



FIDELITY
NATIONAL TITLE COMPANY

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TECHNICAL TIPS

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Colorado Legislative session (2010) — more new laws applicable to the world of real estate

New laws ranging from the 1) adjustment of fees charged by the County Clerk and Recorder for filing a document to \$10 for the first page of a document and \$5 for each additional page (HB 1007), to 2) concerning a requirement that the location of a Private Burial be recorded (HB 1275) and finally to, 3) the sale by a railroad company of its right of way for the operation of a public passenger rail service (HB 10-1276) have been passed by the Colorado Legislation in 2010.

Less exotic **new bills** but very applicable to the current real estate **short sale and foreclosure market** are:

1. HB 10-1133 concerning amendments to the Colorado Foreclosure Protection Act effective January 1, 2011

It was found that the language in the Colorado Foreclosure Protection Act requiring the translation of the entire contract into the principal language spoken by the seller was onerous and discouraged the purchase of homes in or near foreclosure if the homeowner was a non-English speaker. Therefore, HB 10-1133 requires only one paragraph be translated into the homeowner's principal language in the form of a **separate notice**:

This transaction involves important and complex legal consequences, including your right to cancel this transaction within three business days following the date you sign the contract. You

should consult with an attorney or seek assistance from a housing counselor by calling the Colorado Foreclosure Hotline

In addition, HB 10-1133 requires the investor (equity purchaser) in a short sale where the equity purchaser intends to flip the property **within 14 days** from the initial closing from the homeowner to the equity purchaser, to provide the short sale lender and the homeowner with notice of the subsequent planned sale from the equity purchaser to the ultimate purchaser.

2. HB 10-1240 concerning the foreclosure deferment process for residential properties

The Federal government's loan modification program (HAMP) and the short sale or deed in lieu program (HAFA) has caused Colorado's State Legislature to pass amendments to Colorado's current foreclosure statutes (HB 10-1240 and earlier in HB 09-1276) which permit the **deferment or delay of the foreclosure time-line** when the borrower applies for the HAMP program or possibly later to the HAFA program. HB 09-1276 permits the delay of the foreclosure time-line, when the borrower applies for HAMP, not to exceed 90 days (trial period). HB 10-1240 requires the **"Notice of Opportunity for Foreclosure Deferment"** not be posted prior to the date the Public Trustee determines that the documents filed for the commencement of the foreclosure are complete and accurate. This "Notice" shall contain:

Disclaimer: Legal, accounting or other expert advice should always be obtained from a competent professional.



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- Telephone number for the holder and the attorney for the holder of the debt who filed the notice of election and demand
- Public Trustee foreclosure number

Procedures for foreclosure deferment include requiring the foreclosure counselor to notify the holder or the attorney for the holder if an eligible borrower who has qualified for a foreclosure deferment opts not to take part in the deferment process. However, if the public trustee receives certification from the foreclosure counselor that the eligible borrower qualifies for a foreclosure deferment, the public trustee shall cancel any remaining publications of the combined notice and shall continue the sale date of the property week to week until receipt that the deferment has been terminated or, if no certification is received, for ninety days or until the next scheduled sale date after the end of the ninety day period. If it is found that the eligible borrower has transferred the title of the property to another party, then the eligible borrower shall not qualify for a foreclosure deferment.

3. HB 10-1249 concerning expedited residential foreclosure sale effective August 1, 2010 *(HB 10-1249 is a three year program, not permanent)*

Colorado's current foreclosure statutes require a cure period between the recording of the notice of election and demand and the date of sale to be 110 to 125 days if property is not assessed agricultural. Currently, many homes in foreclosure have been abandoned by the owners/borrowers. On or after August 1, 2010, HB 10-1249 permits the holder of the debt to have an expedited sale if **the property**

is found to be abandoned by a court if the holder of the debt requests an order for expediting sale to occur between 40 and 55 calendar days from the recording of the notice of election and demand. An affidavit shall be signed by and based on personal knowledge of the holder of the debt, or agent of the holder of the debt, the sheriff of the county in which the property is located, a building inspector or other municipal or county official have determined the property is **abandoned by affirming at least two of the following supporting facts:**

- Windows and entrances boarded up or window pains broken and unrepaired
- Doors are smashed through, broken off, unhinged or continuously unlocked
- Gas, electric and water service have been terminated for at least 30 days
- Police have received at least two reports of trespassers or vandalism
- Property is deteriorating
- Photographic evidence supporting facts supporting abandonment