



Colorado
Legislative
Council
Staff

ISSUE BRIEF

Number 12-17

A Legislative Council Publication

October 17, 2012

FORECLOSURES AND THE ROLE OF THE PUBLIC TRUSTEE

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Foreclosure is a process that allows a creditor to sell a debtor's property in order to pay for the debt that is owed. In Colorado, the foreclosure process is either overseen by the courts or the public trustee, who acts as an impartial liaison between the lender and the homeowner. This issue brief covers the foreclosure process and describes the office of the public trustee.

Foreclosure Process

The foreclosure process begins when the borrower fails to make a certain number of payments to the lender as specified in their agreement, putting the borrower in default.

Types of liens that can trigger a foreclosure. In Colorado, liens that precipitate foreclosure include unpaid mortgages, unpaid government taxes, unpaid mechanic or contractor services, or unpaid homeowners' association (HOA) dues. Unlike some states, Colorado does not have a threshold that a lien must meet prior to the initiation of foreclosure proceedings on a property to satisfy the debt.

Judicial versus nonjudicial foreclosures. Two processes of foreclosure exist in Colorado: judicial and nonjudicial. The judicial process is used when a default agreement is not present in the mortgage, deed of trust, or other type of debt. More commonly, the nonjudicial process, which is carried out through the office of the public trustee, is used when a power of sale clause is included in the security instrument.

Judicial foreclosure process. The process of judicial foreclosure begins when the lender files a notice, which informs others that there is a lawsuit pending that affects the title or possession of the property in question. A complaint is subsequently filed with the court that states what the debt is, and why the default should allow the lender to foreclose on the property. If the court finds the debt valid and in default, it issues a judgment for the total amount owed, including the costs of the foreclosure process. After the judgment has been entered, the court authorizes the sale of the property.

Nonjudicial foreclosure process. The process of nonjudicial foreclosure begins when the lender informs the borrower of a default on a lien. After 30 days, the lender must send the borrower a notice containing information related to the Colorado Foreclosure Hotline, which provides mortgage modification filing assistance and counseling at no charge. If the lender intends to initiate a foreclosure, the notice of election and demand must be filed more than 30 days after the previous notice containing the foreclosure hotline information with the borrower. The notice of election and demand includes a list of specifics related to the property in question.

The public trustee has ten days to review the documents and, if the filing is complete, file the notice with the county clerk and recorder. The sale is held between 110 to 125 days after the notice is recorded. There are publication requirements associated with the sale and a court proceeding in order for the lender to obtain a court order authorizing the sale. The lender

must make a bid on the property's value to the public trustee's office no later than two days prior to the sale, which the public trustee publishes, along with the date of sale. Finally, the sale is held by the public trustee, and the property is auctioned off and sold to the highest bidder.

The Office of the Public Trustee

The office of the public trustee was created by the Colorado General Assembly in 1894 to act as a neutral intermediary between lenders and borrowers.

Duties of public trustees. In addition to conducting certain foreclosure sales, public trustees process releases of deeds of trust, which are how standard real estate loans are secured. A deed of trust creates a lien on the property that is removed after the loan has been paid in full. The signed and recorded release of deed of trust is the official record that shows the loan was paid and the title cleared from that encumbrance. When it is paid, the lender sends the public trustee a request for release and the public trustee confirms the release and re-conveys the property back to the property owner.

Process for obtaining office. According to state law, the Governor appoints the public trustee for the following counties: Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo, and Weld. For the remaining counties, the county treasurer acts as the public trustee. Broomfield and Denver, as city and counties, assign the duties of the public trustee according to their home rule charters.

Terms of office. Terms of the Governor-appointed trustees are four years, and they serve at the pleasure of the Governor. For smaller counties where the public trustee is the county treasurer, the county treasurer is elected to a four-year term.

Compensation. The compensation of public trustees is set in state law. The public trustee for the City and County of Denver is paid a salary of \$48,500 per year; while the rest of the Governor-appointed public trustees are paid a salary of \$72,500 per year and may receive benefits that do not exceed benefits received by other elected county officials. The public trustees for all other counties are paid a salary of \$12,500 per year. The salaries of the public trustees are paid from fees they collect.

Authorized fees. State law specifies the fees that may be charged by public trustees for the services they provide. For example, public trustees may collect a fee of \$15 for executing a release of a deed of trust. State law also specifies the time requirements for public trustees to complete specific actions related to foreclosure sales. Trustees who fail to meet these deadlines must forfeit 5 percent of the fee for each day they fail to meet the time requirement. Fees collected by public trustees must be used to pay their salaries and office-related expenses related to conducting the duties of the office; any remaining funds after these expenses are transferred to the county general fund at the end of the year.

2012 legislation affecting appointed public trustees. House Bill 12-1329 requires the public trustee of each county to adopt and submit a budget to the boards of county commissioners for review. Additionally, appointed public trustees are now subject to the "state procurement code" for any purchase \$20,000 or more, and for any multiple-year purchase agreement, with specified exceptions. Finally, beginning January 1, 2013, an individual annual audit is required of the official financial activities of all appointed public trustees.