

# HOW TO PREVENT OR NAVIGATE A FORECLOSURE

For many Denver residents, the COVID-19 pandemic has led to a loss of income, an increase in medical expenses, and growing challenges with making timely mortgage payments. If you are falling behind on mortgage payments or in the midst of a foreclosure, use the resources in this guide to get immediate help and learn more about how the foreclosure process works.

## Processes Leading up to a Foreclosure Sale

Homeowners who start falling behind on mortgage payments should take action immediately and contact their lender. At this stage, lenders are typically willing to work with homeowners to get caught up on their payments. Homeowners who seek help *before* their payment is past due have a much greater chance of keeping their home. Homeowners should also contact Office of Financial Empowerment and Protection for additional help and connection to resources.

If a homeowner continues to miss payments, the lender will send the account to collections to increase the urgency of the matter. During this time, a homeowner may receive calls and letters from the lender. Homeowners continuing to have difficulty making mortgage payments should call their lender – the longer they wait, the fewer options they will have.

Typically, after three months of missed payments, the lender hires an attorney to create and execute a Notice of Election and Demand (NED) on their behalf, which is a public notice that provides information about the foreclosure. The NED is sent to the Public Trustee’s office and, within ten business days of receiving the document, it is recorded by the Clerk and Recorder. The date it is recorded is the official start date for foreclosure proceedings.

Within 20 calendar days of recording the NED, the Public Trustee mails the Combined Notice document to all parties listed in the foreclosure filing. The Combined Notice informs the homeowner of their “right to cure” (or right to pay the outstanding mortgage default and halt the foreclosure process). It also informs other parties of their potential right to redeem (or reclaim the property). Finally, it states the date of the scheduled auction (during which the foreclosed property would be sold to the highest bidder).

The Public Trustee sends all parties a second Combined Notice between 45 and 60 days prior to the auction date. The Notice is published for five weeks in a newspaper of general circulation to notify the public of an anticipated foreclosure auction. The Public Trustee will not sell the property unless it receives a bid and an order authorizing sale. If this does not occur by the initial sale date, the foreclosure auction is postponed. The auction date is scheduled by the Public Trustee for a date that is no less than 110 calendar days nor more than 125 calendar days after the date of recording of the NED.

Also, as part of every Public Trustee foreclosure, the foreclosing party must file a motion with the District Court for an order authorizing the foreclosure sale. This is typically referred to as a “Rule 120” proceeding. The Rule 120 is an opportunity for the borrower to contest the default or the party’s right to foreclose. The attorney for the foreclosing party will send to all parties a notice of the motion for order authorizing sale providing the party with the date to file a response should they wish to do so.

## Homeowner Tip

Contact the **Office of Financial Empowerment and Protection** (720-944-2498, [FEC@denvergov.org](mailto:FEC@denvergov.org)) as soon as you start falling behind on mortgage payments or as soon as you receive a Combined Notice. You will be connected to a navigator who can direct you toward:

- Mortgage assistance from a HUD-certified housing counselor
- Legal services
- Mediation services
- Other services available through local government agencies and nonprofits

# Foreclosure Timeline

Homeowner starts falling behind on house payments. \*\*

File received by the Public Trustee's office from lender.

Public Trustee records NED within 10 business days, officially starting the foreclosure process. Auction date is scheduled by Public Trustee for date no less than 110 calendar days nor more than 125 calendar days after date of recording of the NED.

Public Trustee mails Combined Notice within 20 calendar days of recording NED.

Motion filed with court under Rule 120 requesting order authorizing the Public Trustee to hold the sale, order to be obtained no less than 16 days prior to sale.

