partial releases of the deed of trust; or

(II) Copies of the recorded deed of trust and any recorded modifications of the deed of trust or recorded partial releases of the deed of trust and a certification signed and properly acknowledged by a holder of an evidence of debt acting for itself or as an agent, nominee, or trustee under subsection (2) of this section or a signed statement by the attorney for such holder, citing the paragraph of [section 38-38-100.3 \(20\)](#) under which the holder claims to be a qualified holder and certifying or stating that the copies of the recorded deed of trust and any recorded modifications of the deed of trust or recorded partial releases of the deed of trust are true and correct and that the use of the copies is subject to the conditions described in paragraph (a) of subsection (2) of this section;

(d) A combined notice pursuant to [section 38-38-103](#); except that the combined notice may be omitted with the prior approval of the officer because the officer will supply the combined notice;

(e) A mailing list;

(f) Any affidavit recorded pursuant to [section 38-35-109 \(5\)](#) affecting the deed of trust described in paragraph (c) of this subsection (1), which affidavit shall be accepted by the public trustee as modifying the deed of trust for all purposes under this article only if the affidavit is filed with the public trustee at the same time as the other documents required under this subsection (1);

(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;

(g) A statement executed by the holder of an evidence of debt, or the attorney for such holder, identifying, to the best knowledge of the person executing such statement, the name and address of the current owner of the property described in the notice of election and demand; and

(h) A separate document notifying the public trustee that the property referred to in the notice of election and demand is property that requires posting under [section 38-38-802](#). If the document required by this paragraph (h) is not filed at the time the documents required by paragraphs (a) to (e) of this subsection (1) are filed with the public trustee, and the holder determines at a later date that the property requires posting, the holder shall request that the public trustee rerecord the notice of election and demand. Thereafter, all deadlines for the foreclosure action shall be determined according to the date of the rerecording of the notice of election and demand as though the foreclosure was commenced on such date, and the public trustee shall collect a fee of seventy-five dollars from the holder. If the document required by this paragraph (h) is filed in error, the holder may withdraw it by filing with the public trustee an affidavit signed by the holder or the attorney for the holder affirming both that the document required by this paragraph (h) was filed in error and that the property has not been posted pursuant to [section 38-38-802](#). In order to be effective, and thereby notify the public trustee that the property is not eligible for posting, such affidavit shall be filed with the public trustee no later than fourteen days after the date of the determination of the public trustee that the filing is complete in accordance with [section 38-38-102 \(1\)](#).

(2) Foreclosure by qualified holder without original evidence of debt, original or certified copy of deed of trust, or proper indorsement. (a) A qualified holder, whether acting for itself or as agent, nominee, or trustee under [section 38-38-100.3 \(20\) \(j\)](#), that elects to foreclose without the original evidence of debt pursuant to subparagraph (II) of paragraph (b) of subsection (1) of this section, or without the original recorded deed of trust or a certified copy thereof pursuant to subparagraph (II) of paragraph (c) of

subsection (1) of this section, or without the proper indorsement or assignment of an evidence of debt under paragraph (b) of subsection (1) of this section shall, by operation of law, be deemed to have agreed to indemnify and defend any person liable for repayment of any portion of the original evidence of debt in the event that the original evidence of debt is presented for payment to the extent of any amount, other than the amount of a deficiency remaining under the evidence of debt after deducting the amount bid at sale, and any person who sustains a loss due to any title defect that results from reliance upon a sale at which the original evidence of debt was not presented. The indemnity granted by this subsection (2) shall be limited to actual economic loss suffered together with any court costs and reasonable attorney fees and costs incurred in defending a claim brought as a direct and proximate cause of the failure to produce the original evidence of debt, but such indemnity shall not include, and no claimant shall be entitled to, any special, incidental, consequential, reliance, expectation, or punitive damages of any kind. A qualified holder acting as agent, nominee, or trustee shall be liable for the indemnity pursuant to this subsection (2).

(b) In the event that a qualified holder or the attorney for the holder commences a foreclosure without production of the original evidence of debt, proper indorsement or assignment, or the original recorded deed of trust or a certified copy thereof, the qualified holder or the attorney for the holder may submit the original evidence of debt, proper indorsement or assignment, or the original recorded deed of trust or a certified copy thereof to the officer prior to the sale. In such event, the sale shall be conducted and administered as if the original evidence of debt, proper indorsement or assignment, or the original recorded deed of trust or a certified copy thereof had been submitted at the time of commencement of such proceeding, and any indemnities deemed to have been given by the qualified holder under paragraph (a) of this subsection (2) shall be null and void as to the instrument produced under this paragraph (b).

(c) In the event that a foreclosure is conducted where the original evidence of debt, proper indorsement or assignment, or original recorded deed of trust or certified copy thereof has not been produced, the only claims shall be against the indemnitor as provided in paragraph (a) of this subsection (2) and not against the foreclosed property or the attorney for the holder of the evidence of debt. Nothing in this section shall preclude a person liable for repayment of the evidence of debt from pursuing remedies allowed by law.

(3) Foreclosure on a portion of property. A holder of an evidence of debt may elect to foreclose a deed of trust under this article against a portion of the property encumbered by the deed of trust only if such portion is encumbered as a separate and distinct parcel or lot by the original or an amended deed of trust. Any foreclosure conducted by a public trustee against less than all of the property then encumbered by the deed of trust shall not affect the lien or the power of sale contained therein as to the remaining property. The amount bid at a sale of less than all of the property shall be deemed to have satisfied the secured indebtedness to the extent of the amount of the bid.

