

# **OFFICE OF THE PUBLIC TRUSTEE**

**Presented to the Colorado County  
Public Trustees – October, 13 2011**

By

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# PUBLIC TRUSTEE'S OFFICE ESTABLISHED BY STATUTE

- 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

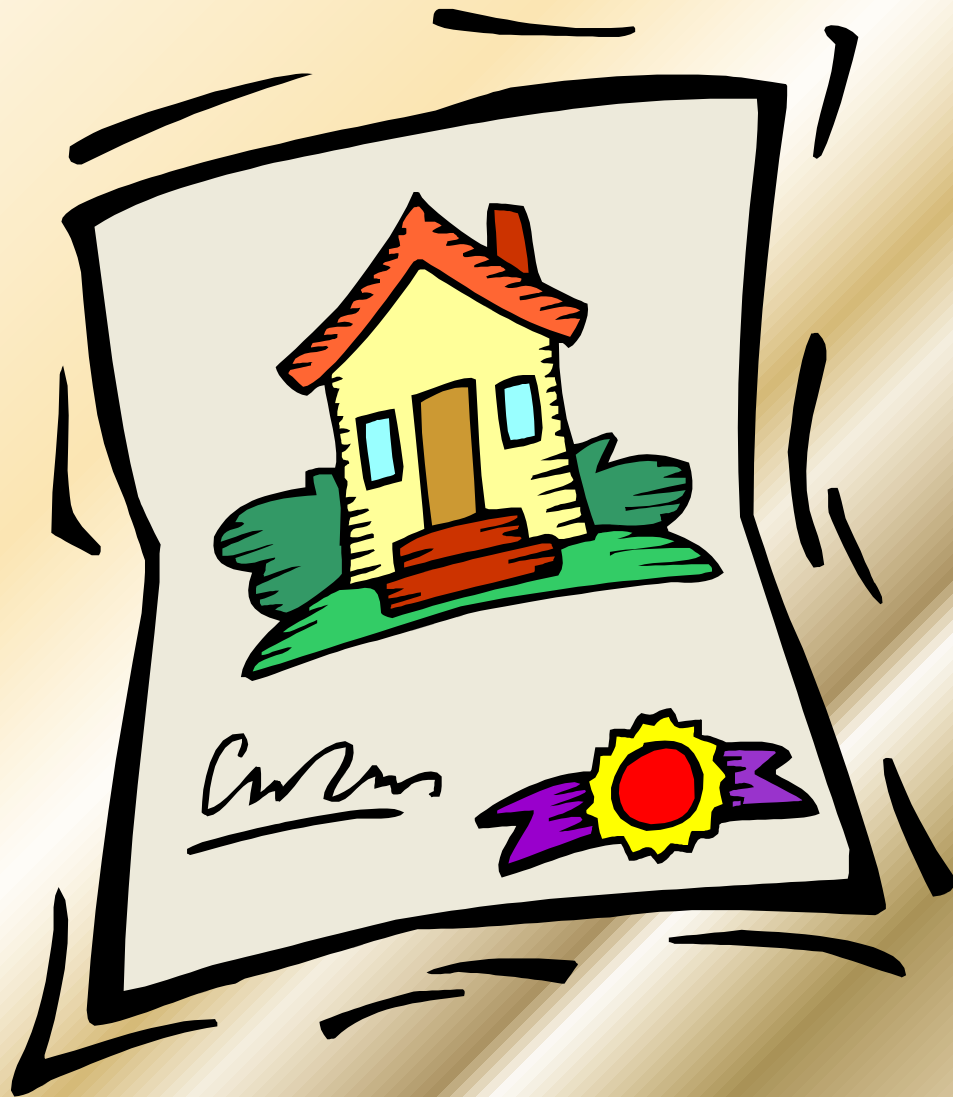
**WHAT** documents are recorded  
by the Public Trustees?