**\*\* Contact the Office of Financial Empowerment and Protection for support and referrals to relevant resources by calling 720-944-2498 or emailing [FEC@denvergov.org](mailto:FEC@denvergov.org).**

Homeowner cures the loan (pays the outstanding mortgage default). The cure process can happen any time after the NED is filed, and a cure payment can be made up until noon, the day prior to the sale.<sup>1</sup>

**The foreclosure process stops.**

Public Trustee mails second Combined Notice, between 60 and 45 days prior to auction

Notice is published for five weeks, beginning 60 and 45 days before scheduled auction sale.

The foreclosure sale takes place. **The homeowner's rights to house are terminated. The new owner of the house has the right to ask you to vacate the property.**

If the property sells at auction for more than is owed to the foreclosing lender, the homeowner should contact the Public Trustee to see if any funds are owed to them.

Homeowner files Chapter 13 or Chapter 7 bankruptcy and foreclosure is stayed or dismissed. If the bankruptcy is filed:

Foreclosure process is stayed by court order and can resume only upon either expiration or modification of the injunction.

...prior to completion of all 5 publications, the Public Trustee puts the file on hold.

When relief from the bankruptcy stay is granted by the bankruptcy court, the foreclosure must be restarted from the beginning.

...after the completion of all 5 publications, the Public Trustee puts the file on hold.

When relief from the bankruptcy stay is granted by the bankruptcy court, the foreclosure auction is rescheduled for a new date, and the foreclosure process continues from where it left off.

...prior to the sale, but the Public Trustee office isn't notified of the filing until after the sale, the sale is void, and any third party funds are returned to that party.

When relief from the bankruptcy stay is granted by the bankruptcy court, the lender must request to reschedule a sale date. Once the Public Trustee receives that request, they scheduled the sale, publish a notice in a newspaper, and send out one mailing.

<sup>1</sup> The cure process is something that goes through the Public Trustee. The homeowner may choose to sidestep the process and reinstate the loan directly with their lender. However, if that is done, the Public Trustee's Office cannot guarantee that the foreclosure process will stop. If the homeowner cures through the Public Trustee's Office, the office guarantees that the foreclosure process will stop.

## Definitions of Key Terms

### **Borrower**

The party responsible for paying a mortgage.

### **Lender**

The party that provides mortgage funds and terms to the borrower. The lender is also the party entitled to initiate foreclosure proceedings.

### **Public Trustee**

The office which processes foreclosure documents and administers the foreclosure process. Every county in Colorado has a Public Trustee. In Denver County, this person is also the Clerk and Recorder.

### **Delinquency**

When a borrower fails to make loan payments as required by the lender.

### **Foreclosure**

The process resulting in the sale of a property to settle a mortgage debt.

### **Auction**

An event in which foreclosed properties are sold to the highest bidder. Denver's auctions are held weekly online on Thursdays, with exceptions for city holidays.

### **Cure**

The act of paying the outstanding mortgage default. Curing a loan stops the foreclosure process.

### **Publication**

The process of publishing a notification of an anticipated foreclosure auction.

### **Rule 120**

Process by which foreclosing party must petition court to get order authorizing the Public Trustee to conduct the sale.

### **Bankruptcy**

A procedure in which a borrower works with legal representation (which is not required but advisable) to assess, reorganize, and/or discharge debt obligations. Filing for bankruptcy pauses or stays the foreclosure process, depending on the details of the homeowner's situation. Individuals can file Chapter 7 bankruptcy, also known as a liquidation, which is a legal option that can help clear some or all of a person's debt; or Chapter 13 bankruptcy, a legal option that can help get some debt discharged, but allows a person to keep their property and repay debt by completing a repayment plan.

### **Withdrawal**

Closure of a foreclosure process before the auction.

### **Overbid**

The amount a property is sold for at a foreclosure sale that is in excess of the written or amended bid amount executed by the holder of the evidence of debt secured by the deed of trust or other lien being foreclosed.

### **Loss Mitigation Process**

Process where homeowners and lenders work together to avoid a foreclosure.

## Important Documents

**Important:** Be sure to keep all documents and mail you receive from the Denver Clerk and Recorder. These are official documents that may be required by your legal counsel, housing counselor, or lender as you navigate the foreclosure process.

