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A PROFESSIONAL CORPORATION

CLIENT ALERT

NEW FORECLOSURE LAWS TOOK EFFECT ON AUGUST 1, 2009

Colorado House Bill 09-1276 (the “Amendments”) took effect on August 1, 2009. The Amendments provide for a delay in the foreclosure of residential property for certain borrowers, referred to in the Amendments as “Eligible Borrowers”.

Applicability

The Amendments are effective as of August 1, 2009. They are codified primarily at C.R.S. §38-38-801 et seq., but the Amendments modify certain other statutory provisions, particularly C.R.S. §§ 24-32-705, 38-38-101, 38-38-103 and 38-38-109. The Amendments are applicable to foreclosures commenced on or after August 1, 2009 and will remain in effect until June 30, 2011.

Eligible Borrower

For certain Eligible Borrowers, the Amendments require that the holder of the evidence of debt (the “Holder”) or its attorney cause notice to be posted on the property being foreclosed to inform Eligible Borrowers of their opportunity for foreclosure deferment. “Eligible Borrower” is defined in the Amendments as the grantor under a deed of trust securing a residential mortgage loan which is a first lien upon the property. However, the Holder will only be required to post notice if the Eligible Borrower also meets all of the following criteria:

- Eligible Borrower resides at the property that is subject to the notice of election and demand on the date the notice of election and demand was filed with the Public Trustee;
- Eligible Borrower occupies the property subject to the notice of election and demand as Grantor’s primary residence on the date the notice of election and demand was filed with the Public Trustee;
- Eligible Borrower has occupied the property subject to the notice of election and demand as Eligible Borrower’s primary residence within 90 days after the date of the deed of trust being foreclosed;
- Eligible Borrower intends to continue to reside at the property; and

- Eligible Borrower is personally obligated on the debt secured by the deed of trust, which was incurred primarily for personal, family or household purposes and had an original principal amount of \$500,000 or less.

Eligible Borrowers who do not satisfy all of these conditions do not have the opportunity for foreclosure deferment and the Holder is not required to give any additional notice to the borrower in connection with the foreclosure process.

Notice of Opportunity for Foreclosure Deferment

If an Eligible Borrower satisfies all of the conditions above, a separate document must be filed with the Public Trustee at the time the foreclosure is commenced identifying the property referred to in the notice of election and demand as property that is subject to the deferment procedures (the “Deferral Document”). A sample form of the Deferral Document is attached hereto as Exhibit A. If no Deferral Document is filed, the Public Trustee will commence the foreclosure sale as if the property is not eligible for the deferment process. If the Holder later determines that the property being foreclosed is subject to the deferment procedures, the Public Trustee must re-record the notice of election and demand and restart the foreclosure.

If a Deferral Document is filed, the Holder or its attorney must cause a notice to be posted in a conspicuous place on the property that is subject to the foreclosure within 15 calendar days of filing the notice of election and demand (the “Deferral Notice”). If possible, the Deferral Notice should be posted on the front door of the residence; however, if access to the front door is not possible or is restricted, the Deferral Notice should be posted at an alternative conspicuous location.

The Deferral Notice must contain the following:

- a description of the foreclosure deferment opportunity and the procedures an Eligible Borrower may follow to seek a foreclosure deferment;
- the number of the Colorado foreclosure hotline and the address of the United States Housing and Urban Development web site that identifies approved housing counselor agencies in Colorado (<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?>);
- the date the Notice was posted; and
- a deadline of 20 days from the posting of the Deferral Notice by which an Eligible Borrower seeking a foreclosure deferment must contact a foreclosure counselor.

The Deferral Notice must be posted in both English and Spanish in at least 14-point, bold-faced type on a single sheet of paper. A copy of the Colorado Department of Local Affairs approved form of Deferral Notice in English and Spanish is attached hereto as Exhibits B and C.

