

Real Estate Finance: Colorado

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A Q&A guide to commercial real estate finance law for borrowers and lenders in Colorado. This Q&A addresses state laws relating to security instruments, usury, 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 real estate 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 use a deed of trust designating the public trustee of the county in which the real property is located to serve 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 the foreclosure process, including:

- Mailing and publishing required notices.
- Holding the foreclosure sale.
- Managing redemptions.

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

Deeds of trust and mortgages naming a private trustee (rather than the public trustee) are only used in special circumstances, including various forms of municipal financings and particularly complicated transactions.

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

- A nonjudicial procedure called a public trustee's sale. Most foreclosures are conducted in this manner (Colo. Rev. Stat. Ann. §§ 38-38-100.3 to 38-38-705; see Question 14).
- Judicial process. Court involvement is required when foreclosing:
 - mortgages;
 - deeds of trust in favor of a private trustee; or
 - deeds of trust in favor of the public trustee that secure performance obligations (for example, a completion guaranty) or other obligations that are not the repayment of a debt.

(Colo. Rev. Stat. Ann. § 38-39-101; *Bakers Park Mining & Milling Co. v. Dist. Ct.*, 662 P.2d 483, 485 (Colo. 1983).)

Colorado is a lien theory state. Any instrument (including 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 materially limit a borrower's or guarantor's personal liability for debt secured by commercial real property. A borrower or guarantor can, however, assert a defense to a deficiency action if the lender submits a bid at the foreclosure sale that is not a good faith estimate of the property's fair market value after both:

- Subtracting:
 - the amount of any unpaid real estate taxes;
 - all amounts secured by liens senior to the foreclosed deed of trust or mortgage; and
 - the estimated reasonable costs of holding, marketing, and selling the real estate.
- Accounting for any income received.

(Colo. Rev. Stat. Ann. § 38-38-106(6).)

The lender does not have to bid more than the total indebtedness due under the security instrument (Colo. Rev. Stat. Ann. § 38-38-106(2), (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 interest rate that can be charged in Colorado for a commercial loan secured by real property is 45% annually (including fees and other charges considered to be interest) (Colo. Rev. Stat. Ann. § 5-12-103(1), (2)).

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?

For information on whether Colorado has adopted electronic signatures, electronic recording, or remote online notarization (RON), see Question 17.

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 (LLC) must execute a security instrument other than to state that a corporation authorized to mortgage its real property may do so as provided by statute or through an instrument under its common seal subscribed by any of the following:

- The president.
- The vice-president.
- Another head officer.

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

A security instrument signed by one of the foregoing officers and in the form required by law is binding and conclusive on the corporation for persons relying on the instrument (Colo. Rev. Stat. Ann. § 38-30-144(2)). Notwithstanding the formalities of § 38-30-144(1), a separate Colorado statute confirms the validity of real estate conveyances executed without a corporate seal (see Corporate Seal).

A corporation may generally mortgage its property to the extent permitted by its bylaws or board of directors (Colo. Rev. Stat. Ann. § 7-112-101(1)(a)).

For details on authorized signatories for other business entities, see [State Q&A, Real Estate Ownership: Colorado: Question 6](#).

Signatory's Name and Title

The signatory's name and title should be in the signature block and the notary's acknowledgment certificate for 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 significant 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 a grantor or mortgagor (borrower) that is a business entity to produce certain documents evidencing its approval of the transaction and the authority of its designated signatories. These documents may include:

- The bylaws, an operating agreement, a partnership agreement, a trust agreement, or another similar governing document depending on the entity.
- Resolutions or consents.
- Certificates.
- A statement of authority under Colo. Rev. Stat. Ann. § 38-30-172(2)(d).

For details on the typical elements of and recording standards applicable to a Colorado security instrument, see [State Q&A, Real Estate Loan Drafting Guidance: Colorado: Question 2](#).

5. Provide the statutory form of acknowledgment for:

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

Colorado statutory law provides model short form acknowledgment certificates. The examples below are:

- Based on the form contained in Colo. Rev. Stat. Ann. § 38-35-101(2). Colorado's Revised Uniform Law on Notarial Acts provides similar short form certificates (Colo. Rev. Stat. Ann. § 24-21-516(1)(a), (b)).
- Sufficient for use assuming the acknowledgment meets all other requirements (Colo. Rev. Stat. Ann. § 38-35-101(3)).

