

GLOSSARY OF FORECLOSURE TERMS

E & D DATE or NED RECORDED – The notice of Election & Demand for Foreclosure (NED) is the FIRST document the Public Trustee’s office receives from the lender or its attorney. This is recorded with the Clerk & Recorder’s office and the foreclosure is officially started at this time.

DEED OF TRUST – In Colorado, a mortgage is generally called a “Deed of Trust” and that document is signed and recorded at the time the property is purchased and financed. The Deed of Trust gives the Public Trustee the right to sell the property through foreclosure proceedings if the borrower defaults on the terms of the Deed of Trust or Promissory Note (non-payment or other default).

ORIGINAL SALE DATE – When a foreclosure is begun after 1/1/08, a sale date is established somewhere between 110 and 125 days after the NED is recorded to allow time for legal notice mailings and for newspaper publications to be completed. The original sale date may be continued upon request of the lender or its attorney or may be continued by the Public Trustee.

ACTUAL SALE DATE or ACTUAL SOLD DATE – This is when the property is actually sold at the Foreclosure Auction Sale. In Adams County, these sales are held each Wednesday (except holidays) at 10:00 a.m. at the Public Trustee’s Office, 1000 Judicial Center Drive #200 in Brighton. Once the Sale is actually held, several deadlines begin to run.

LOAN TYPE – Some different types of loans are: Conventional, VA, FHA or Unknown. If the loan has an adjustable rate of interest it could be followed by “ARM.” For example, a Conventional Adjustable Rate Mortgage would be shown as “C-ARM” in the loan type field.

INTEREST RATE – The percentage rate shown may be the ORIGINAL interest rate on the loan and may not reflect the DEFAULT interest rate on the loan. Default interest rates usually go into effect when payments on the loan are in arrears or past due.

CURRENT LENDER (BENEFICIARY) – It is a common practice for mortgage companies to “sell” loans to other lenders or pools of lenders. The current lender (or beneficiary) of a loan will frequently not be the mortgage company that made the loan when the property was initially purchased.

CERTIFICATE OF PURCHASE – The Public Trustee issues this document to the successful bidder at the Foreclosure Sale to show that the successful bidder has an interest in the property. It is recorded with the Clerk & Recorder’s office and made a public record, but it does NOT transfer title or ownership of the property to the holder of the Certificate of Purchase. It may also be used as a lien if there is another foreclosure running at or about the same time period on the same property. The Certificate of Purchase is assignable to someone else at the option of the holder.

LAST DATE TO REDEEM – This is the deadline for a redemption to be made – a redemption requires that ALL funds owing to the foreclosing lender or holder of the Certificate of Purchase, including attorney’s fees and costs and Public Trustee’s fees and costs, be paid in full. If a property is redeemed before the deadline expires, a Certificate of Redemption will be issued and ultimately the holder of the last Certificate of Redemption issued will obtain ownership of the property through a Public Trustee’s Confirmation Deed. **NOTE:** For all cases started after 1/1/08 the property owner NO LONGER HAS A RIGHT TO REDEEM the property after the Foreclosure Sale.

BID AMOUNT, PENDING BID and BIDDER INFORMATION – These terms reflect the person/entity submitting a written bid (usually the foreclosing lender), the date the bid was officially made and the amount of the bid. For cases started after 1/1/08, written bids are due from the foreclosing lender by noon TWO BUSINESS DAYS prior to the Foreclosure Sale date and that information is posted on the Public Trustee’s website no later than Tuesday evening prior to the Sale Date.

DEFICIENCY AMOUNT – Foreclosing lenders must submit bids that they believe are a reflection of the property’s value at the time of the Foreclosure Sale. If the lender feels the property is worth less than the amount owed on it, the “deficiency amount” reflects the difference. If the property is sold for less than the amount owed on the loan at the time of sale (plus all costs and fees) the lender may attempt to collect the deficiency amount personally against the borrower through a separate court action because the deficiency amount is NOT extinguished by the foreclosure.

OVERBID AMOUNT – If someone other than the foreclosing lender appears in person at the Foreclosure Auction Sale and enters a bid for at least \$1.00 more than the written bid submitted by the foreclosing lender, that is an “overbid” and the person entering it is called an “over bidder.”

CONTINUANCE – The Foreclosure Sale Date may be continued at the request of the lender or its attorney, or it may be continued by the Public Trustee, for various reasons. However, for cases started after 1/1/08, the sale must be held no later than 12 months after the originally-scheduled sale date and the sale may not be continued beyond that 12-month deadline.