### **Notice of Election and Demand (NED)**

Provides information about a foreclosure from the lender's attorney. The file is received by the Public Trustee and recorded by the Clerk and Recorder. The date it is recorded is the start date for foreclosure proceedings.

### **Combined Notice**

Provides the homeowner notice of their right to cure, lienholders of their right to redeem, and all interested parties of the date of the scheduled auction. Sent to all parties listed in the foreclosure filing within 20 days of the Notice of Election and Demand. A second Combined Notice is sent between 45 and 60 days prior to the first scheduled sale date.

### **Intent to Cure**

Communicates the borrower's intent to pay off the default amount and cure the mortgage.

### **Deed of Trust**

Documents the agreement between the mortgage lender and the borrower in a property purchase.

### **Note (Promissory Note)**

Describes the payment conditions of the mortgage, including amount, manner, and parties involved. Provided to the lender at the closing for the property.

# WHAT ELSE YOU SHOULD KNOW

## **Foreclosure Prevention**

Some foreclosures can be prevented. Some homeowners who are falling behind on mortgage payments may be able to restructure their loan or sell their home prior to a foreclosure process happening. To learn more about these and other options contact the Office of Financial Empowerment and Protection and a Navigator will connect you to the appropriate housing counseling service.

## **Mortgage Forbearance and Coronavirus**

Homeowners experiencing difficulty making on-time mortgage payments due to the national coronavirus emergency may be able eligible for mortgage forbearance. Forbearance is when a lender allows homeowners to pause or reduce their payments for a limited period of time. Forbearance does not erase what they owe. They will have to repay any missed or reduced payments in the future, but it allows flexibility in uncertain times. The types of forbearance available vary depending on whether the loan is federally backed or not. To learn more about mortgage forbearance, contact the Office of Financial Empowerment and Protection and a Navigator will connect you to the appropriate housing counseling service.

## **“Dual Tracking” Statute**

“Dual tracking” occurs when a lender starts or continues with a foreclosure even if a homeowner is in the process of working out an alternative with the lender (through a process called “loss mitigation”). Colorado has a statute (C.R.S. 38-38-103.2) that prohibits dual tracking under certain circumstances. To take advantage of this statute, the homeowner must: a) Submit a complete loss mitigation application at least 37 days prior to the sale and receive confirmation from the servicer; b) Receive an approval for a loss mitigation plan; and c) Provide to the Public Trustee at least 14 days prior to the sale written documentation from their servicer that either of the above was approved. If you believe that your lender is dual tracking, contact the Public Trustee’s Office. Not sure? Contact the Office of Financial Empowerment and Protection and a Navigator will connect you to the appropriate housing counseling service.

## **Predatory Housing Practices**

Unfortunately, bad actors sometimes try to take advantage of people at risk or in the midst of foreclosure proceedings. For example, homeowners in this situation may receive frequent phone calls, emails or even in-person solicitations from parties offering to “help”, when, in fact, they may be trying to scam the homeowners. If you think you have been the victim of predatory housing practices, contact the Office of Financial Empowerment and Protection and a Navigator will connect you to the appropriate consumer financial protection assistance.

## **Excess Proceeds**

If a property sells at foreclosure auction for more than is owed to the foreclosing lender, the additional amount is called “Excess Proceeds”. These funds may be owed to the homeowner. Be aware that there are “finders” who may approach homeowners to obtain the funds on their behalf for a fee - usually somewhere between 20% and 50% of the total amount. The Public Trustee provides the excess funds to the homeowner *without* a fee. If you anticipate that your foreclosed property could generate excess funds, avoid the services of a finder and contact the Public Trustee’s Office.

## **Homestead Act**

While a homeowner has a homestead exemption which protects the value of their primary residence (up to \$75,000, or \$105,000, if a person is 60 or over), it is not typically something that can be used to defend a foreclosure. However, it is always advisable to have an attorney review your loan documents to help make that determination.

