

## Foreclosure changes effective Jan 1, 2008 After House Bills 06-1387 and 07-1157

A great portion of this newsletter is devoted to the changes which become effective Jan 1, 2008 in a format created by attorney Greg Notarianni which compares the foreclosure process before Jan 1, 2008 and after Jan 1, 2008. The events within the process are denoted on the column to the left. Please take note that consensual liens i.e. deeds of trust, mortgages must be recorded before the Notice of Election and Demand in order to exercise redemption rights. However, non-consensual lien could record after the Notice of Election and Demand and exercise a redemptive right. In addition, within House Bill 07-1157, a recessionary right has been granted to the foreclosing lender holding the Certificate of Purchase after sale permitting that foreclosing lender and holder of the Certificate of Purchase a right to rescind the Public Trustee Sale within eight business days after the sale.

The owner's redemption period is eliminated on foreclosures commencing after Jan. 1, 2008 evidenced by the recordation of the Notice of Election and Demand. Foreclosures commenced on or before December 31, 2007 will continue to have the owner's redemption period. **WHEN WORKING ON FORECLOSURE PROPERTIES, BE ALERT AS TO WHEN THE NOTICE OF ELECTION AND DEMAND WAS RECORDED... THAT WILL DETERMINE WHETHER A PARTICULAR FORECLOSURE ALLOWS FOR AN OWNER'S REDEMPTION PERIOD OR NOT!**

**Security Title** is also providing the service of "transaction coordination accommodation" for the listing broker in order to assist the listing broker in their communication with the foreclosing lender. This service requires a \$50 fee to be paid up front and an additional \$150 to be paid by the broker at closing for a shortsale closing, as well as a coordination fee of \$195. **Security Title** cannot formally negotiate short pays but **Security Title** can help the process along with contact numbers and guidance from our coordinators.

## Colorado's Foreclosure Statute After House Bills 06-1387 and 07-1157

Colorado has made substantive changes to its foreclosure statute. Below is a table attempting to summarize and compartmentalize those changes, showing the law prior to January 1, 2008, and the law on and after January 1, 2008. This compilation of data is made for purposes of reviewing foreclosures to determine insurability upon completion thereof. This is not a compilation of each and every change to the statute.

The new statute is intended to address a number of issues, including, specifically, the desire to provide more opportunity for debtor to avoid foreclosure by extending the cure period, and making foreclosure investor activity, that clogs the process at the last minute, more difficult.

Prior to July 1, 2006, the owner could grant innumerable deeds of trust at any time during the foreclosure process, and those "lenders" could then file Notices of Intent to Redeem for each such deed of trust, thereby extending the ultimate redemption periods accordingly (5 days for each junior). On and after July 1, 2006, once a foreclosure has been commenced, only three consensual liens recorded thereafter have the right to redeem. Any others cannot. In any event, no consensual lien recorded less than 15 days before the end of the owner's redemption period has a right to redeem.

Also prior to July 1, 2006, anyone with a record interest, including the owner, could wait to file a Notice of Intent to Redeem until the very last day of the owner's redemption period. After July 1, 2006, allowable Notices of Intent to Redeem must be filed 15 days before the end of the owner's redemption period .

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# Technical Tips written by: Ron Childs