Colorado has adopted remote online notarization (RON) (Colo. Rev. Stat. Ann. § 24-21-514.5; see

Question 17). There may be specific requirements for acknowledgments certified using RON. For more information, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart: Colorado](#).

Individual

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

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [SIGNATORY NAME].

Witness my hand and official seal.

[SEAL] [NOTARY SIGNATURE]

[Expiration of Commission: Notary Public
[DATE]]

Corporation

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

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

Witness my hand and official seal.

[SEAL] [NOTARY SIGNATURE]

[Expiration of Commission: Notary Public
[DATE]]

Limited Liability Company

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

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [SIGNATORY NAME] as [SIGNATORY TITLE] of [LLC NAME], a[n] [STATE] limited liability company.

Witness my hand and official seal.

[SEAL] [NOTARY SIGNATURE]

[Expiration of Commission: Notary Public
[DATE]]

Limited Partnership

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

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

Witness my hand and official seal.

[SEAL] [NOTARY SIGNATURE]

[Expiration of Commission: Notary Public
[DATE]]

Trustee

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

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

Witness my hand and official seal.

[SEAL] [NOTARY SIGNATURE]

[Expiration of Commission: Notary Public
[DATE]]

Priority

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

Colorado's General Mechanics' Lien Law (Colo. Rev. Stat. Ann. §§ 38-22-101 to 38-22-133) grants lien

rights to parties working on construction projects in the state, including among others:

- Contractors.
- Laborers.
- Any person who supplies laborers, materials, tools, or equipment.
- Architects, engineers, draftsmen, and surveyors.

(Colo. Rev. Stat. Ann. §§ 38-22-101(1) and 38-22-121.)

For detailed guidance on the mechanics' lien process in Colorado, see [Practice Note, Mechanic's Liens in Practice \(CO\)](#).

Procedure

At least ten days before recording a lien statement to perfect its lien, a claimant must provide a notice of intent by personal service or registered or certified mail, return receipt requested, to both:

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

(Colo. Rev. Stat. Ann. § 38-22-109(3).)

The claimant must then record a lien statement:

- Containing the information required by statute, including an affidavit of service or mailing of the notice of intent.
- In the county where the subject real property is located.
- Within:
 - two months after work on the improvement is completed for a laborer's lien; or
 - 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(1)–(5).)

If necessary, the claimant may record a notice of extension to delay the deadline for its lien statement until the earlier of:

- Four months after work on the improvement is completed.
- Six months after the notice of extension is recorded.

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

mechanics' liens attach (for example, to secure the purchase of the real estate) always has priority as to the encumbered land but not necessarily the improvements under which the mechanics' liens arise (Colo. Rev. Stat. Ann. § 38-22-106(1)). More specifically, if the project involves:

- New construction, a resulting mechanics' lien has priority over the improvements but not the land (Colo. Rev. Stat. Ann. § 38-22-103(2); *Powder Mountain Painting*, 899 P.2d at 281-82).
- Any other construction, a mechanics' lien is inferior as to both the improvements and the land (*Lew Hammer, Inc. v. Dash, Inc.*, 599 P.2d 948, 949-50 (Colo. Ct. App. 1979)).

Tenant Improvements

When a tenant undertakes improvements, the owner can protect its interest in the property from mechanics' liens by promptly either:

- Serving a notice on all potential claimants that its ownership interest cannot be subject to a lien.
- Posting a notice stating the same in a conspicuous place on the land or building.

(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 expressly subordinated. Additionally, the following liens have priority regardless of the timing 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)).
- Liens for homeowners associations (HOAs) governed by the Colorado Common Interest Ownership Act in an amount up to six months' worth of assessed regularly budgeted dues (Colo. Rev. Stat. Ann. § 38-33.3-316(2)).
- Local government liens for fees and expenses owed by landowners for services like weed control, graffiti removal, and related fines and penalties if authorized by local ordinance (Colo. Rev. Stat. Ann. § 31-15-302(1)(e)).
- Mechanics' liens depending on when the lender records its deed of trust or mortgage in relation to

the start of work on a project, among other factors (see Question 6: Priority).

A separate common law rule affects the priority of competing purchase money financing liens. Absent clear written evidence to the contrary (such as an executed subordination agreement), a deed of trust or mortgage securing seller carryback financing has priority over a previously recorded third-party purchase money deed of trust or mortgage. (*ALH Holding Co. v. Bank of Telluride*, 18 P.3d 742, 747 (Colo. 2000).)

