

**IMPORTANT FORECLOSURE INFORMATION SHEET – DRAFT 3/30/2015**

THIS INFORMATION SHEET IS NOT LEGAL ADVICE. IT IS PROVIDED FOR YOUR INFORMATION ONLY. IF THERE IS ANY INCONSISTENCY BETWEEN THIS INFORMATION SHEET AND THE PROVISIONS OF THE COLORADO REVISED STATUTES GOVERNING FORECLOSURES, THE PROVISIONS OF THE COLORADO REVISED STATUTES GOVERN AND CONTROL.

- **SALE DATE:** The filing by a lender of a Notice of Election and Demand (NED) with the Public Trustee starts the foreclosure process. *If the property is residential, initial sale date is set between 110-125 calendar days* after the NED is recorded; *if agricultural, it is set between 215-230 calendar days after same.* Sale dates may be moved to a later date for up to one year from the original sale date.
- **COMBINED NOTICE (CN):** Indicates location and date of sale, foreclosing lender, its foreclosing attorney and amount of outstanding principal. *The CN is mailed within 20 calendar days of recording of the NED.* The CN also addresses the rights to cure and/or redeem. *A second CN is mailed and is also published in a newspaper of record 45-60 calendar days prior to the first scheduled sale date.*
- **LOAN MODIFICATION:** If a foreclosure has commenced but you have confirmation from the foreclosing attorney or the lender that you submitted a complete loan modification application or have been offered and accepted a loan modification and are complying with its provisions, you can ask the Public Trustee (PT) to postpone the sale if you present to the Public Trustee written notification of same from the lender or foreclosing attorney *no later than 14 calendar days before the sale date.* The loan application itself must be dated *at least 37 days prior to the sale date.* The Public Trustee will contact the lender to respond to these allegations and may postpone the sale date pending determination of this inquiry.
- **INTENT TO CURE (ITC):** A borrower facing foreclosure has the right to “cure” the default; in other words, to bring the loan current. If you intend to cure, you must provide notice to the Public Trustee *at least 15 calendar days prior to the scheduled sale date,* to be guaranteed cure figures. The PT will then contact the foreclosing attorney or lender who has *10 business days upon receipt of ITC to provide cure figures;* that is, the amount required to cure the default; otherwise, the PT has the prerogative to continue the sale date further into the future. Payment of the cure amount must be made, in full, via certified funds (cashier’s check), cash, or electronic transfer to the PT’s account.
- **DEFERMENT:** If certain eligibility requirements are met, residential foreclosures require posting of a Notice of the Opportunity for Foreclosure Deferment which describes the deferment program and procedures to follow in order to qualify. *If the borrower qualifies, the sale date may be continued up to 90 days.*
- **COURT ORDER:** A court Order Authorizing Sale (OAS) must be obtained before a sale can occur. A notice will be posted on the property with the date and location of a court hearing, known as a Rule 120 hearing.
- **SALE POSTPONEMENT (CONTINUANCE):** The scheduled sale date for auction will be continued if either the lender requests it or fails to provide an opening bid to the PT’s office.

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- **INTENT TO REDEEM (ITR):** An ITR, along with the required fee and documents, *must be filed by a qualified junior lienor within eight business days post-sale*, in order to redeem the property or receive overbid/excess funds.
- **CONFIRMATION DEED:** Title to the property *automatically vests nine business days post-sale* – or after all redemption periods expire. A Public Trustee Confirmation Deed may be issued after the title vests.
- **OVERBID/EXCESS FUNDS:** Ordinarily, a person buying a house at auction pays \$1.00 over whatever bid the lender submitted. If, however, more than one party is interested, competitive bidding ensues, resulting in the amount for which the home is sold being higher than the bid submitted. The extra amount generated by competitive bidding is known as “Overbid” or “Excess Funds.”
- **DISTRIBUTION OF OVERBID/EXCESS FUNDS:** At the end of the redemption period and after title has vested, Overbid/Excess funds are distributed in the following order: If the bank submitted a bid for less than the total due in the property, the amount still due is called a “Deficiency” is still owed by the foreclosed-upon homeowner. If there are excess funds and a deficiency\*, **the bank is always paid first.** Next in line is any qualified junior lien-holder who has *filed an Intent to Redeem (ITR) within eight business days post-sale*. If there are any funds remaining, they are paid to the property owner at the time the foreclosure started.

\*Example: The lender submits a bid for \$120,000 on a property that carries a total due of \$130,000, thus leaving a \$10,000 deficiency. Due to competitive bidding on behalf of multiple investors, the property sells at auction for \$160,000, generating excess funds of \$40,000. The bank receives back its initial bid of \$120,000 as well as the amount it had initially written off, the \$10,000 deficiency. This leaves excess funds of \$30,000. Two lien-holders who have filed ITR on the property, one for \$10,000 and the other for \$2,000, are paid next, leaving excess funds of \$18,000. This remaining amount is paid to the property owner at the time the foreclosure started.

THE ABOVE IS NOT LEGAL ADVICE. PLEASE CALL OR VISIT YOUR PUBLIC TRUSTEE OR YOUR PUBLIC TRUSTEE WEBSITE TO OBTAIN A COPY OF THE STATUTES GOVERNING FORECLOSURES AND YOUR RIGHTS.

Website:

Telephone number: