• Office of the Public Trustee created by the Colorado General Assembly in 1894 to act as a “neutral intermediate” party between lenders and borrowers
• Colorado is the **ONLY** state in the nation that has Public Trustees – other states have **PRIVATE** trustees representing lenders **OR** foreclosures are done through the Courts
• Counties in the first and second classes (10 of Colorado’s largest counties) the Public Trustees are appointed by and serve at the pleasure of the Governor per 38-37-102
• Cities and Counties of Denver and Broomfield, pursuant to their Charters or Codes, have an **ELECTED** official or **STAFF MEMBER** who performs the Public Trustee duties
• In the remaining 52 Counties in Colorado, the elected Treasurer serves as Public Trustee per 38-37-102
PUBLIC TRUSTEE’S OFFICE

• Term is four years for all Public Trustees
• Appointed Public Trustees must have at least a 4-year college degree and five years’ administrative/business experience or ten years’ administrative/business experience
• Appointed PT must execute a $25,000 surety bond and elected PT must execute a $10,000 surety bond approved by Board of County Commissioners
PUBLIC TRUSTEE’S OFFICE

• Appointed Public Trustees must maintain an office and elected Public Trustees conduct business at the office of County Treasurer

• All Public Trustee offices shall be kept open for transactions during ordinary business hours

• BOCC furnish all office supplies at County expense

• May appoint Deputies who shall have the same power as the PT
PUBLIC TRUSTEE’S OFFICE

- Public Trustees shall perform functions and exercise powers conferred by statute.
- Public Trustees may cooperate and contract for purpose of providing any function, service, facility, including legal service and representation, with other Public Trustees.
- The District Attorney shall provide legal representation when PT is sued unless legal representation is provided otherwise.
DUTIES OF THE PUBLIC TRUSTEE

• RELEASES OF DEEDS OF TRUST  (38-39-101 et seq.)
• FORECLOSURES  (38-38-101 et seq.)
• Successor Trustee upon death of a sole or surviving trustee in a written Trust Agreement affecting title to real property  (38-34-104)
• To convey and dispose of real property on behalf of a dissolved corporation after death of all surviving members of the last acting board of directors of such corporation  (38-30-171 and 38-30-173)
• To act as “escrow agent” for collection of taxes on contracts for deed  (38-35-126)
DUTIES OF THE PUBLIC TRUSTEE

• The Public Trustee’s office is **FEE FUNDED** (not taxpayer funded) and is accountable to the County’s Board of County Commissioners through quarterly financial reports.

• Do not meet time requirements, forfeit 5% fee for each day late

• Appointed PT shall report to Governor as may be required and elected PT report to BOCC
WHAT documents are recorded by the Public Trustees?
WHEN are those documents recorded?
WHY are those documents recorded?
HOW might those documents be indexed?
DEEDS OF TRUST & RELEASES
• **Real Estate Closing Documents** – the purchaser receives a DEED (Warranty Deed, etc.) from the seller to transfer title/ownership to purchaser. If money is borrowed for the purchase of the property, at time of sale purchaser executes a Promissory Note which is the promise of the purchaser to repay lender the loan amount with interest. The purchaser also executes a Deed of Trust.

• The **DEED OF TRUST** is security for payment of a debt (frequently a Promissory Note) – security or “collateral” for payment of the debt is the real property described in the Deed of Trust.

• **Deed of Trust names the Public Trustee** (Grantee) to act for the benefit of the Lender (Beneficiary) to secure payment by the Borrower (Grantor) of the indebtedness.

• Power of the Public Trustee to perform job comes from the Deed of Trust.
MORTGAGES vs. DEEDS OF TRUST

- Colorado law also recognizes “mortgages” as well as Deeds of Trust.
- Mortgages most commonly used on larger, high dollar commercial or other “non-residential” transactions.
- Mortgages usually name a private trustee to act in the event of default instead of the Public Trustee.
- Release is done directly by recorded document submitted by private trustee.
- Foreclosure is done by private trustee through judicial proceedings and then completed by Sheriff pursuant to Court Order – Sheriff’s Certificate of Purchase, Sheriff’s Confirmation Deed.
NEW FORMS for request for release of deed of trust effective as of September 1, 2009
  - WITH production of evidence of debt and
  - WITHOUT production of evidence of debt