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

Lenders protect the priority of their real property liens in Colorado by recording a deed of trust or mortgage. Certain super liens are always senior to instruments securing permanent loans (see Question 7).

Many permanent lenders require a monthly escrow payment equal to 1/12th of the estimated real property taxes and assessments. The lender may pay this amount if the borrower fails to (Colo. Rev. Stat. Ann. § 39-1-109).

Colorado law expressly provides that deeds of trust and mortgages may secure both:

- Future advances of additional principal up to the maximum amount stated in the instrument (see [State Q&A, Real Estate Loan Drafting Guidance: Colorado: Question 1](#)). There are exceptions for revolving credit facilities (see Credit Facilities).
- 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 security instruments provide that future advances of principal and protective advances

each have the same priority as the original principal (generally from the instrument's recording date). This equal priority for protective advances is recognized:

- Uniformly in practice.
- By statute for future advance loans meeting the prescribed requirements (Colo. Rev. Stat. Ann. § 38-39-106(2)).

The General Mechanics' Lien Law 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); see Question 6).

Construction Loans

Construction loans involve periodic advances of funds over time after the instrument securing repayment of the loan is recorded. Any deed of trust or mortgage can secure future advances up to the maximum principal amount stated in the instrument. 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); see [State Q&A, Real Estate Loan Drafting Guidance: Colorado: Question 1: Future Advances.](#))

Construction lenders sometimes use title companies to:

- Provide date down endorsements.
- Review and collect lien waivers from contractors and subcontractors.
- Disburse advances to pay construction draws.

Experienced construction lenders also commonly employ their own sophisticated loan administrators to provide services, including managing and coordinating:

- Property inspections.
- Conditional and unconditional lien waivers.
- Disbursement accounts.
- Title company date downs.

Credit Facilities

Revolving credit facilities secured by real estate have statutory lien priority protections similar to that of permanent or construction loans providing for future advances. After advances made under a revolving credit facility cumulatively reach the maximum secured amount stated in the deed of trust or

mortgage, any future advances (or re-advances) will have the same priority as the previous advances only if the deed of trust or mortgage clearly states that they 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. The landlord must instead receive either:

- A security interest from the tenant (in which case the landlord should also file a UCC-1 financing statement).
- 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 addressing the 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.

There are nominal per page charges to record deeds of trust and mortgages (Colo. Rev. Stat. Ann. § 30-1-103; see [El Paso County Clerk and Recorder: Recording Fees](#)).

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 companies must file premium schedules with the [Colorado Division of Insurance](#) (DOI) and adhere to them. Premiums may essentially be negotiable for some title policies issued in larger amounts by providing endorsements tied to particular circumstances that permit discounted rates. These endorsements must be on file with the DOI. For example, discounts (typically 50%) are available for developers who resell the property within two to three years after purchasing it. Consult with each title company to determine its rates and terms.

The premium for a loan policy is usually nominal when issued simultaneously with an owner's policy.

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

The following is a nonexclusive list of endorsements commonly used by lenders in Colorado commercial real estate transactions. Each underwriter has a list of endorsements it offers. Not all endorsements are applicable to each transaction. For a full list of available endorsements, consult with an approved title company.

Colorado has gradually moved from state-specific forms to American Land Title Association (ALTA) forms with some variation among title companies. Several Colorado-specific endorsements, such as those dealing with the non-disturbance of surface estates in connection with mineral extraction, are still customary.

- ALTA 3 (3-06) series (Zoning, as applicable).
- ALTA 6 (6-06) (Variable Rate Mortgage).
- ALTA 8.2-06 (Commercial Environmental Protection Lien).
- ALTA 9.3-06 (Covenants, Conditions and Restrictions).
- ALTA 11 (11-06) (Mortgage Modification).
- ALTA 12 (12-06) (Aggregation).
- ALTA 13.1-06 (Leasehold).
- ALTA 14 (14-06) series (Future Advance, as applicable).
- ALTA 17-06 (Access and Entry).
- ALTA 18-06 (Single Tax Parcel) and 18.1-06 (Multiple Tax Parcel – Easements).
- ALTA 19-06 (Contiguity – Multiple Parcels) and 19.1-06 (Contiguity – Single Parcel).
- ALTA 25-06 (Same as Survey).
- ALTA 26 (26-06) (Subdivision).
- Colo. Form 100.29 (Development of Minerals – Damage to existing improvements including landscaping).
- Colo. Form 100.30 (Development of Minerals – Physical (but not aesthetic) damage to existing or future improvements).

