



Dennis J. Gallagher
Auditor

SPECIAL ADVISORY REPORT

Review of City Clerk and Recorder Foreclosure Operations

SUMMARY

Special Advisory Reports (SAR) provide information on limited reviews or time-critical assessments, investigations or evaluations as requested by City management. While not always in full compliance with rigorous audit reporting standards, SARs are non-audit services that further the accountability of the City by providing a reporting vehicle that is flexible, quickly issued, and focused on singular issues.

KEY ISSUE

The Clerk and Recorder of the City and County of Denver requested this review. The purpose of this non-audit service was to provide objective analysis and observation of new processes and procedures implemented to improve the Office's foreclosure process.

BACKGROUND

The Public Trustee, housed within the Office of the Clerk and Recorder, processes foreclosure actions on real estate properties with mortgages in default, provides foreclosure cure information and assistance to property owners or lien holders prior to sale by auction, conducts public auctions, and deeds unredeemed property.¹ Colorado Revised Statutes (CRS) §§ 38-38-100 through 38-39-3 govern functions performed by the Office of the Public Trustee. A process map containing the foreclosure

chain of events as well as timeframes related to statute is located on page 3.

According to the *Understanding Mortgage Foreclosures in Denver*² report, between 2000 and 2006, the number of foreclosure filings in Denver increased more than four-fold, from 917 to 4,745, an increase of 32 percent annually. By 2006, the Office of Public Trustee had a backlog of over 800 foreclosure files. In addition to this backlog, published reports regarding the Office's compliance with statutory requirements resulted in public relations issues for the Office of the Public Trustee.

Most instances of noncompliance involved Notice of Election and Demands (NED) filed outside of the 10-day period mandated by statute. Legal representatives may request a refund of their filing fee when the Office does not comply with statute.

To reduce this backlog and related legal and public relations risks, in 2007 the Office of the Public Trustee hired ten (10) temporary staff and implemented use of new foreclosure software, Millennium Default System (MDS). MDS was purchased in late 2006. Several states including California, Arizona, and Washington use MDS. MDS, which was an upgrade to the prior system, automatically selects time sensitive dates required by statute, tracks staff assignments and has a

¹ Source: Public Trustee's Office Website:
<http://denvergov.org/Foreclosures/tabid/393031/Default.aspx>
Accessed: 06/15/2009.

² Source: *Understanding Mortgage Foreclosures in Denver*:
Office of Economic Development Policy Group – March
2008.

built in audit function. In addition, MDS reduces paper usage through the electronic filing of all foreclosure documents.

METHODOLOGY

To conduct the review of this function, we conducted initial interviews with Public Trustee management to gain an understanding of the overall foreclosure process and subsequently assessed each step in the foreclosure process.

The Office of the Public Trustee personnel, as applicable, provided detailed information and documentation and demonstrated related job functions to include new file setup, cures, confirmation deeds, bankruptcies, withdrawals, publications and redemptions.

Additionally, auditors contacted attorneys that are frequently involved in the foreclosure process to obtain a third party perception of the current practices.

CONCLUSION

The Office of the Public Trustee does not foreclose on properties though there may be a public misconception that the Office does

so. State law requires the Public Trustee perform the administrative functions of foreclosure proceedings.

Based on our limited review, there appears to be minimal process-related risk with Clerk and Recorder foreclosure operations. Our analysis revealed there are currently no foreclosure files in backlog.

