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NEW FORECLOSURE LAW

By Beverly L. Edwards, Esq.

Until the Colorado Legislative session of 2006, the structure of Colorado's Public Trustee foreclosure system had been well established for a very long time. Owners/borrowers placed in foreclosure had two essential rights: 1) the right to cure the default in the loan prior to the foreclosure sale provided that they followed the notice requirements set forth in the foreclosure statutes and 2) the right to redeem the property from foreclosure by paying the amount bid at the foreclosure sale (usually the full amount due on the loan) for a period of time after the foreclosure sale, provided the owner/borrower followed specific notice requirements. The owner's right to redeem the property after a foreclosure sale had been available since the inception of the Public Trustee foreclosure system in the 1890's.

In 2006, the Colorado Legislature enacted H.B.06-1387, followed by H.B. 07-1157 in 2007. The majority of the provisions of these laws took effect on January 1, 2008. The Acts significantly changed the foreclosure laws by eliminating the owner's right to redeem after the foreclosure sale, and greatly expanding the time period for the owner/borrower to cure the default on the loan prior to the foreclosure sale.

Under previous law, the Public Trustee was required to set the foreclosure sale 45 to 60 days after recording the Notice of Election and Demand for Sale (the document filed by the foreclosing creditor initiating the foreclosure action). The owner then had the right to cure the default on the loan up until the day before

the foreclosure sale, provided that the owner filed a Notice of Intent to Cure at least 15 days prior to the foreclosure sale. If the owner did not cure the default and the sale was held, the owner then had 75 days to redeem the property (six months for agricultural property) from the foreclosure sale. If the owner did not redeem from the foreclosure sale, junior lienholders were each given a time period to redeem – 10 days for the first junior lienholder, and 5 days for each successive junior lienholders.

Under the new foreclosure statutes, the Public Trustee must record the Notice of Election and Demand within 10 days after receiving the Notice of Election and Demand from the foreclosing creditor. For residential property, the date of the foreclosure sale must be not less than 110 and not more than 125 days after the recording of the Notice of Election and Demand. For agricultural real property, the date of the foreclosure sale must be not less than 215 and not more than 230 days after the recording of the Notice of Election and Demand. The owner continues to have the same right to cure the loan up until the day before the sale, provided the owner files a Notice of Intent to Cure no later than 15 days prior to the foreclosure sale.

The owner no longer has a right to redeem from the foreclosure sale, only junior lienholders have that right under the new foreclosure statutes. The junior lienholder must file a Notice of Intent to Redeem within 8 business days after the foreclosure sale. No sooner than 15 business





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days nor later than 19 business days after the foreclosure sale, the first junior lienholder will have the right to redeem the property. Each subsequent lienholder will have a period of five business days to redeem.

The new laws provide for other changes, but the extended cure period and sale date and elimination of the redemption period are the most significant change in the area of distressed real estate loans. Only time will tell if providing owners more time to bring their loans current will actually result in lowering overall delinquencies.

New Foreclosure
Law

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