# RESOURCES FOR DENVER RESIDENTS FACING FORECLOSURE

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| <p><b>DENVER OFFICE OF FINANCIAL EMPOWERMENT AND PROTECTION, CONSUMER FINANCIAL PROTECTION UNIT</b></p> <ul style="list-style-type: none"> <li>• Serving individuals, families and small businesses</li> <li>• Navigation services to a HUD certified councilor to address foreclosure.</li> <li>• Free financial one-on-one coaching This should be the second bullet</li> <li>• Consumer financial protection (addressing financial fraud and promoting fair housing practices)</li> <li>• Debt management</li> <li>• Credit check-ups</li> </ul> <p><i>(Please note: OFEP cannot and does not provide legal advice, but can help residents connect to legal services in the community.)</i></p> | <p>720-944-2498</p> <p>Email <a href="mailto:FEC@denvergov.org">FEC@denvergov.org</a> for financial coaching.</p> <p>Email <a href="mailto:cfpd@denvergov.org">cfpd@denvergov.org</a> for navigation or consumer financial protection support.</p> |
| <p><b>BROTHERS REDEVELOPMENT</b></p> <p>Brothers Redevelopment is a HUD-approved counseling agency that provides a housing-related services to hundreds of thousands of clients across Colorado. Its HUD-certified housing counselors provide foreclosure counseling in English and Spanish.</p>   | <p>719-888-9134<br/> <a href="https://brothersredevelopment.org/">https://brothersredevelopment.org/</a></p>   |
| <p><b>COLORADO HOUSING ASSISTANCE CORPORATION</b></p> <p>This is a HUD-approved counseling agency that provides free counseling for homeowners who are struggling to make payments.</p>  | <p>303-572-9445<br/> <a href="mailto:JillW@chaconline.org">JillW@chaconline.org</a><br/> <a href="mailto:Veronicac@chaconline.org">Veronicac@chaconline.org</a><br/> <a href="http://www.chaconline.org">www.chaconline.org</a></p>                |
| <p><b>DEL NORTE NEIGHBORHOOD DEVELOPMENT CORPORATION</b></p> <p>Del Norte is a HUD-approved counseling agency that provides Foreclosure Prevention services to individuals and families across Colorado. Their bilingual certified housing counselors will provide one-on-one counseling, and homeownership workshops as needed.</p>   | <p>303-477-4774<br/> <a href="http://www.delnortendc.org">www.delnortendc.org</a></p>  |
| <p><b>DENVER HOUSING AUTHORITY (DHA)</b></p> <p>DHA provides free housing counseling services to help prevent foreclosure. These services are available to Denver residents and are approved by the U.S. Department of Housing and Urban Development.</p>  | <p>720-956-3806<br/> <a href="mailto:homeownership@denverhousing.org">homeownership@denverhousing.org</a></p>  |
| <p><b>NEWSED CDC</b></p> <p>NEWSED is a HUD-approved counseling agency that provides bilingual housing counseling and workshops.</p>   | <p>303-534-8342 x 100<br/> <a href="http://www.newsed.org/housing-counseling">www.newsed.org/housing-counseling</a></p>  |
| <p><b>NORTHEAST DENVER HOUSING CENTER</b></p> <p>This a HUD-approved counseling agency that provides free housing counseling services.</p>   | <p>303-377-3334<br/> <a href="mailto:htaylor@nedenverhousing.org">htaylor@nedenverhousing.org</a><br/> <a href="http://www.nedenverhousing.org">www.nedenverhousing.org</a></p>  |
| <p><b>SOUTHWEST IMPROVEMENT COUNCIL</b></p> <p>The Southwest Improvement Council is a HUD-approved counseling agency in Denver that provides foreclosure and mortgage default counseling with a HUD-certified housing counselor.</p>   | <p>303-934-0923<br/> <a href="mailto:lancegswic@gmail.com">lancegswic@gmail.com</a><br/> <a href="http://www.swic-denver.org">www.swic-denver.org</a></p>  |
| <p><b>DENVER DEPARTMENT OF HOUSING STABILITY (HOST)</b></p> <p>HOST provides resources to help Denver residents:</p> <ul style="list-style-type: none"> <li>• Stay in a current home</li> <li>• Pay utility and mortgage bills</li> <li>• Understand the foreclosure and eviction processes</li> </ul>   | <p><a href="http://Denvergov.org/Housing">Denvergov.org/Housing</a><br/> 720-913-1534<br/> <a href="mailto:housingstability@denvergov.org">housingstability@denvergov.org</a></p>  |

