

## **FORECLOSURE DEFERMENT PROGRAM-General Policy**

**HB 09-1276, Residential Foreclosure Deferment**, section 6, establishes that the bill “shall apply to foreclosures that are commenced by the **filing** [with the Public Trustee] of a notice of election and demand” on or after August 1, 2009. All foreclosures filed with a Public Trustee after August 1 should include that notice, (Notice to Public Trustee Regarding Foreclosure Deferment Eligibility) if **applicable**

**Please do not include the notice of eligibility for properties that are clearly not eligible.** It would be against good public policy to tell property owners they may be eligible if they clearly are not – this gives false hope to the property owner, and creates additional work for the HUD-approved counselors. The only element of eligibility the Public Trustee can review is part of 801(1)(e). If a Public Trustee Office receives a notice of eligibility on a filing associated with a Deed of Trust on which the original principal amount was over \$500,000, it will reject the filing.

This **effective or applicability date** of the bill is the **only** time the date of your filing the NED with the Public Trustee is relevant. All **deadlines** associated with this section of the law (CRS 38-38-802) are based on the date the Public Trustee finishes reviewing the filing, accepts the filing, opens a foreclosure file and approves the NED for recording (even if the actual recording date of the NED is a few days later). This "determination/acceptance" date will be visible to you on the Public Trustee website in most cases. Contact the Public Trustee Office to ensure that you are using the correct date, as late submittal of an Affidavit of Posting will result in a continuance of the sale; publications will not be made and the 2nd mailing of the Combined Notice will not be done until the Affidavit of Posting has been provided. Per 38-38-807, if you fail to post the Notice on the property within the time specified, the eligible borrower's deadline for contacting a housing counselor will run from the date of "actual posting" of the Notice. Late posting of the Notice on an eligible property will also affect your ability to recover certain costs or default interest as may be specified in the Deed of Trust.

The deadlines established in the bill appear to be mandatory for EVERYONE – the Notice posting must be done on eligible properties and the Affidavit of Posting filed with the Public Trustee or the foreclosure may be continued until the "last possible sale date" according to law and may be subject to administrative withdrawal. Likewise, the borrower **MUST** contact a housing counseling agency in a timely manner in order to be considered for deferment qualification; the holder/attorney **MUST** timely provide an address for payments to be made if a deferment is granted, and the housing counselor **MUST** provide a timely Certificate of Qualification to the Public Trustee's Office in order for the foreclosure case to be considered in deferment.

While the expiration of deferment periods may be many months down the road, please also be aware that per CRS 38-38-803(6), upon expiration or early termination of the deferment, the Public Trustee will promptly assess a \$75 fee, reschedule publication of the combined notice of deferred sale date (with a newly-established sale date to allow sufficient time for mailing and publication according to law), and mail the combined notice of deferred sale date. If, upon expiration of the deferment period, your client wants to withdraw the file rather than have the Public Trustee continue with the sale, you need to submit the withdrawal notice before or simultaneously with the end of the deferment period.

If holder/attorney provides to the Public Trustee at the time of filing a new foreclosure the notice that the property may be eligible for deferment (CRS 38-38-101(1)(h)) and THEN determines that notice was provided in error or otherwise later determines that the property was not eligible for the deferment, the holder/attorney should proceed with posting of the Notice on the property, provide the Affidavit of Posting to the Public Trustee and work with the housing counselor to receive a certification that the property is NOT qualified for the deferment.

Please also note that a foreclosure's entry into deferment status does not waive the requirement for you to submit a supplemental mailing list on time, as required by CRS 38-38-101(f). Nor does it waive the requirement for the holder/attorney to timely provide cure figures if requested to do so upon filing of a Notice of Intent to Cure. Also, HB 1276 does not negate the requirements for notice to be provided pursuant to HB 08-1402 as stated in CRS 38-38-102.5.

In order to expedite communications and meet deadlines with regard to this program, PLEASE utilize email to the Public Trustee Offices whenever possible (or fax if email is unavailable). Arapahoe County Public Trustee email address is: [publictrustee@co.arapahoe.co.us](mailto:publictrustee@co.arapahoe.co.us). The fax number is 303-730-0076.

**FORMS:** The **NOTICE form for posting on the eligible property** is provided, pursuant to law, by the Colorado Division of Housing at <http://www.dola.state.co.us/cdh/foreclosurenotice/index.htm>. Holders/attorneys MUST use that Notice form. Other **suggested forms** that may be used by holders/attorneys are available from the CPTA website: [www.e-ccta.org/CPTA\\_home\\_page.htm](http://www.e-ccta.org/CPTA_home_page.htm).