Events	Before January 1, 2008	After January 1, 2008	ORDER AUTHORIZING SALE	The Order Authorizing Sale shall be dated or recite that the hearing was completed on or before the day prior to the last day on which an effective notice of intent to cure may be filed with the PT	1) The Order Authorizing Sale shall recite the date the hearing was scheduled, if no response was filed or the date the hearing was completed, if a response was filed and that date shall be no later than the day prior to the last day on which an effective notice of intent to cure may be filed with the PT. 2) The order authorizing sale shall be submitted to PT no later than 12 noon on the second business day prior to the date of sale.	LAST DAY TO SUBMIT REDEMPTION STATEMENT TO PT	The holder of the certificate of purchase shall submit an initial statement to the PT at least 7 calendar days prior to the expiration of the redemption period or within 10 calendar days after receipt of notice of intent to redeem by PT, whichever is earlier, all sums necessary to redeem as of the date of the statement together with the per diem interest. The statement may be amended but in no event later than the 7th calendar day prior to the expiration of the redemption period.	The holder of the certificate of purchase shall submit a signed redemption statement to the PT no later than 13 business days following the sale. The statement must include a per diem interest amount. The statement may be amended but not later than two business days prior to the commencement of the redemption period for each junior lienor entitled to redeem.
<b>PT'S RECEIPT OF FORECLOSURE DOCUMENTS</b>	Foreclosure documents including Notice of Election and Demand for Sale ("NED") received by Public Trustee ("PT")	Foreclosure documents including Notice of Election and Demand for Sale ("NED") received by Public Trustee ("PT")						
<b>RECORDING OF NED</b>	1 Within 10 working days after receipt, the PT shall commence the foreclosure by recording the NED in the office of the county clerk and recorder. 2 Upon recording of the NED the PT shall publish a notice of sale for five successive weekly insertions.	No later than 10 business days after receipt, the PT shall record the NED in the office of the county clerk and recorder	<b>LAST DAY TO FILE INTENT TO CURE</b>	Owner, anyone liable on the debt, holders of interests junior to the lien being foreclosed or other specified interests may file a written intent to cure at least 15 calendar days prior to the date the foreclosure sale is held	Owner as of the time of recording of the NED, certain persons claiming through owner, anyone liable on the debt, holders of interests junior to the lien being foreclosed (if interest recorded prior to NED) or other specified interests may file a written intent to cure at least 15 calendar days prior to the date the foreclosure sale is held			
<b>MAILING OF NOTICE OF SALE</b>	Within 20 calendar days after the date of first publication of notice of sale, PT shall mail a copy of the notice of sale to (1) the grantor of the deed of trust, (2) to each subsequent owner of record and (3) persons who have acquired a record interest in the property after the recording of the deed of trust being foreclosed and prior to the recording of the NED.		<b>DEADLINE FOR SUBMITTING CURE STATEMENT TO PT</b>	Where a timely intent to cure is filed, the owner of the evidence of debt must submit a written statement to the PT setting forth the amount necessary to cure the default on or before 12 noon on the seventh calendar day before the day upon which the sale is set.  <b>Penalty</b> – PT shall postpone the sale for no longer than two weeks and thereafter from week to week until statement is provided.	<b>If request for cure statement is received by holder of evidence of debt 30 calendar days or less before the sale date</b> - cure statement must be provided to PT by 12 noon on the 7th calendar day prior to the sale date. <b>PENALTY</b> – Failure to provide cure statement– PT continues the sale week to week until cure statement is filed. <b>If request for cure statement is received by holder of evidence of debt more than 30 calendar days before the sale date</b> – cure statement must be provided to PT within 10 business days after receipt of request <b>PENALTY</b> – If cure statement is not filed with the PT by 12 noon on the 7th calendar day before sale, the PT shall continue the sale from week to week until cure statement is provided.			
<b>INITIAL MAILING OF COMBINED NOTICE OF SALE AND RIGHT TO CURE AND RIGHT TO REDEEM</b>		Initial mailing of the combined notice of sale and rights to cure and redeem shall be mailed no more than 20 calendar days after the recording of the NED to (1) the original grantor of the Deed of Trust, (2) any person liable on the debt and (3) the occupant.	<b>DEADLINE FOR SUBMITTING CURE FUNDS to Public Trustee</b>	Cure funds must be tendered to the PT on or before 12 noon on the day before the date upon which the sale is set	Cure funds must be tendered to the PT on or before 12 noon on the day before the sale	<b>LAST DAY TO REDEEM</b>	Non-agricultural property – Within 75 days of the date the sale is held, the owner or other person liable for a deficiency who has filed an intent to redeem may redeem by paying to the PT the amount necessary to redeem.  If no redemption is made within 75 days, the most senior, junior lienor who has filed an intent to redeem may redeem within ten days after the expiration of the 75 day period. Subsequent junior lienors who have filed an intent to redeem are allowed successive 5-day periods to redeem.  Agricultural property – Within 6 months of the date the sale is held, the owner or other person liable for a deficiency who has filed an intent to redeem may redeem by paying to the PT the amount necessary to redeem.  - If no redemption is made within 6 months, the most senior, junior lienor who has filed an intent to redeem may redeem within ten days after the expiration of the six month period. Subsequent junior lienors who have filed an intent to redeem are allowed successive 5-day periods to redeem.	
