

## Colorado Foreclosure Process

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**This document is provided to you to gain a general understanding for the foreclosure process. It is broken down into types of foreclosures, the foreclosure process for filing a foreclosure, foreclosure process prior to sale, foreclosure process after sale, and frequently asked questions.**

### There are three main types of foreclosures:

**The Public Trustee Foreclosure** - Foreclosures conducted by the office of the Public Trustee on deeds of Trust containing a power of sale (right to sell property at public auction in the event of default). The procedure for conducting the foreclosure is set by Colorado State Statutes and must be followed precisely. The Deed of Trust is an agreement between three parties: the Grantor (owner), the Public Trustee (who has the power of sale), and the Beneficiary (lender).

**The Tax Sale** - The Tax Sale is the sale of real property by the Treasurer for failure to pay real estate taxes. The procedure is set by statute.

**The Judicial Foreclosure** - A judicial foreclosure is conducted through the court system on a mortgage, deed of trust, or judgment. The procedure for conducting the foreclosure is under Rule 105 of the Colorado Rules of Civil Procedure. A mortgage is an agreement between two parties, the mortgagor (owner) and the mortgagee (lender).

## Colorado foreclosure process:

Colorado Revised Statute 38-38-101 requires certain documents be filed with the Public Trustee in order to initiate a foreclosure. The following documents are required to start the Public Trustee foreclosure.

- Cover letter.
- \$300 minimum deposit payable to the County Public Trustee (please check local county for actual fee). If the note amount is greater than \$400,000, call for the deposit amount.
- The Original Evidence of Debt or one of the following:
  - A corporate surety bond (lost instrument bond) issued by a company authorized to issue such bonds in the State of Colorado in one and one-half times the face value of the original evidence of debt; or
  - A copy of the evidence of debt as well as a certification from the lender or the agent or attorney stating that the lender is:
    1. A qualified institution according to C.R.S. 38-38-101(1.5);
    2. The lender is the owner and holder of the original evidence of debt;
    3. The copy of the evidence of debt is true and correct; and
    4. The use of the copy of the evidence of debt is subject to the conditions outlined in C.R.S. 38-38-101(1.6).
      - Original Deed of Trust or a certified copy thereof. A certified copy may be obtained from the Clerk and Recorder at the local county in which property resides. Include assignments, releases and merger agreements if appropriate.
      - Two originally signed Notice of Election and Demand forms, which state whether all or a portion of property is being foreclosed and which further state the outstanding principal balance.
      - A notarized affidavit stating the outstanding principal balance.
      - A certificate stating the name and address of the current owner of the property.

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- One copy of the Notice of Public Trustee Sale which states whether all or a portion of the property is being foreclosed and which further states the outstanding principal balance. The notice needs to state the "The lien being foreclosed may not be a first lien." The attorney's name, address and telephone number also must be included. The Public Trustee sale is held at the office of the Public Trustee, in which the property resides. Please contact the office of Public Trustee for information as to when sales takes place and location.
- One copy of the Cure and Redemption Rights Notice which includes the name of the owner of the evidence of debt and a sufficient number of copies of legal attachments to be mailed with the Notice. Please include as many **legible** copies of the current statutes as are required to be mailed. The names, addresses and telephone numbers of the attorneys representing the foreclosing lienor should be on the notice.
- Two copies of each mailing list together with two sets of stamped, addressed envelopes with the Public Trustee's return address on them. Include one labeled "Occupant."
- No later than noon of the day before the sale, provide:
  - Bid Letter
  - Order Authorizing Sale
  - Certificate of Purchase completely typed in
  - Balance of our fees
  - If in bankruptcy, the Lift of Stay
- At the time a Deed is requested, please provide:
  - Cover letter-requesting Deed
  - The Original Certificate of Purchase
  - Any assignments if applicable
  - A prepared Public Trustee's Deed
  - \$36 for a one-page deed and \$5 for each additional page

## Foreclosure Process Prior to Sale:

After the required documentation is received by the Public Trustee in the county for which the property resides, the Public Trustee files a Notice of Election and Demand with the Clerk and Recorder. The foreclosure sale is set between 45 and 60 days after the date of the Notice of Election and Demand. The foreclosure sale is published in a general circulation newspaper for five consecutive weeks.

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The combined Rights to Cure and Redeem and a copy of the published sale notice are mailed to each individual on the mailing list provided by the foreclosing attorney.

Before the sale, the owner of the property has an opportunity to cure the default on the property by filing an Intent to Cure with the Public Trustee's office. The intent to cure must be filed at least 15 days prior to the sale. We cannot accept late intent forms without the permission of the foreclosing party. The owner must cure the default on the property by 12 noon on the day before the foreclosure sale.

