

January 1942

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Dicta Editorial Board

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Recommended Citation

Bar Association Warns Holders of Encumbrances, 19 Dicta 65 (1942).

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The committee of the Colorado Bar Association, of which Percy S. Morris of Denver, is chairman, which was appointed by direction of the Board of Governors to give publicity to a warning to holders of encumbrances on real estate in Colorado that they are in serious danger of losing their investments in certain cases unless by the 28th of March of this year they record with the county clerk and recorder an extension, has prepared a statement to the public containing a summary of the provisions of the 1927 statute, as amended in 1933, requiring the filing of the extensions and has mailed a copy of the statement to each of the two hundred sixty-five newspapers in Colorado with a letter to each stating that many holders of encumbrances coming within the provisions of the statute are not aware of its existence and will not protect their mortgages unless they are advised through the press or otherwise of the necessity of recording the extension by March 28th and asking the newspaper to give the contents of the statement as prominent heading and space as possible in an early issue.

The committee has also sent the statement to the county clerk and recorder and the county treasurer of each of the sixty-three counties in the state with a letter to each asking him to post the statement in a prominent place in his office and to allow it to remain there at least until after March 28.

The statute in question¹ provides that no lien upon real property created by mortgage, trust deed or other instrument in writing, securing the payment of an indebtedness, shall remain a lien longer than fifteen years after the last or final payment of the principal is due and payable as shown by the recorded instrument unless, during such fifteen years, there is recorded with the county clerk and recorder of the county in which the real estate is situate an extension signed by the owner of the indebtedness and describing the mortgage, deed of trust or other instrument, setting forth the date to which the payment of the indebtedness, or any part thereof, has been extended or, if no extension has been agreed upon between the holder of the indebtedness and the then owner of the property, reciting that the holder of the indebtedness desires to continue in effect the lien and notice of such mortgage, deed of trust or other instrument. It further provides that, with respect to debts which fell due before the 1927 act was approved, the holders of the debts shall have fifteen years from the date of the approval of the act in which to record the extension. As the date of the approval of the 1927 act was March 28, 1927, the fifteen years from that date will expire on March 28 of this year.

¹COLO. ST. ANN. (1935) c. 40, §§ 122-134.

After calling attention to these provisions of the statute, the statement prepared by the committee continued with the following:

"Therefore, The Colorado Bar Association is extremely desirous that the widest publicity be given to the foregoing facts in order that each person owning a debt or loan secured by a mortgage or deed of trust or other instrument of lien upon real estate in Colorado may be advised that, if the debt or loan which he holds became due on or before March 28, 1927, and if no extension of such debt or loan has been recorded since March 28, 1927, he must, before March 28 of this year, file with the county clerk and recorder of the county in which the real estate is located an extension and that, if he does not do so, he may lose the amount of the debt or loan which he holds.

"Also, with respect to debts and loans falling due after March 28, 1927, the statute provides that, in order to keep alive the liens on real estate securing them, an extension must be filed with the county clerk and recorder within fifteen years after the indebtedness became due and also within fifteen years after each date to which time of payment shall have been extended by a recorded extension. So that, after March 28 of this year and continuing indefinitely thereafter, a mortgage, deed of trust or other instrument of lien will become unenforceable at the end of fifteen years after the time when the debt secured by it falls due and at the end of fifteen years after the date to which a previous recorded extension had extended the time of payment, unless during each such fifteen years an extension is so recorded.

"Even though payments of interest or principal are being made regularly on the indebtedness, the extension should nevertheless be recorded. Anyone in doubt as to when, in order to protect his mortgage or deed of trust, he must file an extension, should, before March 28 of this year, either record such an extension or secure competent advice on the matter."

Attorneys will, of course, be vigilant to see that extensions are recorded not later than March 28 of this year as to all encumbrances in their charge where, by the provisions of the statute, extensions are required to be filed on or before that date in order to keep the liens alive. And the committee further suggests that each attorney advise each client who holds or may hold any encumbrance falling within the statute to determine whether an extension must be recorded to preserve the lien of same.

Attention is also called to the fact that Section 123 provides that "the original extension, and all additional and further extensions shall, in no event, extend the lien or the original mortgage, trust deed or other instrument, beyond a total of thirty years."