<b>SUPPLEMENTAL MAILING OF COMBINED NOTICE OF SALE AND RIGHT TO CURE AND RIGHT TO REDEEM</b>		Supplemental mailing of the combined notice shall be mailed no more than 60 nor less than 45 calendar days prior to the first scheduled sale date to (1) the original grantor of the Deed of Trust, (2) any person liable on the debt, the occupant, and (3) each person who appears to have an interest in the property recorded prior to the NED.	<b>BID SUBMITTED TO PT</b>	Owner of the evidence of debt must submit written bid to PT before 12 noon on or before the day prior to the date of sale.	Holder of the evidence of debt must submit written bid to PT before 12 noon on the second business day prior to the date of sale.			
<b>MAILING OF COMBINED NOTICE OF RIGHT TO CURE AND RIGHT TO REDEEM</b> Day 20-35 (approximately) Within 20 calendar days after recording of NED	PT shall mail a combined notice of right to cure and right to redeem to (1) grantor of the deed of trust, (2) each subsequent owner of record and (3) persons who have acquired record interest in the property after the recording of the deed of trust being foreclosed and prior to the recording of the NED who have a right to cure or redeem		<b>SALE DATE</b>	PT shall schedule a sale date not less than 45 calendar days nor more than 60 calendar days after the date of recording of the NED.  If a corrected notice of sale must be published, the sale may be continued to a date no more than 30 days after the fifth corrected notice of sale is published.	Non-agricultural property – the PT shall set the initial date of sale no less than 110 calendar days nor more than 125 calendar days after the date of recording of the NED.  Agricultural property – the PT shall set the initial date of sale no less than 215 calendar days nor more than 230 calendar days after the date of recording of the NED.			
<b>AMENDMENT OF MAILING LIST</b> Day 20-35 (approximately) Within 20 calendar days after recording of NED	Mailing list may be amended or supplemented in writing prior to the date required for the mailing of notices.		<b>CONTINUANCE OF SALE DATE</b>	No later than six months from the date originally designated in the notice of sale excluding periods of time where a bankruptcy or other court ordered stay is in effect.	No later than twelve months from the date originally designated in the combined notice of sale and right to cure and right to redeem excluding periods of time where a bankruptcy or other court ordered stay is in effect.	<b>VESTING OF TITLE</b>	Title to the property vests in the holder of the certificate of purchase or the holder of the certificate of redemption issued to the last redeeming lienor upon the expiration of the redemption period allowed to the owner and all subsequent lienors entitled to redeem.	Title to the property vests in the holder of the certificate of purchase or the holder of the certificate of redemption issued to the last redeeming lienor upon the expiration of the redemption period of all lienors entitled to redeem. In the event there are no lienors entitled to redeem, title to the property vests in the holder of the certificate of purchase at the close of the PT's business day on the eighth business day after sale.
<b>AMENDMENT OF MAILING LIST</b> No less than 65 calendar days prior to the date of sale		The holder of the evidence of debt may deliver an amended mailing list to the PT no less than 65 calendar days prior to the date of sale. PT shall send the combined notice to persons on the amended mailing list no less than 60 calendar days prior to the date of sale.  <b>AFTER FIRST PUBLICATION OF COMBINED NOTICE</b> – the holder of the evidence of debt may deliver an amended mailing list to the PT and the PT shall mail the amended combined notice, republish and continue the sale.	<b>LAST DAY TO FILE NOTICE OF INTENT TO REDEEM</b>	The owner, any other person liable for a deficiency and lienors who have a lien of record within the time for filing a notice of intent to redeem may file a notice of intent to redeem with the PT at least 15 calendar days prior to the end of the redemption period.  Note – the holder of the certificate of purchase may in writing allow the PT to accept a late filed notice of intent to redeem provided it is filed prior to the expiration of the redemption period.	A junior lienor entitled to redeem may file a notice of intent to redeem with the PT within 8 business days after the sale.  A junior lienor may file a late intent to redeem if the redemption period for that junior lienor has not expired and the holder of the certificate of purchase authorizes the PT to accept such late intent in writing.			

<sup>1</sup> Counsel for the lender may waive this deadline, in writing. C.R.S. §38-38-302(1)(b).

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