If a Deferral Notice is given, within 20 calendar days of filing the notice of election and demand with the Public Trustee, the Holder or its attorney must provide the Public Trustee with

an affidavit stating that the Deferral Notice was posted (the “Deferral Affidavit”). A sample form of the Deferral Affidavit is attached hereto as Exhibit D.

The Deferral Affidavit must contain at least the following information:

- the foreclosure case number;
- the borrower’s name or names;
- the address of the property at which the Deferral Notice was posted; and
- the date the Deferral Notice was posted.

The Public Trustee will not begin publication or send any foreclosure related mailings until such time as the Deferral Affidavit has been received. The Public Trustee is required by law to continue the sale on a week-to-week basis until the Deferral Affidavit has been provided.

Procedures for Foreclosure Deferment

To qualify for a foreclosure deferment, the Eligible Borrower must contact a foreclosure counselor within 20 days after the Deferral Notice was posted in order to obtain a qualification decision. The initial contact may take place by telephone, electronically or in person. The foreclosure counselor must promptly notify the Holder that it has been contacted by the Eligible Borrower and specify the date of the contact. Within 10 calendar days of being contacted by the foreclosure counselor, the Holder must notify the foreclosure counselor and the Eligible Borrower in writing of the address to which payments must be sent if the Eligible Borrower qualifies for a foreclosure deferment and information on how payments can be made electronically.

No later than 30 calendar days after the Eligible Borrower’s initial contact with the foreclosure counselor, the counselor must (a) determine whether the borrower qualifies for a foreclosure deferment; and (b) certify the determination to the Eligible Borrower and the Holder.

An Eligible Borrower will not qualify for a foreclosure deferment if any of the following events have occurred:

- the Eligible Borrower has abandoned the property;
- the Eligible Borrower provided materially false information to obtain credit;
- the Eligible Borrower has engaged in gross waste of the property, has been cited for major code violations, or has used the property for illegal purposes;
- the Eligible Borrower is currently in a bankruptcy proceeding in which the property subject to the foreclosure is property of the bankruptcy estate or within the 24 months preceding the filing of the notice of election and demand has been discharged from a Chapter 7 bankruptcy in which the property subject to the foreclosure was property of the bankruptcy estate; or
- within the 24 months preceding the filing of the notice of election and demand, the Eligible Borrower has been discharged from a Chapter 13

bankruptcy with a modified loan agreement for which the property subject to the foreclosure is security.

If the Eligible Borrower qualifies for a foreclosure deferment, the foreclosure counselor is required to notify the Public Trustee of such determination within the same 30-day period. Once the Public Trustee receives notice from the foreclosure counselor that the Eligible Borrower qualifies for a foreclosure deferment, the foreclosure will be immediately halted and continued until such time as the foreclosure deferment has been terminated. A foreclosure deferment granted pursuant to the Amendments shall not exceed 90 calendar days.

If the Eligible Borrower has received a foreclosure deferment, the Eligible Borrower shall not qualify for a subsequent deferment in connection with the same debt obligation, including any modification of the debt.

Foreclosure Deferment Period

If a Holder has received notice from an Eligible Borrower's foreclosure counselor that the Eligible Borrower qualifies for a foreclosure deferment, the Holder and the Eligible Borrower shall negotiate the payment terms of the debt obligation secured by the deed of trust. During the foreclosure deferment period, the Eligible Borrower shall make monthly loan payments to the Holder or the Holder's designated representative that equal 66 2/3% of the monthly payment due prior to the delinquency, less any portion of the monthly payment that represents taxes and insurance. If the Eligible Borrower has an obligation to make monthly payments for taxes and insurance, the eligible borrower shall pay the Holder, on the same schedule, 1/12 of the annual amount due for the taxes and insurance prior to delinquency. The first payment will be due to the address provided by the Holder by the 5th day following the foreclosure counselor's certificate of qualification for the foreclosure deferment. Subsequent payments will be due every 30 calendar days thereafter until the conclusion of the foreclosure deferment which shall not exceed 90 days from the date of the first payment. Acceptance of payments made during the foreclosure deferment period does not constitute a waiver or default or modification of any amounts due on the original debt or any other rights of the Holder.