QUALIFIED HOLDER vs. NON-QUALIFIED HOLDER

Qualified Holders are usually Federal or State banking institutions or lenders or Government agencies (FHA etc) per 38-38-100.3 (20)

Non-Qualified Holders are usually individuals – perhaps a seller who took back a Deed of Trust from the purchaser of his/her home or a small private lender
REQUEST FOR FULL RELEASE OF DEED OF TRUST AND RELEASE BY HUSBAND OF EVIDENCE OF DEBT WITHOUT PRODUCTION OF EVIDENCE OF DEBT PERTAINING TO 18-31-102(2)(a) AND (c), COLORADO REVISED STATUTES

Date

Original Grantor (Borrower)

Check here if current address is unknown

Original Beneficiary (Lender)

Date

Date of Deed of Trust

Recording Information

TO THE PUBLIC TRUSTEE OF COUNTY (The County of the Public Trustee who is the appropriate grantees to whom the Deed of Trust has been delivered and contains the property described in the Deed of Trust).

PLEASE EXECUTE AND RECORD A RELEASE OF THE DEED OF TRUST DESCRIBED ABOVE. The indebtedness evidenced by the Deed of Trust has been fully satisfied and the purpose of the Deed of Trust has been fully satisfied and satisfied. This is not a partial release as described above.

[Signatures]

Hershey and Address of Creditor/Age, or Attorney of Creditor

State of

County of

The foregoing Request for Release was acknowledged before me on (date)

[Signature]

notary public

State of

County of

The foregoing Request for Release was acknowledged before me on (date)

[Signature]

notary public

REQUEST FOR FULL RELEASE OF DEED OF TRUST AND RELEASE BY HUSBAND OF EVIDENCE OF DEBT WITHOUT PRODUCTION OF EVIDENCE OF DEBT PERTAINING TO 18-31-102(2)(a) AND (c), COLORADO REVISED STATUTES

Date

Original Grantor (Borrower)

Check here if current address is unknown

Original Beneficiary (Lender)

Date

Date of Deed of Trust

Recording Information

TO THE PUBLIC TRUSTEE OF COUNTY (The County of the Public Trustee who is the appropriate grantee to whom the Deed of Trust should be sent and is the property described in the Deed of Trust).

PLEASE EXECUTE AND RECORD A RELEASE OF THE DEED OF TRUST DESCRIBED ABOVE. The indebtedness evidenced by the Deed of Trust has been fully satisfied and the purpose of the Deed of Trust has been fully satisfied. This is not a partial release as described above.

[Signatures]

Hershey and Address of Creditor/Age, or Attorney of Creditor

State of

County of

The foregoing Request for Release was acknowledged before me on (date)

[Signature]

notary public

State of

County of

The foregoing Request for Release was acknowledged before me on (date)

[Signature]

notary public
RELEASING OF DEEDS OF TRUST

• Public Trustee receives a Request for Release of Deed of Trust signed by the CURRENT Holder (owner) of the Evidence of Debt
• Public Trustee verifies information on Request against Deed of Trust originally recorded – dates, recording information, original parties names, county where property is located
• Public Trustee collects from submitter the PT fee as well as fees for RECORDING of the Release
MERS

- Most Public Trustees will NOT accept a Request for Release of Deed of Trust (or Partial Release) signed by MERS
- MERS is an electronic registration system that acts as an electronic “clearinghouse” for mortgages and deeds of trust
- MERS is NOT the true “holder” or owner of the debt
FULL Release vs. PARTIAL Release

- **FULL** release of deed of trust – ALL of the debt has been paid in full – evidence of debt (Note) and Deed of Trust are marked as “cancelled” and returned to submitter

- **PARTIAL** release of deed of trust – only a PORTION of the debt has been paid and only a portion of the property will be released
RELEASE SUBMITTED TO CLERK

• Once PT has processed the Release, it is IMMEDIATELY submitted to the Clerk’s office for recordation – either in hard copy or electronically

• Appropriate recording FEES are paid by PT to the Clerk

• Original, recorded Release of Deed of Trust returned to borrower at address listed on Release or to submitter as stated on Release or to the Public Trustee?
PT Returns Loan Documents to Submitter as Requested

• After the Release of Deed of Trust has been processed and sent to the Clerk for recording, the Public Trustee returns the Promissory Note and Deed of Trust to the submitter (as requested)

• **NOTE:** Colorado law says a Deed of Trust is supposed to be RELEASED by the lender within 90 days after payoff – when borrower doesn’t receive recorded Release, they CALL!
HOW DO YOU INDEX RELEASES OF DEEDS OF TRUST?