CURE – A “cure” is made PRIOR TO THE FORECLOSURE SALE by only certain people/entities who have a legal right to cure the default on the mortgage or Deed of Trust. If a property owner (or other legally-entitled person) believes he can bring the past-due payments current (plus all fees and costs of the lender, lender’s attorney and Public Trustee), he must file with the Public Trustee’s office a Notice of Intent to Cure AT LEAST 15 days prior to the scheduled Sale Date. The Public Trustee’s office then requests a “cure” figure from the lender and provides that to the party filing the Notice of Intent to cure. The owner (or other legally-entitled person) has **ONLY UNTIL 12:00 NOON on the day PRIOR to Sale Date** to pay all funds necessary to cure the default. **Since the property owner NO LONGER HAS A RIGHT TO REDEEM the property**

AFTER the Foreclosure Sale, the opportunity to keep the property and get out of foreclosure is through a “cure.”

DEED or CONFIRMATION DEED – Once all redemption periods have expired and no redemption has been made (or a redemption has been made and a Certificate of Redemption has been issued and recorded), the Public Trustee may issue a Public Trustee’s Deed or Confirmation Deed to the holder of the Certificate of Purchase or the holder of the last-issued Certificate of Redemption. The Deed is then recorded with the Clerk & Recorder’s office and transfers title to the property from the previous owners (borrowers) to the new owner.

LIENORS – There may be more than one deed of trust or other lien on a property. Anyone who holds a lien on a property is called a “lienor” and may have a right to redemption of the property according to law. For cases filed after 1/1/08, **Lienors need to have a recorded interest in the property being foreclosed PRIOR to the NED recording date.** In order to redeem the property in foreclosure, a lienor must file a Notice of Intention to do so within the time specified by law. Lienors interested in exercising their legal rights on a foreclosure property are strongly advised to consult with an attorney.

MAILINGS – By law, the Public Trustee must mail notices and information to persons/entities specified on the mailing lists provided to the Public Trustee by the lender or its attorney.

REDEMPTION – A “redemption” is made AFTER the Foreclosure Auction Sale takes place and has several deadlines associated with it. If a redemption is made, a Certificate of Redemption is issued by the Public Trustee’s office.

PUBLICATION – By law, the Public Trustee must publish a Notice or Combined Notice in a newspaper of general circulation within Adams County. The Notice must be published at least 5 consecutive times over a period of one month.

RESCISSION – For cases filed after 1/1/08, the lender or its attorney may “rescind” (or void) the foreclosure sale after it has taken place. In order to rescind the sale, the foreclosing lender must be the successful bidder at the Foreclosure Sale and the holder of the Certificate of Purchase and a notice must be given to the Public Trustee no later than 8 business days after the date of the Foreclosure Sale.

RESTART – When a borrower files a Bankruptcy Petition prior to or during publication of the notice of foreclosure, the U.S. Bankruptcy Court will usually issue a “stay order” requiring that the foreclosure action not be continued until further notice from the court. If the Bankruptcy Court subsequently issues an order granting “relief” from the stay order, then the foreclosure may be restarted. If the foreclosure is restarted, the Public Trustee’s office must follow the court’s order to re-record the NED, re-publish the Notice in the newspaper and reset a new Foreclosure Sale Date.

WITHDRAWAL or ADMINISTRATIVE WITHDRAWAL – A foreclosure may be withdrawn (or stopped) for several reasons at the request of the lender or its attorney or by the Public Trustee if the sale has been continued for too long a period of time and not held within 12 months from the originally-scheduled Sale Date. A withdrawal is processed when a cure is made so that the foreclosure does not go forward.

RULE 120 COURT ACTION and ORDER AUTHORIZING SALE – When a loan is referred to an attorney for a foreclosure action, the attorney files a Court action under Rule 120 of the Colorado Rules of Civil Procedure. The borrowers/owners are notified of the date and time for the Court hearing and may attend that Court hearing. The purpose of the hearing is to provide the lender’s attorney an opportunity to prove to the judge that a “reasonable probability exists that the loan is in default” (payments are not being made or are past due). If the borrower/owner feels that the loan is NOT in default (their payments have been made and are not past due) they can appear at the hearing and tell the Judge the facts from their perspective. If the borrower/owner does NOT appear at the court hearing, the court will consider from the evidence presented whether or not there is a reasonable probability that a default exists and then, if so, will enter an Order Authorizing Sale to permit the foreclosure action to proceed. Before the Public Trustee’s office may sell a property on the Foreclosure Sale Date, it must have received from the lender’s attorney a signed copy of the Order Authorizing Sale. Any Foreclosure Sale made without that Order is invalid.

The laws regarding foreclosures are in Title 38, Article 38 of the Colorado Revised Statutes. Those statutes are available in most public libraries as well as online under Colorado.gov and then click on “General Assembly” and “Colorado Revised Statutes.”