Often, a property will not go to sale on its originally scheduled date because the foreclosing attorney has not filed a bid or because an owner has filed bankruptcy. Filing of a bankruptcy by the owner of the property stops the foreclosure until the automatic stay is lifted, the bankruptcy by the bankruptcy court abandons the property, or the bankruptcy case is dismissed or closed. The foreclosure sale date extends week to week until the Bankruptcy Court takes action.

A property that has not gone to sale on its originally scheduled date is listed as being continued. A list of properties that are being sold or continued is posted each Wednesday morning by our office.

A property can be continued for up to six months by the foreclosing attorney at which time the attorney must withdraw the foreclosure. Properties that are part of a bankruptcy proceeding can be continued indefinitely.

## **How to Cure the Default on a Foreclosed Property**

Colorado Revised Statute 38-38-104 makes provisions for a property owner to cure the default on his mortgage before it goes to foreclosure sale.

### **Filing an Intent to Cure**

The "Intent to Cure" form must be filed with the Office of the Public Trustee at least 15 days prior to the scheduled foreclosure sale date.

The owner must provide evidence of ownership. This may be in the form of the recorded Warranty Deed, Quit Claim Deed, etc. If you do not have the document, a recorded copy may be obtained at the Clerk and Recorder office in the county in which the property resides.

Upon receipt of the completed "Intent to Cure" form, the Public Trustee will request the cure amount from the attorney for the foreclosing party. The foreclosing party must provide the cure amount to the office of the Public Trustee on or before noon on the seventh calendar day prior to the sale date. Failure to provide these figures will postpone the foreclosure sale for no longer than two weeks.

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You will be contacted as soon as the office of Public Trustee receives the cure figures. The funds must be presented to the Office of the Public Trustee no later than noon the day before the scheduled foreclosure sale date. The funds must be in the form of cash or certified funds.

Some things to remember:

- The Public Trustee cannot accept late Intent to Cure forms
- It may take 14 days to receive the cure amount -- please file your Intent to Cure as soon as possible
- It is your responsibility to contact the office of the Public Trustee for updated figures for the amount to cure as interest, late fees, attorney fees, etc., continue to accrue
- Please provide a working phone number where we may contact you with the cure amount

## **Foreclosure Process after the Sale**

An owner has 75 days after the sale to redeem his property. If the property is agricultural, this redemption period is extended to six months. An owner intending to redeem his property needs to file a written intent to redeem by day 60 of the owner redemption period. Intent forms will not be accepted after the 60th day without the permission of the foreclosing party.

The Public Trustee will then obtain a redemption amount which will be for the amount that the property was sold for at sale, per diem interest at the default rate of the note, and any other expenses allowed by law. An owner must present the redemption amount in cash or certified funds to the Public Trustee by the close of business on the final day of redemption. The Public Trustee cannot accept late redemption proceeds.

In an owner redemption, the sale is annulled and the owner retains title to the property subject to all liens and encumbrances of record except for the deed of trust that was foreclosed upon (the owner has paid off this deed upon redemption).

For junior lien holders, the redemption period begins after the owner redemption period has expired. The first junior lien holder has ten days to redeem the property and each subsequent junior lien holder then has five additional days to redeem the property.

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Intents to redeem by a junior lien holder must be filed with the Public Trustee by **day 60 of the owner redemption period**. In junior lien holder redemptions, the junior lien holder must have a recorded interest in the property prior to day 60 of the owner

redemption period. There is a \$50 fee to file an intent to redeem and the junior lien holder must present a certified copy of the recorded interest in the foreclosed property.

If there is an Internal Revenue Service (IRS) lien against the property, the IRS must file an intent to redeem and must follow the junior lien holder redemption process outlined in the state statutes. The IRS also has a 120-day federal redemption right which begins on the last day of the owner redemption period. If the IRS redeems under federal law, the Public Trustee's office is not involved in this redemption (i.e., issuing a certificate of redemption). If the United States government has a lien on the property (Small Business Administration or U.S. Treasury – not IRS), then the U.S. government is granted a one year redemption period and does not have to file an intent to redeem with the Office of the Public Trustee.

A redeeming lien holder must present the redemption amount in cash or certified funds to the Public Trustee by the close of business on the final day of his redemption period. The Public Trustee cannot accept late redemption proceeds. A certificate of purchase holder may pass on certain expenses to a redeeming lien holder. A junior lien holder may only include expenses as outlined in [C.R.S. 38-38-303\(4\)](#).

Certificate of Redemption is issued to the party redeeming the property from the foreclosure. This redemption interest is fully assignable.

A Public Trustee's Deed is issued to the holder of the Certificate of Purchase if there has been no owner redemption and no other intents to redeem were filed or the Public Trustee's Deed is issued to the last redeeming junior lien holder after the expiration of all redemption periods.

In both instances, title vests free and clear of all liens and encumbrances junior to the foreclosed lien except omitted parties--parties that were not notified of the foreclosure but who have an interest in the property.