(4) Notice of election and demand. A notice of election and demand filed with the public trustee pursuant to this section shall contain the following:

(a) The names of the original grantors of the deed of trust being foreclosed and the original beneficiaries or grantees thereof;

(b) The name of the holder of the evidence of debt;

(c) The date of the deed of trust being foreclosed;

(d) The recording date, county, book, and page or reception number of the recording of the deed of trust being foreclosed;

- (e) The amount of the original principal balance of the secured indebtedness;
- (f) The amount of the outstanding principal balance of the secured indebtedness as of the date of the notice of election and demand;
- (g) A legal description of the property to be foreclosed as set forth in the documents to be provided to the public trustee pursuant to paragraph (c) of subsection (1) of this section;
- (h) A statement of whether the property described in the notice of election and demand is all or only a portion of the property then encumbered by the deed of trust being foreclosed;
- (i) A statement of the violation of the covenant of the evidence of debt or deed of trust being foreclosed upon which the foreclosure is based, which statement shall not constitute a waiver of any right accruing on account of any violation of any covenant of the evidence of debt or deed of trust other than the violation specified in the notice of election and demand;
- (j) The name, address, business telephone number, and bar registration number of the attorney for the holder of the evidence of debt, which may be indicated in the signature block of the notice of election and demand; and
- (k) A description of any changes to the deed of trust described in the notice of election and demand that are based on an affidavit filed with the public trustee under paragraph (f) of subsection (1) of this section, together with the recording date and reception number or book and page number of the recording of that affidavit in the records.
- (5) Error in notice. In the event that the amount of the outstanding principal balance due and owing upon the secured indebtedness is erroneously set forth in the notice of election and demand or the combined notice, the error shall not affect the validity of the notice of election and demand, the combined notice, the publication, the sale, the certificate of purchase described in [section 38-38-401](#), the certificate of redemption described in [section 38-38-402](#), the confirmation deed as defined in [section 38-38-100.3 \(5\)](#), or any other document executed in connection therewith.
- (6) Indorsement or assignment. (a) Proper indorsement or assignment of an evidence of debt shall include the original indorsement or assignment or a certified copy of an indorsement or assignment recorded in the county where the property being foreclosed is located.
- (b) Notwithstanding the provisions of paragraph (a) of this subsection (6), the original evidence of debt or a copy thereof without proper indorsement or assignment shall be deemed to be properly indorsed or assigned if a qualified holder presents the original evidence of debt or a copy thereof to the officer together with a statement in the certification of the qualified holder or in the statement of the attorney for the qualified holder pursuant to subparagraph (II) of paragraph (b) of subsection (1) of this section that the party on whose behalf the foreclosure was commenced is the holder of the evidence of debt.
- (7) Multiple instruments. If the evidence of debt consists of multiple instruments, such as notes or bonds, the holder of the evidence of debt may elect to foreclose with respect to fewer than all of such instruments or documents by identifying in the notice of election and demand and the combined notice only those to be satisfied in whole or in part, in which case the requirements of this section shall apply only as to those instruments or documents.
- (8) Assignment or transfer of debt during foreclosure. (a) The holder of the evidence of debt may assign or transfer the secured indebtedness at any time during the pendency of a foreclosure action without

affecting the validity of the secured indebtedness. Upon receipt of written notice signed by the holder who commenced the foreclosure action or the attorney for the holder stating that the evidence of debt has been assigned and transferred and identifying the assignee or transferee, the public trustee shall complete the foreclosure as directed by the assignee or transferee or the attorney for the assignee or transferee. No holder of an evidence of debt, certificate of purchase, or certificate of redemption shall be liable to any third party for the acts or omissions of any assignee or transferee that occur after the date of the assignment or transfer.

(b) The assignment or transfer of the secured indebtedness during the pendency of a foreclosure shall be deemed made without recourse unless otherwise agreed in a written statement signed by the assignor or transferor. The holder of the evidence of debt, certificate of purchase, or certificate of redemption making the assignment or transfer and the attorney for the holder shall have no duty, obligation, or liability to the assignee or transferee or to any third party for any act or omission with respect to the foreclosure or the loan servicing of the secured indebtedness after the assignment or transfer. If an assignment or transfer is made by a qualified holder that commenced the foreclosure pursuant to subsection (2) of this section, the qualified holder's indemnity under said subsection (2) shall remain in effect with respect to all parties except to the assignee or transferee, unless otherwise agreed in a writing signed by the assignee or transferee if the assignee or transferee is a qualified holder.

(c) If an assignment or transfer is made to a holder of an evidence of debt other than a qualified holder, the holder must file with the officer the original evidence of debt and the original recorded deed of trust or, in lieu thereof, the documents required in paragraphs (b) and (c) of subsection (1) of this section. An assignee or transferee shall be presumed to not be a qualified holder, and as such, shall be subject to the provisions of this paragraph (c), unless a signed statement by the attorney for such assignee or transferee that cites the paragraph of [section 38-38-100.3 \(20\)](#) under which the assignee or transferee claims to be a qualified holder is filed with the officer.

(9) Partial release from deed of trust. At any time after the recording of the notice of election and demand but prior to the sale, a portion of the property may be released from the deed of trust being foreclosed pursuant to [section 38-39-102](#) or as otherwise provided by order of a court of competent jurisdiction recorded in the county where the property being released is located. Upon recording of the release or court order, the holder of the evidence of debt or the attorney for the holder shall pay the fee described in [section 38-37-104 \(1\) \(b\) \(IX\)](#), amend the combined notice, and, in the case of a public trustee foreclosure, amend the notice of election and demand to describe the property that continues to be secured by the deed of trust or other lien being foreclosed as of the effective date of the release or court order. The public trustee shall record the amended notice of election and demand upon receipt. Upon receipt of the amended combined notice, the public trustee shall republish and mail the amended combined notice in the manner set forth in [section 38-38-109 \(1\) \(b\)](#).

(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, overbids, or redemption proceeds.