For more information on commercial loan policy endorsements, see [Practice Notes, Title Insurance Endorsements \(Commonly Requested\) for Commercial Real Estate Loans](#) and [Title Insurance Endorsements \(Deal-Specific\) for Commercial Real Estate Loans](#).

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 the gap coverage risk in Colorado 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's and loan policies to provide gap coverage for closings they handle.

Although uncommon, title companies may require the borrower to record a deed of trust or mortgage several days to a week before loan disbursement and closing. The title company will then review the title records to verify there are no liens recorded between the last title search and the security instrument.

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 real estate collateral loans in Colorado are:

- Secured by a deed of trust naming the public trustee of the county where the real property is located as trustee (Colo. Rev. Stat. Ann. §§ 38-37-100.5 to 38-37-113).
- Foreclosed nonjudicially through a public trustee's sale (Colo. Rev. Stat. Ann. §§ 38-38-100.3 to 38-38-705).

For detailed guidance on the nonjudicial commercial foreclosure process in Colorado, see [Practice Note, Commercial Foreclosures \(Nonjudicial\) \(CO\)](#).

Judicial foreclosure is less common but necessary when foreclosing a mortgage and in other prescribed circumstances (see Question 1 and [Practice Note, Commercial Foreclosures \(Judicial\) \(CO\)](#)).

Colorado also has a statutory procedure permitting a lender holding a deed of trust or mortgage securing an installment obligation to foreclose as to any one or more delinquent installments of principal or interest without acceleration as if each installment was separately secured (Colo. Rev. Stat. Ann. § 38-38-201). This method of foreclosure by installment is rarely used, however.

Providing Materials to the Public Trustee

To start nonjudicial foreclosure proceedings, the lender's counsel must deliver to the public trustee:

- A notice of the foreclosure (called a notice of election and demand or NED) (Colo. Rev. Stat. Ann. § 38-38-101(4)).

- The original promissory note (and any indorsement or assignment) or other original evidence of indebtedness (for example, a bond, credit agreement, or certified copy of a monetary judgment).
- An original or certified copy of the deed of trust.
- If the note holder is not the loan servicer, a statement from the holder identifying the servicer to the best of its knowledge.
- A statement from the note holder providing the name and address of the current property owner to the best of its knowledge.
- Any affidavit recorded under Colo. Rev. Stat. Ann. § 38-35-109(5) (to correct a scrivener's error, for example) affecting the deed of trust.
- The "combined notice" and a list of those required to receive notice of the foreclosure (mailing list) (Colo. Rev. Stat. Ann. § 38-38-103; see Combined Notice of Sale).

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

Qualified Holders

Certain lenders are classified as qualified holders and may start foreclosure proceedings without delivering the original evidence of debt. By statute, qualified holders indemnify the public trustee for any damages arising from the lender's failure to be the actual holder of the evidence of debt and lack of entitlement to foreclose. (Colo. Rev. Stat. Ann. § 38-38-101(2).)

Qualified holders in Colorado include:

- Colorado-chartered banks.
- National banks.
- Federally or Colorado-chartered:
 - credit unions; or
 - savings and loan associations.
- Federal government agencies or departments.
- Entities created by the federal or state government that originate, insure, guarantee, or purchase loans.

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

Proceeding Without Original Evidence of Debt

If the original evidence of debt is lost and the lender is not a qualified holder, it must submit both:

- An indemnity bond from a licensed surety.
- A copy of the evidence of debt.

(Colo. Rev. Stat. Ann. §§ 38-38-101(1) and 38-39-102(3)(b).)

There is an exception to the bond requirement. The lender may request its deed of trust to be released without producing or exhibiting the original evidence of debt by doing all the following:

- Submitting a copy (rather than the original) of the evidence of debt.
- Agreeing to indemnify and defend the public trustee against any claim for damages resulting from the public trustee's action according to the request.
- Providing the public trustee with a current address for:
 - the original grantor;
 - the assuming party, or
 - the current owner.
- Electronically recording the request for the release of the deed of trust.

(Colo. Rev. Stat. Ann. § 38-39-102(3)(d).)

Combined Notice of Sale

The public trustee must record the NED within ten business days after receiving a complete set of materials from the lender (Colo. Rev. Stat. Ann. § 38-38-102(1)). The public trustee must then:

- Mail a combined notice of the foreclosure sale to the interested parties identified in the mailing list provided by the lender within 20 days after the NED is recorded (Colo. Rev. Stat. Ann. § 38-38-103(1)(a), (4); see Providing Materials to the Public Trustee).
- Set an initial date for the foreclosure sale between:
 - 110 and 125 days after the NED is recorded for most types of property; and
 - 215 and 230 days after the NED is recorded for agricultural property.