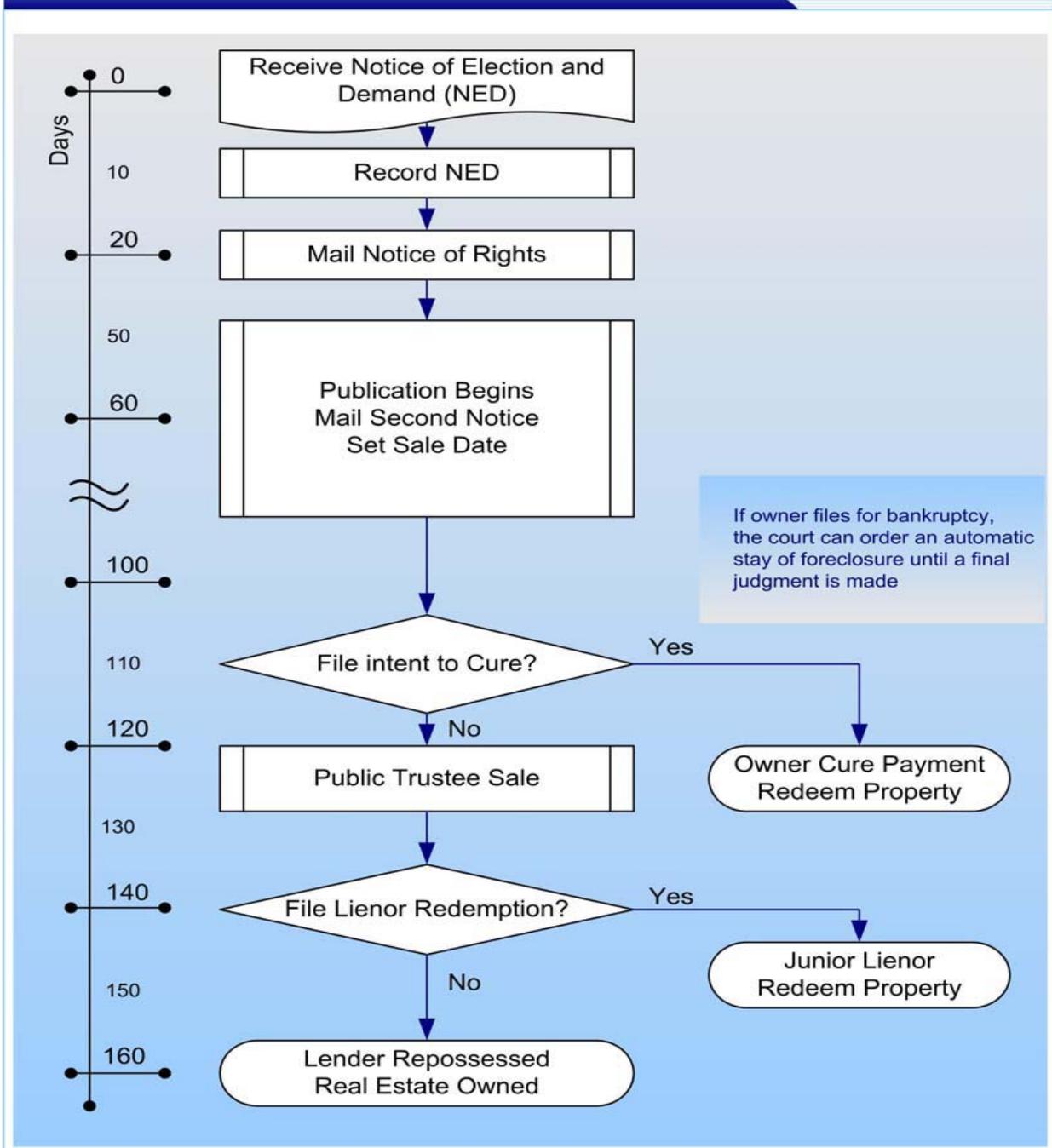
The Office of the Public Trustee's implementation and use of MDS has greatly enhanced their ability to handle foreclosures for the City and County of Denver. Public Trustee management has cross-trained staff and implemented changes to improve staff's ability to handle their workload in a timely and efficient manner.

The Clerk and Recorder as well as Office of the Public Trustee management and staff should be recognized for their commitment to improving the foreclosure process and for eliminating the backlog in a timely manner.

SAR TEAM

Sonia Montano, Audit Supervisor
Marcus Garrett, Lead Auditor
Travis Henline, Senior Auditor

Denver Foreclosure Process and Timeline



State law may change this process and timeline.

Source: *Understanding Mortgage Foreclosures in Denver*: Office of Economic Development Policy Group – March 2008.