

FAQ re EXPEDITED FORECLOSURES (HB 10-1249) – REVISED as of July 15, 2010

Disclaimer: This document is for internal Public Trustee use only and not for public distribution. This is Carol Snyder's work product and her non-attorney interpretation of the expedited foreclosure law. This is intended to provide some answers to questions about implementation of the law in HB 10-1249. This new law takes effect for **NEDs recorded on or after AUGUST 1, 2010 but prior to August 1, 2013**. This law will "sunset" (go away) with NEDs recorded on and after August 1, 2013 unless the Legislature extends or changes that provision in the future.

NOTE: Rich Krohn's opinion is that an expedited foreclosure *COULD* be done for a re-recorded NED **but ONLY if there is a Court Order** directing the PT to process that case as an expedited foreclosure. For example, a sale is set aside by Court Order and in that Court Order Setting Aside Sale it says that when the foreclosure is restarted by re-recording of the NED the foreclosure will proceed as an expedited foreclosure. Remember, **only** in a scenario where the PT would need to follow a **Court Order** to process the foreclosure pursuant to the expedited foreclosure statutes (38-38-901 et seq.) would it apply to a re-recorded NED.

An expedited foreclosure will take less time to complete, will require only ONE mailing, will require 4 vs. 5 publications, will require a COURT ORDER (to be included in or with the Order Authorizing Sale) permitting the foreclosure to be done as an expedited foreclosure and allows a limited number of sale continuances. **IT WILL BE AT THE OPTION OF THE HOLDER** to determine if a case will move forward under the expedited foreclosure procedures. Borrower(s) may also opt to have his/her foreclosure processed as an expedited foreclosure. For these reasons, it is unlikely that there will be HUGE VOLUMES of expedited foreclosures – they will most likely happen when neighbors have made many complaints about a home that is a blight on the neighborhood, or when the borrower simply wants to get on with his/her life and is wanting to move (or has already moved) out of the residence.

NEW FORMS for use on Expedited Foreclosures have been created by the CPTA Forms Committee. Those forms were distributed at Summer Conference in Colorado Springs in June, 2010 as follows:

Combined Notice for publication

Combined Notice for mailing

Statutes for expedited foreclosures (for inclusion in mailing)

Certificate of Mailing

Certificate of Purchase referencing that the foreclosure was processed as an expedited foreclosure

I believe the forms are being "built into" the new foreclosure vendors' systems that will be deployed to our offices by August 1, 2010. For those of you doing it manually, the forms will be available to you through the Association.

Expedited foreclosures are available only:

- On Residential properties as defined in C.R.S. 12-61-902
- When DOT is a first lien on the property
- When the holder has elected and requested the PT to do an expedited foreclosure or the borrower has opted to have the case expedited and has gotten the holder to request the PT to do so
- Sufficient proof has been provided to the Court (at the Rule 120 hearing on the OAS) to show that the property is abandoned
- On PT foreclosures – not judicial foreclosures.

Expedited foreclosures and Deferments are not allowed on the SAME PROPERTY – the law specifically says that the **deferment program will NOT apply to an expedited foreclosure**. You should not receive a notice of eligibility for deferment nor an Affidavit of Posting on an expedited foreclosure case.

1. When and how will the PT know that a particular foreclosure will be processed as an expedited foreclosure?

PT will receive **AT THE TIME OF FILING** of the initial foreclosure package, **EITHER:**

- A copy of an Order for expedited sale, **or**
- A separate document notifying the PT of the election for an expedited sale.

If you also receive a Notice that the property may be eligible for deferment (pursuant to 38-38-101(1)(h)), then the case **CANNOT** be processed as an expedited foreclosure. If you receive the (h) notice, you'll probably need to contact the attorney to let them know to make a CHOICE between expedited and potential deferment because they cannot do both. Also, if the holder/attorney had the property POSTED FOR DEFERMENT then they may have to withdraw their expedited foreclosure case and re-file it as a 'regular' foreclosure because they cannot do both deferment and expedited.

If you do NOT receive the actual court Order for expedited sale at the time of filing of the initial foreclosure package, but receive ONLY the separate document notifying you of the election for an expedited sale, **you MUST receive that court Order NO LATER than 30 calendar days after the date of recording of the NED.**

2. What does the PT do if notified to process a case as an expedited foreclosure?

You will "mark" the file as EXPEDITED so that the date calculations can be made for faster processing, fewer publications, etc. Bob Sagel has prepared a calculation sheet and our computer vendors will deploy an expedited foreclosure process no later than August 1, 2010. Both of these mechanisms will assist in deadline calculations.