**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

# RELEASE OF DT – NEW FORMS

- **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

Original Note and Deed of Trust Returned to:  
WHEN RECORDED RETURN TO:

Prepared/Received by:

REQUEST FOR FULL  / PARTIAL

**RELEASE OF DEED OF TRUST AND RELEASE BY HOLDER OF THE EVIDENCE OF DEBT WITH PRODUCTION OF EVIDENCE OF DEBT PURSUANT TO § 38-39-102 (1) (a), COLORADO REVISED STATUTES**

Date  
Original Grantor (Borrower)  
Current Address of Original Grantor, Assuming Party, or Current Owner  
 Check here if current address is unknown  
Original Beneficiary (Lender)  
Date of Deed of Trust  
Date of Recording and/or Re-Recording of Deed of Trust  
Recording Information  
County Rept. No. and/or Film No. and/or Book/Page No. and/or Torrens Reg. No.

TO THE PUBLIC TRUSTEE OF \_\_\_\_\_ COUNTY (The County of the Public Trustee who is the appropriate grantee to whom the above Deed of Trust should grant an interest in the property described in the Deed of Trust.)

PLEASE EXECUTE AND RECORD A RELEASE OF THE DEED OF TRUST DESCRIBED ABOVE. The indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied in regard to the property encumbered by the Deed of Trust as described therein as to a full release or, in the event of a partial release, only that portion of the real property described as: **(IF NO LEGAL DESCRIPTION IS LISTED THIS WILL BE DEEMED A FULL RELEASE)**

Name and Address of Current Holder of the Evidence of Debt Secured by Deed of Trust (Lender)

Name, Title and Address of Officer, Agent, or Attorney of Current Holder

Signature Signature

State of \_\_\_\_\_, County of \_\_\_\_\_  
The foregoing Request for Release was acknowledged before me on \_\_\_\_\_ (date) by\*

(Notary seal)

Date Commission Expires \_\_\_\_\_  
\*If applicable, insert title of officer and name of current holder Notary Public Witness my hand and official seal

**RELEASE OF DEED OF TRUST**

WHEREAS, the Grantor(s) named above, by Deed of Trust, granted certain real property described in the Deed of Trust to the Public Trustee of the County referenced above, in the State of Colorado, to be held in trust to secure the payment of the indebtedness referred to therein; and

WHEREAS, the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied according to the written request of the current holder of the evidence of debt;

NOW THEREFORE, in consideration of the payment of the statutory sum, receipt of which is hereby acknowledged, I, as the Public Trustee in the County named above, do hereby fully and absolutely release, cancel and forever discharge the Deed of Trust or that portion of the real property described above in the Deed of Trust, together with all privileges and appurtenances thereto belonging.

Public Trustee Date  
Deputy Public Trustee Date  
(If applicable, Notary Seal)

(If applicable, Name and Address of Person Creating New Legal Description as Required by § 38-35-106.5, Colorado Revised Statutes.)

Original Note and Deed of Trust Returned to:  
WHEN RECORDED RETURN TO:

Prepared/Received by:

REQUEST FOR FULL  / PARTIAL

**RELEASE OF DEED OF TRUST AND RELEASE BY HOLDER OF THE EVIDENCE OF DEBT WITHOUT PRODUCTION OF EVIDENCE OF DEBT PURSUANT TO § 38-39-102 (1) (a) AND (b), COLORADO REVISED STATUTES**

Date  
Original Grantor (Borrower)  
Current Address of Original Grantor, Assuming Party, or Current Owner  
 Check here if current address is unknown  
Original Beneficiary (Lender)  
Date of Deed of Trust  
Date of Recording and/or Re-Recording of Deed of Trust  
Recording Information  
County Rept. No. and/or Film No. and/or Book/Page No. and/or Torrens Reg. No.

TO THE PUBLIC TRUSTEE OF \_\_\_\_\_ COUNTY (The County of the Public Trustee who is the appropriate grantee to whom the above Deed of Trust should grant an interest in the property described in the Deed of Trust.)