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| <ul style="list-style-type: none"> <li>• Find a new home</li> <li>• Find shelter</li> </ul> <p>Additionally, HOST administers the <b>TEMPORARY RENT AND UTILITY ASSISTANCE (TRUA) program</b>. Rent and Utility Assistance from the Department of Housing Stability helps Denver residents facing a financial hardship to prevent eviction or utility shut off. If you need help with paying rent or utilities you may be eligible to receive temporary help.</p>  |   |
| <p><b>THE PUBLIC TRUSTEE’S OFFICE</b></p> <p>The Public Trustee records foreclosure documents and administers the process in a legal and transparent manner. The Public Trustee can:</p> <ul style="list-style-type: none"> <li>• Explain the foreclosure process to homeowners</li> <li>• Provide a list of outside resources for homeowners</li> <li>• Provide foreclosure cure information to homeowners</li> <li>• Hold and release overbid funds</li> </ul> <p><i>(Please note: The Public Trustee cannot provide legal advice to homeowners, administer debt mitigation agreements, or administer appeals.)</i></p>  | <p>Call 720-865-8400 or email <a href="mailto:foreclosures@denvergov.org">foreclosures@denvergov.org</a>.</p> <p>The Public Trustee’s Office has a resource guide for foreclosure and foreclosure-related eviction resources: (<a href="https://www.denvergov.org/content/dam/denvergov/Portals/777/documents/Fo%20reclosures/ForeclosureAssistanceResourceGuide.pdf">https://www.denvergov.org/content/dam/denvergov/Portals/777/documents/Fo reclosures/ForeclosureAssistanceResourceGuide.pdf</a>)</p> |
| <p><b>DENVER HUMAN SERVICES</b></p> <p>Denver Human Services offers a variety of services, including deposit, first month’s rent, mortgage, eviction, rental, and cash assistance, to qualifying Denver residents who are at risk of losing their housing. Denver Human Services can also support residents with:</p> <ul style="list-style-type: none"> <li>• Behavioral health/mental health services</li> <li>• Resources specifically for older adults and those who are aging</li> <li>• Food resources, including the Supplemental Nutrition Assistance Program (SNAP) and food pantry referrals</li> <li>• Services for veterans/people with military experience and their families</li> <li>• Connections to employment and training</li> <li>• Accessing Supplemental Security Income (SSI), services for those with disabilities, rehab or drug treatment, and more</li> </ul> | <p>Apply for food, cash, medical, and child care assistance at <a href="http://Colorado.gov/PEAK">Colorado.gov/PEAK</a></p> <p>Find more information about Denver Human Services’ emergency assistance programs at <a href="http://Denvergov.org/HumanServices">Denvergov.org/HumanServices</a> or call 720-944-2032.</p> <p>Call 720-944-4DHS (4347) for more information about Denver Human Services programs and services.</p>   |
| <p><b>LOW-INCOME ENERGY ASSISTANCE PROGRAM (LEAP)</b></p> <p>LEAP is a federally funded program that helps qualifying households by paying a portion of their heating costs. Applications can take 30 days to process but can be quicker for emergencies like a shutoff notice. Applications are accepted November-April.</p> <p>If you are experiencing a heat emergency, Energy Outreach Colorado may be able to help.</p>   | <p>Call Energy Outreach Colorado’s HEAT HELP line (available 24/7) at 866-431-8435.</p> <p><a href="http://www.denvergov.org/LEAP">www.denvergov.org/LEAP</a></p>   |
| <p><b>COLORADO LEGAL SERVICES</b></p> <p>Colorado Legal Services (CLS) provides free legal services in all types of residential evictions to individuals and families who meet income guidelines. CLS also provides these same services to seniors, without regard to income. CLS may give legal advice, assistance in filing answers and other legal documents or full representation in court. If you are a tenant and have been served with a notice, have received court papers, or have a problem with your housing, please contact CLS immediately.</p>  | <p>303-837-1313<br/> <a href="http://www.coloradolegalservices.org">www.coloradolegalservices.org</a></p>   |