## How to Redeem After the Sale

[C.R.S 38-38-302](#) makes provisions for the owner of a property in foreclosure to redeem the property after it has gone to foreclosure sale.

### Filing an Owner Intent to Redeem

After the foreclosure sale the owner of the property has a "redemption" time in which to redeem the property. Residential/commercial property owners have 75 days to redeem the property. Owners of agricultural property have six months to redeem the property.

An owner intending to redeem his property must file a written intent to redeem with the Public Trustee's office at least 15 days prior to the expiration of the owner redemption period. Intent forms cannot be accepted late without the permission of the foreclosing party. Attorneys can file intent to redeem for their clients. Title companies cannot file an owner intent to redeem. If there are multiple owners, only one needs to file.

Upon receipt of the completed "Intent to Redeem" form, the Public Trustee will request the figures for the redemption amount from the foreclosing party. This amount will be the amount the property sold for at sale, per diem interest at the default rate of the note, and any other expenses allowed by Colorado law. The requested amount must be presented in the form of certified funds or cash to the office of the Public Trustee on or before the final day of the owner's redemption.

In an owner redemption, the sale is annulled and the owner retains title to the property, subject to all liens and encumbrances of record except the deed of trust that was foreclosed upon (the owner has paid off this deed upon redemption).

Some things to remember:

- The Public Trustee cannot extend the owner redemption time.
- The Public Trustee cannot accept late redemption funds.
- It may take as many as 14 days to receive the requested redemption figures - please file the Owner "Intent to Redeem" form as soon as possible.
- It is your responsibility to contact the office of the Public Trustee for updated figures for the amount to redeem. Interest, late charges, attorney fees, etc., continue to accrue during the redemption time.
- Please provide a working phone number where we may contact you with the figures for the amount needed to redeem the property.

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## How to File an “Intent to Redeem” by Junior Lienor

[C.R.S. 38-38-303](#) provides for a junior lien holder to exercise their right to redeem the property in foreclosure.

The holder of a junior lien must file an Intent to Redeem with the Office of the Public Trustee and pay the \$50 fee within the owner's redemption time. Intents to redeem as a junior lienor must be filed in the Office of the Public Trustee at least 15 days before the expiration of the owner's redemption period. Redemption time for owners of residential/commercial property is 75 days. Redemption time for owners of agricultural property is six months.

The redemption time for the junior lienor begins after the homeowner's redemption has expired. The first junior lienor has ten days to redeem the property and each subsequent junior lien holder has five additional days to redeem. If the United States government has a lien on the property (Small Business Administration or U.S. Treasury that is not the IRS), then the U.S. government is granted a one-year redemption. The IRS may redeem under both the Colorado Revised Statutes and the Federal Statutes. If the IRS files an Intent as a Junior Lienor under the C.R.S., they will be allowed the same redemption rights as other junior lienors.

### **No Lienor is entitled to redeem unless:**

- Such lienor's lien is either a mortgage or deed of trust or is created or recognized by the State or Federal Statute or by judgment from a court of competent jurisdiction.
- Lienor's lien appears by instruments duly recorded or filed as permitted by law within the time for filing a Notice of Intent to redeem which is at least 15 calendar days prior to the end of the redemption period as provided for in [C.R.S. 38-38-302](#)
- Such lienor has filed a Notice of Intent with the Public Trustee at least 15 calendar days prior to the end of the redemption period as provided for in [C.R.S. 38-38-302](#)
- Such lienor has attached to the Notice of Intent to Redeem, a true and correct copy of such recorded instruments evidencing the lien and any assignment of the lien with evidence of recording affixed by the [County Clerk and Recorder's Office](#), and

- Such lienor has attached to the Notice of Intent to Redeem an affidavit of the lienor, signed by the redeeming lienor or such lienor's attorney, setting forth the amount required to redeem such lienor's lien

Note: An agent for the lien holder can no longer file intent to redeem.

## Consensual Liens and Redemptions

A consensual lien for foreclosure redemption purposes is a conveyance of an interest in real property granted by the owner of the property, after the recording of a Notice of Election and Demand, that is not an absolute conveyance of fee title in and to the property, without rights of rescission, reverter, or remainder. Consensual lien includes, but is not limited to, all deeds of trusts, mortgages or other assignments, encumbrances or conveyances as security for the performance of the grantor, and all options, leases, easements, and contracts, including those specified in [C.R.S. 38-38-305](#). Consensual lien does not include liens specified in [C.R.S. 38-38-306](#) (judgment, creditor, mechanics lien, statutory lien) or [C.R.S. 38-33.3-316](#) (homeowner's association lien).

