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## Foreclosure Timeline, Part 2

This is the second half of the timeline we began in last month's Topic of the Month.

The timeline is a simplified summary of the basic procedures under the foreclosure statute and does not attempt to cover all aspects. This is a complex statute and an attorney should be consulted before taking any steps or making any decisions regarding the foreclosure process.

Note that, unless otherwise stated, all references to "days" are "calendar days."

### Right to Cure

The borrower (includes owners of the property, co-owners, spouses, junior lien holders, surities, guarantors, personal or other legal representatives) must give at least 15 days written notice, prior to the sale, of the intention to cure.

- The public trustee must deliver a request for a statement of these sums to cure, to the lender's attorney, at least 12 days prior to the sale — if not the sale is postponed for 2 weeks.
- The public trustee must receive the cure amount from the borrower by noon on the day before sale.
- The statement must be valid for at least 10 days and no more than 30 days.

Failure to provide the statement within 10 business days of receipt of the request to cure, or 8 days prior to the date of sale (whichever is earlier), means that:

- Sale is automatically postponed for 1 week and thereafter week to week until the cure statement is provided (but there is no continuance beyond 12 months from the original date).
- Interest is charged at the regular rate and not the default rate during this period.

### Default cured

If the default has been cured, then:

- A formal withdrawal must be filed with the public trustee if the NED has been recorded.
- All costs to date must be paid, including the fees of the public trustee, together with a withdrawal fee.
- If a Rule 120 proceeding has been commenced, this proceeding must be withdrawn, or the order vacated (if the order has been granted).

If the foreclosing party fails to withdraw the sale, the public trustee can withdraw the sale after 45 days after the last possible date of sale.

### Rule 120 Hearing (Colorado Rules of Civil Procedure Rule 120)

- This proceeding provides a court supervised procedure to confirm the existence of the default, the exercise of the power of sale in the deed of trust, and compliance with the Service Member Civil Relief Act (50 U.S.C. 520).
- The notice of the Rule 120 proceeding must be served on the borrower, record owner of the property, and all other persons who may have an interest in the property at least 15 days before the date set for the hearing.
- Not less than 15 days prior to the date of the hearing, a notice of the hearing must be posted in a conspicuous place (14 days for sales where NED is recorded after September 1, 2012).





- At least 15 days prior to the sale, the foreclosing party must obtain an order authorizing the sale from the district court.
- The public trustee will not go to sale without this order, and a sale held without this order is invalid.

### **Sale of Property by the Public Trustee**

- The lender must submit its bid no later than 12 noon on the second business day prior to the date of the foreclosure sale. If this deadline is missed, the sale is continued for 1 week.
- The public trustee will auction the property at the time and place stated in the notice of sale, but no less than 16 days after the date of the scheduled Rule 120 hearing.
- On completion of the sale, the public trustee will issue a certificate of purchase to the successful bidder, and record a copy within 5 days of the sale.

### **Rescission of the Sale**

- The sale can be rescinded without a court order, if the holder of the certificate of purchase is the foreclosing party.
- Rescission must be requested within 8 days after the sale.
- If the sale has been rescinded, the lender can commence a new foreclosure sale scheduled not less than 30 days and not more than 45 days after the request for a new sale.

### **Redemption by Junior Lienors**

- All lienors must file a notice of intention to redeem with the public trustee within 8 days after the sale, with copies of the instruments evidencing the lien and a statement of the amounts required to redeem this lien.
- The public trustee must fix the date of redemption on the 9th day after the sale. No redemption period is shortened or altered by the fact that a prior lienor redeemed prior to the end of that lienor's redemption period.
- The lienor having the most senior priority may redeem no earlier than 15 days and no later than 19 days after the date of sale.
- Thereafter, the lienors holding the next junior lien may redeem within 5 days from the expiry of the previous lienor's redemption period.
- Redemption periods cannot be shortened.
- The redemption amount must be paid to the public trustee no later than 12 noon on the last day of the redemption period.
- Special redemption periods apply for liens filed by the Internal Revenue Service, where the redemption period is 120 days from date of sale, and for liens in favor of the federal government (for example, judgments and Small Business Administration loans where the redemption period is 1 year from the date of sale).

### **Expiration of Redemption Periods**

- On the expiration of all redemption periods, if no junior lienor has redeemed, title vests automatically in the holder of the certificate of purchase.
- If there has been a redemption by a junior lienor, title will vest in that lienor, if no other junior lien holder has redeemed.

### **Confirmation Deed**

The public trustee must execute and issue a public trustee's deed within 9 days after the expiry of all redemption periods (where NED recorded after September 1, 2012, if the public trustee has received all fees and costs, 10 days, or 10 days after the date that the public trustee has received all fees and costs).