• Grantor?
• Grantee?
• Cross-indexed by Current Holder?
• Cross-indexed by Original Holder?
• Property Description or Address?
• Cross-indexed by Recording Information on Original Deed of Trust?
• Partial Releases?
PT receives Request for Release of DOT from lender – either WITH production of original evidence of debt (EOD) and DOT (if not a qualified holder per Colorado law) or WITHOUT production of original EOD and DOT (if qualified holder per Colorado law)

PT assures correct fees are received and examines submitted Request for Release against submitted loan documents (DOT/Note) to assure dates, recording info, names, etc. match and then executes the Release of DOT at the bottom of the form

PT sends executed Releases of DOT and appropriate recording fees to Clerk’s Office for recording – recorded Release to be sent by Clerk to borrower if address is listed on Release or to submittter

PT retains fee earned for processing Release of DOT

PT returns submitted DOT and EOD to submitter
1. **NED** – Notice of Election and Demand for Foreclosure – *prepared by attorney for lender*
   - The NED officially “starts” the foreclosure when it becomes public notice via recordation

2. **CERTIFICATE OF PURCHASE (COP)** – prepared by PT after the foreclosure auction sale is held to evidence sale of property to purchaser at sale –
   - **MUST have attached to COP** the Order Authorizing Sale entered by District Court and ALL mailing lists utilized by the PT for notice mailings
   - The COP is assignable by the holder and may be recorded
3. Certificate of Redemption (COR) – prepared by PT if a junior lien holder redeems the property by “buying out” the COP holder – deadlines for payment

• COR may not ALWAYS be recorded if there are no junior lien holders who redeem.

4. Public Trustee’s Confirmation Deed (PTD) – prepared by PT to transfer title to foreclosed property to either the COP holder or to the last person/entity issued a COR
5. Withdrawal of Election and Demand for Foreclosure (WED) – prepared by foreclosing lender or attorney, processed by PT and recorded when the foreclosure is being withdrawn (terminated and closed) due to:

- A “cure” being made by the borrower or other person entitled to cure the default (past due payments, late fees & costs are paid to lender to bring loan current)

- Unknown reasons for lender to stop the foreclosure (problem with legal description, new loan, loan modification, etc.)
Other Documents That MAY be Recorded for FORECLOSURES

• Withdrawal of Election and Demand may also be recorded to effect an ADMINISTRATIVE WITHDRAWAL by the PT – a foreclosure MUST go to sale within 12 months after 1\textsuperscript{st} scheduled sale date (unless bankruptcy is filed during foreclosure or borrower is in the military “Helping Heroes Keep Their Homes Act of 2010”) – if the sale date is continued up to that 12-month deadline, the PT may (without attorney’s approval but after notice is given) administratively withdraw the case by recording of a Withdrawal of Election and Demand
Other Documents That MAY be Recorded for FORECLOSURES

• AMENDED Notice of Election and Demand – if a portion of the property is released during the foreclosure (Partial Release of DOT) an Amended NED must be recorded and foreclosure proceeds against remainder of property

• RE-RECORDED NED – there are several reasons why an NED may need to be re-recorded:
  – To correct an error or missed deadline in the PT office
  – To “restart” a foreclosure case that has been in bankruptcy and stayed by a Bankruptcy Court order when the stay is lifted or removed by Court order
Other Documents That MAY be Recorded for FORECLOSURES

• **Notice of Rescission of Sale** – A notice of rescission may be recorded if the holder or its attorney wants to “undo” a sale that occurred, perhaps in error, because there was an agreement in place with the borrower for a loan modification and the lender forgot to notify the attorney to continue the sale, etc.

