

## ARAPAHOE COUNTY PUBLIC TRUSTEE –FORECLOSURE DEFERMENT PROGRAM POLICY

House Bill 09-1276 established a new Part 8 in Title 38, Article 38 of the Colorado Revised Statutes. Based on a reading of that Bill, in its entirety, and on advice of counsel, the Arapahoe County Public Trustee adopts the following policies regarding implementation of the Foreclosure Deferment Program (the "Program") in this office:

1. Holder/Holder's Attorney needs to make a determination, prior to filing the NED and other foreclosure documents with this office, whether the property requires posting because the property/borrower **could be eligible** for the Program. This determination may be based **at least** on (a) the loan is a residential loan, (b) the Deed of Trust is a **first lien on the property** described in the NED, (c) the **borrower is personally obligated** on the debt, which was incurred primarily for personal, family or household purposes and (d) the **loan had an original principal amount of \$500,000.00 or less**. If the property/borrower at least meets these criteria, unless there is some other basis for knowing that the property/borrower is not eligible for the Program, then the Holder/Holder's Attorney should include with the NED and other foreclosure documents filed with this office a separate document (see C.R.S. §38-38-101(1)(h)) notifying us that the property requires posting under C.R.S. §38-38-802. If the property/borrower does NOT meet these tests, then this office will NOT expect to receive the document described in C.R.S. § 38-38-101(1)(h), we will not expect you to post Notice on the property, and the foreclosure action will NOT be tracked by the Arapahoe County Public Trustee's Office as potentially eligible and requiring posting for the Program.

2. If the Holder/Holder's Attorney LATER DETERMINES that the property may have been eligible for the Program and did require posting under C.R.S. §38-38-801 et. seq., our office may be requested to re-record the NED and, thereafter, all deadlines for the foreclosure action shall be determined according to the date of NED re-recording as though the foreclosure was commenced on such date. A fee of \$75 will be charged to the file. In this event, Holder/Holder's Attorney should note the provisions of C.R.S. §38-38-807 when preparing a Bid if the property eventually is taken to foreclosure auction sale.

3. Deadlines for posting of Notice and filing of the Affidavit of Posting with our office shall be calculated based on the date that the initial foreclosure package filing is **determined by this office to be "complete and accurate"** and we have created the foreclosure file for the case. Unless paragraph 2 above applies, deadlines will NOT be calculated based on the NED recording date. Deadlines for borrower's contact of a housing counselor, Holder/Holder's Attorney providing payment address and information to the borrower and housing counselor, and the housing counselor's determination of qualification or non-qualification for the Program shall be calculated based on the actual date of posting, as described in the Affidavit of Posting filed with our office.

4. During the time this office has marked a file for "eligibility" for the Program, we will proceed with the foreclosure as usual – mailing Combined Notices of the first-scheduled sale date and preparing the Combined Notice for publication – until and unless we receive timely notice from the housing counselor that the property/borrower is QUALIFIED for the Program. If a Certificate of Qualification is timely received, we will immediately cancel any publications (if they have already started), or not begin publications and we will not mail any further notices. The foreclosure sale will be continued week to week according to law for a period up to 90 days (or to the next scheduled sale date after the 90-day period) or until a Certificate of Early Termination of the deferment is received (if applicable).

5. If the foreclosure case has been marked as eligible for the Program, and the Affidavit of Posting (in compliance with C.R.S. §38-38-802(5)(c)) is NOT timely filed with this office, we will continue the sale for one week and will notify the Holder/Holder's Attorney ONE TIME ONLY via email. If we still do not receive an Affidavit of Posting from the Holder/Holder's Attorney, we will continue the sale date an additional week for each week that the required Affidavit of Posting is not provided. Publication of the Combined Notice and mailing of the Combined Notice will also be delayed if the Affidavit of Posting is not timely filed with this office.

6. If the deferment period expires on the foreclosure, or we receive a Certificate of Early Termination of the deferment, \$75 will be charged to the file, we will set a new sale date in compliance with the law, **begin publication** of the Combined Notice of Deferred Sale **and mail** the Combined Notice of Deferred Sale as soon as possible, but no more than 20 calendar days after completion of the deferment. If you wish to withdraw the file rather than incur the \$75 fee, then you must send the applicable documents to this office before the deferment expires.

FORECLOSURE FILING PACKAGES received by this office on or before close of business July 31, 2009, will NOT be eligible for the Program, unless they are rejected and resubmitted after that deadline. Foreclosure files received by this office after close of business July 31, 2009, should include the notice of eligibility, if applicable, as such files would be covered by the provisions of House Bill 09-1276. A standard official NOTICE form for use in property posting under this Program is available on the Colorado Division of Housing website at <http://www.dola.state.co.us/cdh/foreclosurenotice/index.htm> Other suggested forms for the 38-38-101(1)(h) notice and the Affidavit of Posting are available on the Arapahoe County Public Trustee's website.