



Big Changes in Foreclosure Process

House Bill 06-1387 became law in June of 2006 although many of its provisions will not take effect until July 1, 2007. **The current foreclosure time line remains in place on all foreclosures commenced before July 1, 2007.**

The following provisions take effect July 1, 2006:

- The Public Trustee in the county where the property is located will act as a successor trustee in a deed of trust containing a grant of a power of sale to a public trustee if the county name is omitted or if the county listed is incorrect on the recorded deed of trust
- Payments to Public Trustee must meet the definition of good funds (funds available for immediate withdrawal as a matter of right)
- Public Trustee shall have the authority to maintain and manage custodial accounts and funds may be transmitted electronically to the attorney for the note holder
- Court order authorizing sale (Rule 120 hearing) to be provided to Public Trustee no later than 12 noon on the second business day prior to sale date...otherwise sale is invalid
- Public Trustee may accept documents in an electronic format subject to uniform policies set forth by the Public Trustee
- All Colorado Tax Liens, other than liens for withholding taxes, may be divested by foreclosure in the same manner as other liens upon the property being foreclosed, with the State having the same redemption rights as other lienors in such a foreclosure. This statutory provision expressly states that the foreclosing lender is not required to make the written request, or to commence a civil action, thus providing a substantially faster, easier and more effective means of divesting most State tax liens from the property subject to foreclosure

Some definitions that will help you read this newsletter:

- Attorney for the Holder** means the attorney for the foreclosing lender
- Combined notice** is the new single notice combining the notice of sale and notice of right to cure and redeem
- Confirmation Deed** is the new term for the Public Trustee's Deed
- Evidence of Debt** must be in writing and evidence a "promise to pay or a right to the payment of a monetary

obligation" which is now expanded to include a debt instrument secured by a deed of trust is reduced to a judgment, that the deed of trust may now be foreclosed through the Public Trustee, rather than foreclosed judicially

- Holder of evidence of debt** is the foreclosing lender
- Mailing list** now includes three types including the **initial, the supplemental and the amended mailing lists**
- Officer** is the Public Trustee
- Qualified holder** means a holder authorized to foreclose

The following provisions will take effect July 1, 2007:

- Public Trustee shall maintain checking accounts for clearing house purposes, escrow accounts with a Bank or Savings & Loan designated as an "eligible public depository"
- Agricultural property is property not platted as a subdivision, is not located within a city or incorporated town (as set forth in a written statement by the clerk of the city or incorporated town) and is valued and assessed as agricultural property by the assessor (as set forth in a written statement of the assessor). Characterization of property as agricultural property for purposes of foreclosure is a binding determination made by the officer of the Public Trustee's office utilizing the evidence set forth above
- Combined notice shall be the notice of sale, right to cure and right to redeem sent to all persons who have an interest before the notice of election and demand is recorded if the person's interest may be extinguished by the foreclosure. The Combined Notice must be mailed out twice (initial and supplemental)
- Confirmation Deed means the deed issued by the Public Trustee
- Upon receipt of intent to redeem, the holder of the Certificate of Purchase submits a Statement of Redemption within 14 days after the date of sale setting forth all sums needed to redeem. Statement of Redemption is a statement of the holder of the debt. The intent to redeem must be filed no later than ten days after the sale by a lien holder

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- The foreclosure packet shall contain notice of 1) notice of election and demand, 2) original evidence of debt or corporate surety bond at one and a half times the face amount of the original note or statement signed by “qualified holder” of the note or their attorney of the holder of the note, 3) the original recorded deed of trust or certified copy, 4) combined notice, and 5) initial mailing list no less than sixty days from first scheduled sale date
- Foreclosure of a portion of subject property is permitted if the parcels are described separately on the deed of trust. Foreclosure of a portion of the security does not affect the power of sale as to the remaining property
- Written bid must be submitted by the holder of the evidence of debt to the Public Trustee no later than the second business day prior to the sale date...if not received by time deadline, sale is continued for one week. A written bid may be amended in writing or electronically no later than 12 noon on day prior to the sale or orally at the time of sale
- A written bid must be made public including line items in the bid form for utilities and HOA fees and charges and the bid may be based on good faith estimate of fair market value less certain senior liens, unpaid property taxes and less reasonable costs and expenses for holding, marketing and selling the subject property
- When scheduling the initial date of sale on non-agricultural property, the Public Trustee must set the sale date between 110 days and 125 days of the recording of the notice of election and demand...when scheduling agricultural property sale date, the Public Trustee must set the sale date between 215 days and 230 days from the recording of the notice of election and demand
- The date of sale (cure period) has been extended by combining the previous cure and redemptive periods; and thus, eliminating the owner foreclosure redemption period
- The sale can only be continued week to week for up to 9 months at the request of the holder of the note except for sales affected by bankruptcy proceedings. Continuance is for any reason deemed “good Cause” by the Public Trustee
- If the bankruptcy petition is filed when all publications are complete, the sale will be continued on a week to week basis
- If the bankruptcy petition is filed when all publications have not been completed, the Public Trustee must cancel remaining publications and the sale cannot be continued. Once abandonment occurs or the bankruptcy case is closed, the Public Trustee must re-record the notice of election and demand and proceed as though the foreclosure had just been commenced
- Junior lienors may redeem after sale date if the subject lien was recorded BEFORE the notice of election and demand
- Junior lienors have within 10 days after sale to file lienor’s intent to redeem and upon receipt of the intent to redeem, the Public Trustee within one day must request from the holder of the certificate of purchase a written statement of all sums necessary to redeem (the “Statement of Redemption”)
- On the eleventh day after sale, the Public Trustee shall set the dates of the redemption period of each lienor
- Upon receipt of the request for written statement of all sums owed, the holder of the certificate of purchase has no later than 14 days following the sale date to provide a Statement of Redemption
- Once the intent to redeem is filed within the permitted time frame, the most senior junior lienor has between 15 and 20 days after the sale to redeem...each subsequent lienor has an additional period of 5 days to redeem. Redemption requires payment of all sums due on or before 12 noon of the last day of the lienor’s redemption period
- After all redemption periods expire, title vests in the holder of the certificate of purchase and the Public Trustee will issue the Confirmation Deed no later than 15 days after the sale or after all redemption periods expire and upon receipt of all statutory fees and costs