A property owner may issue as many consensual liens as desired. The only consensual liens that have a right to redeem are liens that have been recorded not less than 15 calendar days prior to the end of the owner's redemption period and for which the lienor has filed an Intent to Redeem. If more than three consensual liens encumbering the sold property are recorded after the recording of the Notice of Election and Demand, only the holders of the three most senior of such consensual liens who have filed a timely Notice of Intent to Redeem shall have a right to redeem. The priority of redemption and right to redeem shall be determined by the order of recording of the consensual liens. The order of redemption is determined by the recording of the lien, not the date of the lien or the date that the intent was filed. The liens must be recorded prior to day 60 (assuming a 75-day owner redemption period) and an intent was filed by day 60.

For more information regarding consensual liens and redemptions refer to Senate Bill 02-161 effective July 1, 2002 or the [Colorado Revised Statutes](#) 2002 version - Volume 10.

## **Affidavit to be Filed by Lienor**

[C.R.S. 38-38-303 \(1\), \(2\), and \(4\) \(New Created by Steven PelikantSection\)](#)

At the time of filing an Intent to Redeem ([C.R.S. 38-38-303\(4\)](#)), the lienor or the lienor's attorney files a true and correct copy of the recorded instruments evidencing the lien or any assignment with evidence of recording affixed and an affidavit stating the amount to redeem such lienor's lien.

At the time of redemption ([C.R.S. 38-38-303\(4\)](#)), the lienor or lienor's attorney files an affidavit stating:

- The amount owing on such lien;
- Cost and expenses actually incurred which are permitted by [C.R.S. 38-38-303\(5\)](#) for which such lienor has filed with the Public Trustee receipts or invoices evidencing such costs and expenses incurred as of the last day of the owner's redemption period;
- A statement within this affidavit verifying that such costs and expenses were actually incurred as of the last day of owner's redemption period; and
- The per diem amount that shall accrue thereafter.

[C.R.S. 38-38-303\(4\)](#) states that if the amount owing under the redeeming lienor's lien following the end of the owner's redemption period changes from the amount shown on the affidavit previously delivered to the Public Trustee, the redeeming lienor may at any time prior to such redeeming lienor's redemption submit a revised or corrected [Affidavit](#).

The junior lienor who redeems must present cash or certified funds to the Public Trustee by the end of that junior lienor's redemption time. The junior lienor who redeems is issued a Certificate of Redemption, the cost of which is added to the redemption amount. The cost of a one-page Certificate of Redemption is \$36.

A Public Trustee Deed is issued to the last redeeming junior lien holder after the expiration of all redemption periods. The holder of the Certificate of Redemption will request the Public Trustee Deed in writing, surrender the Certificate of Redemption and pay the \$36 fee to the Public Trustee.

The Intent to Redeem and Affidavit of Amount Owed form may be purchased online from [Bradford Publishing Company](#) or by calling 1-800-446-2831.

### **Additional Information**

Additional information about the foreclosure process can be obtained from the Colorado Revised Statutes, Articles 37, 38, and 39. A copy of the statutes may be purchased from Bradford Publishing at 1-800-446-2831.

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## Frequently Asked Questions Regarding Foreclosures

### **What type of funds are necessary to bid at the Public Trustee Sale?**

Cash or certified funds must be tendered at the time of sale.

### **Where can I obtain information about other liens against this property?**

Information concerning liens recorded against a property can be obtained by contacting the [Douglas County Clerk and Recorder's Office](#), 301 Wilcox St., Castle Rock, CO 80104, or by calling 303-660-7446.

### **What is a deficiency bid?**

A deficiency bid occurs when the foreclosing lender submits a written bid for an amount less than the amount owed. The foreclosing lender may elect to sue the homeowner, or anyone else who signed the original promissory note (loan papers), for the amount of the deficiency (the amount owed minus the amount of the bid). Bidding at the Public Trustee sale on properties that have deficiency bids begins at \$50 over the lender bid amount. In most cases lenders file deficiency bids because the adjusted fair market value of the property is less than the amount owed to them.

### **What happens to the funds bid in excess of the amount bid by the foreclosing lender?**

In the event the foreclosing lender bids less than the amount due them ( a deficiency bid), the amount of the deficiency would be reduced by the funds generated by the Public Trustee sale. If the lender's bid was not deficient, and someone bids on the property in excess of the amount owed to the lender, at a Public Trustee Sale, overbid funds are distributed in a prescribed order. The funds are held by the Douglas County Treasurer until all periods of redemption have expired.

### **If a Certificate of Purchase or a Public Trustee's Deed is issued for a foreclosure on a second mortgage, does that remove the first mortgage holder's lien from the property?**

No. In this case the Certificate of Purchase Holder or Public Trustee Deed Holder would take title to the property subject to the first mortgage, or any other senior liens. Foreclosure is a very complex process and we suggest you contact your legal advisor if you have concerns or questions about a specific property.

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