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| <p><b>COLORADO AFFORDABLE LEGAL SERVICES (CALs)</b></p> <p>CALs counsels, represents and advises landlord and tenant clients on legal issues and other landlord/tenant matters. CALs advises parties how to file, initiate and defend themselves in court proceedings, including mediation in addition to offering dispute resolution information and referrals for legal assistance.</p>   | <p>303-996-0010<br/>coloradoaffordablelegal.com</p>  |
| <p><b>COLORADO COALITION FOR THE HOMELESS</b></p> <p>The City and County of Denver is partnering with Colorado Coalition for the Homeless and the National Guard to support motel/hotel room options across Denver for people experiencing homelessness during the COVID-19 crisis.</p>   | <p>303-293-2217<br/>coloradocoalition.org/covid-19</p>   |
| <p><b>COLORADO HOUSING CONNECTS</b></p> <p>Colorado Housing Connects provides information on tenant/ landlord questions and concerns.</p>   | <p>1-844-926-6632<br/>coloradohousingconnects.org</p>  |
| <p><b>NEIGHBORHOOD EQUITY AND STABILIZATION INITIATIVE (NEST)</b></p> <p>The mission of NEST is to support neighborhoods experiencing significant change in elevating their voice to determine the future of their community by empowering under-resourced, marginalized residents and businesses. Our Vision: Vibrant, innovative, and interconnected communities with the means and opportunities to make a home, get a job, and build a future. NEST:</p> <ul style="list-style-type: none"> <li>• Conducts outreach to inform and support homeowners of delinquent property taxes, liens, and foreclosures</li> <li>• Supports grassroots community organizing</li> <li>• Provides funding to neighborhood and community organizations that offer programs and services to low-to-moderate income individuals.</li> </ul> | <p>Denvergov.org/content/denvergov/en/denver-office-of-economic-development/housing-neighborhoods.html</p> |
| <p><b>DENVER SHERIFF DEPARTMENT CIVIL PROCESS OFFICE</b></p> <p>The Denver Sheriff Department Civil Division is responsible for service of civil process, sale of real and personal property under court order, execution of court ordered evictions processes and serves, and more.</p>  | <p>720-865-9556<br/>201 W. Colfax Ave. First Floor Atrium<br/>www.Denvergov.org/Sheriff</p>                |
| <p><b>DENVER REGIONAL COUNCIL OF GOVERNMENTS (DRCOG) AREA AGENCY ON AGING AND NETWORK OF CARE</b></p> <p>DRCOG has also developed a comprehensive, community-based website to provide current information on services, including legal assistance and housing support, available to older adults and their caregivers.</p>  | <p>www.drcog.org/programs/area-agency-aging<br/>Main number: 303-480-6700</p>                              |
| <p><b>COLORADO BAR ASSOCIATION</b></p> <p>For individuals who do not qualify for Colorado Legal Services, the Colorado Bar Association provides legal resources and access to a comprehensive list of licensed lawyers who can assist with foreclosure issues.</p>  | <p>www.cobar.org</p>   |