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

- Send a second combined notice to the specified interested parties between 45 and 60 days before the first scheduled sale date (Colo. Rev. Stat. Ann. § 38-38-103(1)(b)). The lender may provide an amended mailing list in advance.

- Publish certain portions of the combined notice:
 - once per week for five consecutive weeks;
 - in a newspaper or other publication of general circulation in the county where the property is located; and
 - starting between 45 and 60 days before the first scheduled sale date.

(Colo. Rev. Stat. Ann. § 38-38-103(5)(a).)

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).)

Right to Cure

If the only default is nonpayment, certain persons have the right to cure and terminate the foreclosure proceedings before the sale, including:

- The property owner.
- The borrower and others liable for the debt.
- Some junior interest holders.

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

The person proposing to exercise the cure right must provide to the public trustee at least 15 days before the sale both:

- A notice of intent to cure.
- Evidence of the person's right to cure.

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

The public trustee must inform the lender of the notice to cure at least 12 days before the sale. The lender or its counsel must file a statement providing the cure amount with the public trustee. The cure amount:

- Is generally the sum of the unpaid debt service installments (including default interest), other charges due under the deed of trust, and foreclosure expenses.
- Must be paid by 12:00 noon on the day before the sale.

(Colo. Rev. Stat. Ann. § 38-38-104(2).)

Foreclosure Sale

Before any foreclosure sale by the public trustee, the lender must deliver a court order authorizing the sale under C.R.C.P. 120. The order must:

- Recite the date a court hearing was scheduled (if no hearing was held) or completed (if a hearing was held).
- Be obtained at least 16 days prior to the foreclosure sale.

(C.R.C.P. 120(d)(3); see Right to Cure.)

Rule 120(a)(1) sets forth the requirements for the lender to file a “Verified Motion for Order Authorizing a Foreclosure Sale under C.R.C.P. 120,” including exhibits. Responses are due 21 to 35 days after filing. The lender must identify various interested parties in the motion and provide them with notice of the motion in the prescribed form and manner (C.R.C.P. 120(a), (b)). The scope of a Rule 120 hearing is limited to determining:

- The existence of a default authorizing the power of sale.
- Compliance with the Servicemembers Civil Relief Act (50 U.S.C. § 3931).
- Whether the lender is the real party in interest.
- Whether the status of any loan modification request bars foreclosure.

(C.R.C.P. 120(d)(1).)

Redemption

The borrower does not have a post-sale right of redemption but may exercise its statutory right to cure the default before the foreclosure sale (see Right to Cure).

Holders of junior liens, easements, and leases have certain rights to redeem the property after the foreclosure sale through specified notices, procedures, and filings with the public trustee (Colo. Rev. Stat. Ann. § 38-38-302). If any junior interest holder exercises its redemption rights, the foreclosure process extends for approximately:

- One month (15 to 19 business days) to accommodate the most senior interest eligible for redemption.
- One additional week (five business days) for each other interest holder exercising its redemption right by order of priority.

(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:

- Publishing costs for the notice of sale.
- The public trustee’s fee. The fee is \$300 if the original principal amount of the debt secured by the deed of trust is \$500,000 or less. If the original secured principal is more than \$500,000, the fee is:
 - 1/16th of 1% of the original principal amount or the outstanding principal balance, whichever is less; and
 - a minimum of \$300.
- 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 or lenders to make loans secured by real property in Colorado if the bank or lender has no other established business presence in the state.

A foreign entity is not considered to be transacting business in Colorado (and consequently does not have to register with the [secretary of state](#)) if its only activities in the state include:

- Creating or acquiring:
 - indebtedness; or
 - mortgages or other security interests in real or personal property.
- Securing or collecting debts on its own behalf or enforcing mortgages or security interests in the collateral.
- Owning real or personal property without more.

(Colo. Rev. Stat. Ann. § 7-90-801(2).)

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, remotely notarized documents, or both, 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. § 24-21-514.5).

There may be specific requirements for performing RON. 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, and pending electronic recording and RON laws, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart](#). To view and customize comparison charts on electronic signatures, recording, and notarization laws across states, see Quick Compare Chart, State Laws on Electronic Signatures, Electronic Recording, and Remote Notarization.

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