PLEASE EXECUTE AND RECORD A RELEASE OF THE DEED OF TRUST DESCRIBED ABOVE. The indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied in regard to the property encumbered by the Deed of Trust as described therein as to a full release or, in the event of a partial release, only that portion of the real property described as: **(IF NO LEGAL DESCRIPTION IS LISTED THIS WILL BE DEEMED A FULL RELEASE.)**

Pursuant to § 38-39-102 (3), Colorado Revised Statutes, in support of this Request for Release of Deed of Trust, the undersigned, as the holder of the evidence of debt secured by the Deed of Trust described above, or a Title Insurance Company authorized to request the release of a Deed of Trust pursuant to § 38-39-102 (3) (c), Colorado Revised Statutes, in lieu of the production or exhibition of the original evidence of debt with this Request for Release, certifies as follows:

- 1. The purpose of the Deed of Trust has been fully or partially satisfied.
- 2. The original evidence of debt is not being exhibited or produced herewith.
- 3. It is one of the following entities (check applicable box):
  - a.  The holder of the original evidence of debt that is a qualified holder, as specified in § 38-39-102 (3) (a), Colorado Revised Statutes, that agrees that it is obligated to indemnify the Public Trustee for any and all damages, costs, liabilities, and reasonable attorney fees incurred as a result of the action of the Public Trustee taken in accordance with this Request for Release;
  - b.  The holder of the evidence of debt requesting the release of a Deed of Trust without producing or exhibiting the original evidence of debt that delivers to the Public Trustee a Corporate Surety Bond as specified in § 38-39-102 (3) (b), Colorado Revised Statutes; or
  - c.  A Title Insurance Company licensed and qualified in Colorado, as specified in § 38-39-102 (3) (c), Colorado Revised Statutes, that agrees that it is obligated to indemnify the Public Trustee pursuant to statute as a result of the action of the Public Trustee taken in accordance with this Request for Release and that has caused the indebtedness secured by the Deed of Trust to be satisfied in full, or in the case of a Partial Release, to the extent required by the holder of the indebtedness.

Name and Address of the Current Holder of the Evidence of Debt Secured by Deed of Trust (Lender) or name and address of the Title Insurance Company Authorized to Request the Release of a Deed of Trust

Name, Title and Address of Officer, Agent, or Attorney of the Holder of the Evidence of Debt Secured by Deed of Trust (Lender)

Signature Signature

State of \_\_\_\_\_, County of \_\_\_\_\_  
The foregoing Request for Release was acknowledged before me on \_\_\_\_\_ (date) by\* (Notary seal)

Date Commission Expires \_\_\_\_\_  
\*If applicable, insert title of officer and name of current holder Notary Public Witness my hand and official seal

**RELEASE OF DEED OF TRUST**

WHEREAS, the Grantor(s) named above, by Deed of Trust, granted certain real property described in the Deed of Trust to the Public Trustee of the County referenced above, in the State of Colorado, to be held in trust to secure the payment of the indebtedness referred to therein; and

WHEREAS, the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied according to the written request of the holder of the evidence of debt or Title Insurance Company authorized to request the release of the Deed of Trust;

NOW THEREFORE, in consideration of the payment of the statutory sum, receipt of which is hereby acknowledged, I, as the Public Trustee in the County named above, do hereby fully and absolutely release, cancel and forever discharge the Deed of Trust or that portion of the real property described above in the Deed of Trust, together with all privileges and appurtenances thereto belonging.

Public Trustee Date  
Deputy Public Trustee Date

(If applicable, Name and Address of Person Creating New Legal Description as Required by § 38-35-106.5, Colorado Revised Statutes.)

# RELEASES 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?

# Workflow for Releases of DOTs

## WORKFLOW DIAGRAM FOR PUBLIC TRUSTEE RELEASES OF DEEDS OF TRUST

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 submitter

↳ PT retains fee earned for processing Release of DOT

↳ PT returns submitted DOT and EOD to submitter

# FORECLOSURES



# Documents Recorded for FORECLOSURES

- 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

# Documents Recorded for FORECLOSURES

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

# Documents Recorded for FORECLOSURES

## 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<sup>st</sup> 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?**