Termination of Foreclosure Deferment Period

The foreclosure deferment period will terminate early upon certification by the foreclosure counselor to the Public Trustee. The Holder can seek early termination of the foreclosure deferment period, but must demonstrate to the foreclosure counselor that adequate grounds for early termination exist. The foreclosure counselor shall make a determination within 10 calendar days after a Holder's request and issue a certification of early termination if the foreclosure counselor determines:

- that the Eligible Borrower has abandoned the property;
- that the Eligible Borrower has failed to comply with the conditions of foreclosure deferment, including failure to make payments on time and in accordance with the statute;

- that the Eligible Borrower has conveyed, transferred or further encumbered the property in violation of the deed of trust;
- that a foreclosure has been initiated by a different party on another lien encumbering the property; or
- that the Eligible Borrower has filed bankruptcy during the foreclosure deferment.

Summary

This summary is intended to provide a general overview of select provisions of the Amendments and is not intended to address questions of law applicable to, or provide legal advice relevant to, a specific instrument. To the extent you have questions regarding the applicability of the Amendments to a specific situation please do not hesitate to contact us.

EXHIBIT A

NOTICE TO PUBLIC TRUSTEE REGARDING FORECLOSURE DEFERMENT ELIGIBILITY

TO: The Public Trustee of the _____ County of _____, Colorado

Foreclosure No. _____

Grantor/Borrower: _____

Property Address: _____

Current Holder: _____

Date of Deed of Trust: _____ Date of Recording: _____

Recording Information: _____ Original Principal Balance: \$ _____

Pursuant to C.R.S. 38-38-101(1)(h), you are notified that the property involved in this foreclosure action may be eligible for a Foreclosure Deferment and requires posting pursuant to 38-38-802 C.R.S.

Name of Holder: _____

OR

Attorney for Holder:

By _____

By _____

Printed Name and Title of Signer for Holder

Attorney's Signature Colorado Bar Reg. # _____

Address: _____

Address: _____

Business Telephone: _____

Business Telephone: _____

Business FAX: _____

Business FAX: _____

Email: _____

Email: _____

EXHIBIT B

Colorado Department of Local Affairs Approved
Notice of Opportunity for Foreclosure Deferment (ENGLISH VERSION)
(Must be printed on 8 x 14 paper)

RE: Borrowers: _____
Property: _____
Date of Notice: _____

Dear _____ :

You may qualify for a 90-day deferment of the foreclosure that has been started against your property.

If you qualify, you will have the opportunity to defer the foreclosure for up to 90 days, during which time you can “catch up” on delinquent payments and keep your home. In order to be eligible for consideration:

- 1. You must be the borrower under the Deed of Trust securing the loan on your property.**
- 2. You must have occupied the property within 90 days after the date of the Deed of Trust.**
- 3. You must currently reside at the property with the intent to keep it as your primary residence.**

If you are eligible under 1, 2 and 3 outlined above and you are interested in learning if you qualify for a deferment, you must contact a HUD-approved foreclosure counselor via telephone, electronic mail, or in person, within TWENTY DAYS of the date of this notice.

The HUD-approved foreclosure counselor will review your financial situation with you and determine if you qualify for a deferment. If the HUD-approved counselor determines you are qualified for a deferment, the counselor will notify the public trustee to delay the foreclosure and will work with you and your lender to try to help you keep your home.