3. In what manner are the "normal" foreclosure procedures CHANGED for an expedited foreclosure?

- The PT will **set an initial sale date** *no less than 45 calendar days nor more than 65 calendar days* AFTER the date of recording of the NED.
- The PT will **NOT receive an initial mailing list** with the foreclosure filing from the attorney. An **EXPEDITED MAILING LIST** must be filed **no later than 15 calendar days AFTER the recording of the NED.**
- The holder/attorney should NOT be filing a notice regarding deferment eligibility per 38-38-101(1)(h) and should NOT be posting the property with the Deferment Opportunity notice.
- The PT is **NOT required to mail the first, initial mailing of the Combined Notice** per 38-38-103(1)(a). PT **shall mail the Combined Notice** (required by 38-38-103(1)(b)) **to the persons shown on the EXPEDITED MAILING LIST no more than 25 calendar days after recording of the NED.**
- A **legible copy of the Expedited Foreclosure statutes** shall be **added** to the statutes normally **mailed with the CN.**
- **Publications** of the CN (for publication form) are modified so that the CN shall be published once each week for 4 consecutive weeks – meaning **FOUR consecutive publications instead of five publications.** The **last date of publication shall be MORE THAN 5 calendar days prior to the first scheduled date of sale.**
- A **sale may NOT be continued more than 4 weeks** pursuant to 38-38-109(1)(a) – at the request of the holder/attorney. This **limitation will NOT be effective** if a bankruptcy is filed or if cure figures are requested and not timely provided. Since expedited foreclosures **CANNOT** also be in deferment, you will not be awaiting an Affidavit of Posting and will NOT be doing any continuances for a late Affidavit of Posting.
- Deadline for attorneys to deliver an **AMENDED mailing list** shall be **no later than 30 calendar days** after recording of the NED. If PT receives an Amended mailing list the PT shall mail the CN no later than 5 **business days** from date of receipt of the Amended mailing list. If the CN for the Amended mailing list is mailed **LESS THAN 21 calendar days** prior to the actual date of sale, the PT shall continue the sale for **ONE WEEK.** If PT must continue the sale for this reason, that continuance **will count against the maximum number of continuances allowable** in an expedited foreclosure and, thereafter, the maximum number of weeks that a sale may be continued shall be only three.

4. Are the deadlines **ABSOLUTE** in an expedited foreclosure or can the PT allow late filings?

PTs are not legally authorized to allow LATE FILINGS under the expedited foreclosure law. In fact, there are provisions in the law making deadlines **MANDATORY** for the case to proceed as an expedited foreclosure. If those deadlines are **NOT** met, there are severe consequences:

A foreclosure shall be deemed WITHDRAWN and the holder/attorney shall have **45 calendar days within which to file a written Withdrawal of NED**, IF the holder/attorney:

- Fails to file a copy of the Order for expedited sale with the PT no later than 30 calendar days after recording of the NED
- Fails to file an **EXPEDITED** mailing list with the PT no later than 15 calendar days after recording of the NED
- Delivers an Amended mailing list later than 30 calendar days after recording of the NED

The PT will record the Withdrawal of the NED. If the PT does **NOT** receive the Withdrawal within 45 calendar days after the holder/attorney misses one of the specified deadlines, the PT shall transmit by mail or electronic transmission a notice requesting filing of the Withdrawal. If the written Withdrawal of the not filed within 30 calendar days after that notice/request is transmitted, the **PT may record at any time** a Withdrawal of the NED. If the foreclosure is deemed withdrawn pursuant to these provisions, the PT shall collect all fees and costs actually incurred by the PT along with the usual withdrawal fee per our fee schedule.

5. What protections does a homeowner/borrower have that his/her property is actually abandoned before an expedited foreclosure can be processed?

The Rule 120 hearing for the Order Authorizing Sale will now be expanded to include an examination of evidence provided by the holder/attorney to show the Judge the property is abandoned and that an expedited foreclosure sale is appropriate. There are **SEVERAL** kinds of evidence that will be considered (see the bill itself for the details). This part of the process is **NOT** the concern of the PT, but must be proved to the Court. There are also provisions for posting of the notice of hearing on the Rule 120 Order. The PT still must receive the Order Authorizing Sale at least 2 days prior to sale date and it still must have been signed by the Court at least 16 days prior to sale date.

Remember that a homeowner/borrower may also **OPT TO HAVE THE FORECLOSURE EXPEDITED**. In that event, the borrower would so notify the lender and the lender would still have to make an election to proceed with the expedited foreclosure – nothing in the law **REQUIRES** the lender to do so.

Also, if the homeowner/borrower feels that his/her property **HAS NOT BEEN ABANDONED** and should not be processed as an expedited foreclosure, he/she can go to the Rule 120 hearing to protest.

If the Order allowing the expedited foreclosure is **NOT** issued or is **NOT** filed with the PT in a timely manner, the holder/attorney will need to withdraw the expedited foreclosure and re-file as a 'normal' foreclosure.

SAMPLE

NOTICE OF ELECTION TO PROCEED WITH EXPEDITED FORECLOSURE

Pursuant to 38-38-901 et seq., Colorado Revised Statutes

TO: The Public Trustee of the _____ County of _____

DATE: _____, 20____.

RE: Property Address: _____

Grantor: _____

Current Holder: _____

Date of Deed of Trust: _____ Date of Recording: _____

Recording Information: _____ Original Principal Balance: \$ _____

The undersigned gives notice to the Public Trustee that it has elected to have this foreclosure action processed pursuant to 38-38-901 et seq., Colorado Revised Statutes, as an EXPEDITED FORECLOSURE.

The undersigned further states that the Grantor(s) has requested that this foreclosure be processed as an EXPEDITED FORECLOSURE.

Name of Holder: _____

OR Attorney for Holder:

Law Firm Name (if applicable)

By _____

By _____

Printed Name and Title of Signer for Holder

Attorney's Signature Colorado Bar Reg. # _____

Address: _____

Address: _____

Business Telephone: _____

Business Telephone: _____

Business FAX: _____

Business FAX: _____

Email: _____

Email: _____