• **Order Setting Aside Sale** – If a property was taken to sale in error (perhaps as stated above) but it was sold to an OUTSIDE BIDDER/INVESTOR instead of to the Holder of the debt, a rescission cannot be done and a Court Order must be obtained to set the sale aside and reinstate the Note and Deed of Trust.
Other Documents That MAY be Recorded for FORECLOSURES

• Scrivener’s Error Affidavit – The Public Trustee is authorized by law (38-38-705(2)) to execute and record a Scrivener’s Error Affidavit to correct any error in a certificate of purchase, certificate of redemption, public trustee’s deed or other recorded document PREPARED by the office of the Public Trustee. PT CANNOT make corrections in documents prepared by someone else’s office via a Scrivener’s Error Affidavit.

• Miscellaneous Documents as Necessary – The PT may also need to record other documents, such as Court Orders, when directed to record those documents by a Court of law.
HOW DO YOU INDEX FORECLOSURE-RELATED DOCUMENTS?

- Grantor?
- Grantee?
- Foreclosure Number?
- Cross Indexing for Original Holder?
- Cross Indexing for Original Grantor (if loan was assumed)?
- Property Description/Legal Description?
- Cross Indexing for Original DT Information?
FORECLOSURE WORKFLOW

1. PT receives documents for filing of new foreclosure from the Holder or Holder’s attorney – Notice of Election and Demand for Foreclosure (NED) is prepared by holder or attorney – the document is not prepared by the PT

2. PT examines documents to assure compliance with law (complete & accurate) to accept new foreclosure filing – sets up new foreclosure file, assigns foreclosure number, collects PT deposit for fees and costs of case, establishes sale date (on residential property, 110-125 days and on agriculture, 215-230 days after NED recording) and sets publication dates (per law) for the case

3. No later than 10 business days after receipt of initial filing from holder/attorney, PT must have NED recorded by Clerk’s office – this OFFICIALLY begins the foreclosure

4. PT creates a Combined Notice and mails notice of new foreclosure to required parties; sends Combined Notice to newspaper for publication preparation; proofreads galley proofs received from newspaper & makes necessary corrections; returns final, approved notice to newspaper for scheduled publication

5. PT does a SECOND mailing of the Combined Notice to all parties having a record interest in the property per holder/attorney’s mailing list; Combined Notice is published in newspaper 5 consecutive times over a period of 4 weeks – mailing completed & publications started at least 45 days before Sale

6. No later than 15 days PRIOR to sale date, borrowers (& other entitled parties) MAY file a Notice of Intent to Cure with the PT – if funds are paid to “cure” loan default no later than noon the day prior to sale, foreclosure is to be withdrawn – Withdrawal of Election and Demand for Foreclosure (WED) is prepared by holder/attorney & PT sends to Clerk for recording
FORECLOSURE WORKFLOW

7. PT conducts foreclosure **AUCTION SALE** – most properties sold to foreclosing lender; some sold to outside bidders/investors who attend and bid at sale

8. Within 5 business days after sale, PT issues a **Certificate of Purchase (COP)** to buyer at sale; COP must be recorded by Clerk within 5 business days after sale; PT must attach Order Authorizing Sale and all mailing lists for case – COP does not transfer title but only evidences investment in property

9. No later than 8 business days after sale, parties having a right to redeem the property from COP holder (in order to protect their “junior” liens) must file with PT a Notice of intent to Redeem (NOIR) – if junior lienholders do not file an NOIR, their junior lien may be extinguished by the foreclosure

10. IF redemption funds ARE paid by an NOIR filer (between business day 15-19 after sale) the PT issues a **Certificate of Redemption (COR)** to the payor and sends the COR to Clerk for recording; if several NOIR filers pay redemption funds (in order as per law) PT issues COR to each successive payor and has successive CORs recorded in Clerk’s office

11. After expiration of all redemption periods, a **PT Confirmation Deed** is issued by PT after request by the person entitled to receive the Deed (either COP holder or last COR holder) and after either business day 9 or 15 after sale – foreclosure case closed by PT after Deed is issued and recorded
PUBLIC TRUSTEE – BY THE NUMBERS

2010 Statewide Public Trustee Statistics
58 of 64 Counties Reporting

Releases Executed – 286,584
New Foreclosure Files – 41,473
Restarted Files – 1,504
Withdrawals (including cures) – 21,365
Sales Redeemed by Junior Lienors – 294
Confirmation Deeds Issued Including Prior Year Sales – 22,893
QUESTIONS
DISCUSSION
and / or
COMMENTS?