To get information on this deferment program you may contact:

**The Colorado Foreclosure Prevention Hotline:
1-877-601-HOPE (4673) or**

To find a list of approved Housing Counseling Agencies please visit:

<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?>

**DEADLINE FOR YOU TO CONTACT A HUD-APPROVED
FORECLOSURE COUNSELOR: _____**

Holder/Holder's Attorney Name: _____

Holder/Holder's Attorney Email Address: _____

EXHIBIT C

Colorado Department of Local Affairs Approved
Notice of Opportunity for Foreclosure Deferment (SPANISH VERSION)
(Must be printed on 8 x 14 paper)

RE: Prestatario(s) _____
Propiedad: _____
Fecha de Notificación: _____

Estimado(s) _____:

Tal vez usted califique para 90-días de aplazamiento de su ejecución hipotecaria que se ha iniciado en contra de su propiedad.

Si usted califica, obtendrá la oportunidad de aplazar la ejecución hipotecaria hasta por 90 días. Durante este periodo usted podrá poner al corriente sus pagos atrasados y conservar su casa. Para ser elegible se debe tomar en consideración lo siguiente:

- 1. Usted tiene que ser el prestatario en la escritura de fideicomiso que garantiza el préstamo hipotecario en su propiedad.**
- 2. Usted debe haber ocupado la propiedad dentro de los 90 días después de la fecha de la firma de la escritura de fideicomiso.**
- 3. Usted tiene que estar viviendo actualmente en la propiedad e intentar seguir viviendo en la propiedad como residencia primaria.**

Si usted cumple con los puntos 1, 2 y 3 arriba mencionados y esta interesado en saber si califica para un aplazamiento, usted tiene que contactar a un consejero de ejecución hipotecaria aprobado por el departamento de Vivienda y Desarrollo Urbano de los Estados Unidos (por sus siglas en ingles HUD) por teléfono, correo electrónico o en persona, dentro de los VEINTE DIAS después de la fecha de esta notificación.

El consejero de vivienda aprobado por HUD revisará su situación financiera con usted y decidirá si usted califica para un aplazamiento. Si el consejero aprobado por HUD determina que usted califica para este aplazamiento, va ha notificar al Administrador Publico (Public Trustee) para aplazar la ejecución hipotecaria y tratara de trabajar con usted y su compañía financiera para conservar su propiedad.

Para obtener mas información sobre este programa de aplazamiento puede contactar a:

**La Línea de Ayuda de Prevención de Ejecución Hipotecaria:
1-877-601-4673(HOPE) o**

Para encontrar una lista de Agencias de Vivienda Aprobadas por HUD por favor visite la página de Internet:

<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?>

**FECHA LIMITE PARA CONTACTAR A SU CONSEJERO DE
EJECUCIONES HIPOTECARIAS APROBADO POR
HUD: _____**

Nombre del Abogado Titular: _____

Correo Electrónico del Abogado Titular _____

EXHIBIT D

Form of Affidavit of Posting

AFFIDAVIT OF POSTING
ELIGIBLE FORECLOSURE DEFERMENT
(38-38-801 *et seq.*, C.R.S.)

TO THE PUBLIC TRUSTEE OF THE COUNTY OF _____:

*FORECLOSURE NO. _____

*GRANTOR/BORROWER: _____

*PROPERTY ADDRESS: _____

*DATE OF POSTING: _____, 20____.

*Required Information

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The undersigned, _____, as Holder ** or as
 Attorney for Holder, hereby certifies that the standard, approved form of **Notice of Opportunity for Foreclosure Deferment** in this foreclosure action was posted on the front door of the residence (or at an alternative conspicuous location) at the property address and on the date shown above.

Date of Signature: _____

Signature
Colorado Bar Registration No. _____
(must be completed if signed by Attorney for Holder)

If this Affidavit is signed by or filed on behalf of a **non-qualified Holder, it MUST be notarized.

Subscribed and sworn to before me this _____ day of _____, 20____, by
_____, as _____ of the Holder, _____.
(title)

My Commission expires: _____

Notary Public

Print Holder or Attorney Name: _____

Business Address: _____

Business Phone No.: _____ FAX No.: _____

Email: _____