

*By Margaret T. Chapman*

*Jefferson County Public Trustee*

### **Why a Public Trustee?**

Colorado's Public Trustee system, the only one in the United States, grew out of the devastating blow to Colorado when the country went on the gold standard.

In the other 49 states, there is a combination of judicial foreclosures and private trustees who administer the release and foreclosure of deeds of trust.

In 1873, Congress adopted a policy of demonetization of silver, making gold the standard for payment and currency in the United States. In the late 1880s, much of Colorado's economy relied on the rich silver mines located throughout the state. As the price of silver fell, Colorado's economy collapsed. As mines closed, miners became unemployed; and merchants who relied on the miners' business were also affected.

In January 1894, Populist Gov. Davis Waite called a special session of the State Legislature to address the deed of trust situation in Colorado. Prior to March 5, 1894, Colorado also used private trustees. However, most of the deeds created at this time gave more rights to the lender than the borrower. Colorado Populists, a part of Populist Party or "The People's Party, gained popularity in the late 1800s because they felt that America's climate was growing "tramps and millionaires." Populists sought to strengthen the middle class, enhance working conditions, and coinage of silver.

This caused the Populists led by Gov. Waite to directly champion the position in Colorado that following a default, a borrower must be given a chance to regroup, refinance, or sell a property in order to redeem a foreclosure. Prior to the March 5, 1894, enactment of the Public Trustee system, most Colorado deeds did not have this right of redemption.

The special session created a great deal of controversy. Many, including the "Rocky Mountain News," criticized the Governor for "wasteful" government spending of \$100,000 for the session. However, a poll of statewide newspapers showed popular opinion was split fairly evenly.

In this mixed political climate, the state legislature met in a Denver assembly hall as the State Capitol had not yet been built. The Governor tasked the legislature with 33 issues that he felt were impeding Colorado's economic growth. One of these tasks challenged lawmakers:

*"To provide that trust deeds as security for all debts contracted after this act shall be declared mortgages only, with an equity of redemption and subject to foreclosure according to the rules and proceedings in an equity court."*

A Trinidad Democrat and lawyer, Rep. Bo Sweeney, introduced House Bill 48 (HB 48) on Jan. 17, 1894. HB 48 provided a one-year right of redemption to homeowners and to junior creditors. This bill also provided interest accrual to lenders during the foreclosure process. Although HB 48 provided a much needed balance of rights between lender and borrower, the Senate was not ready to approve this bill and sent it to committee for revision.

## **What Does a Public Trustee Do?**

The concept of the Public Trustee was formed in this committee. After considerable debate and several amendments, the bill was referred to the Colorado Supreme Court to determine if it were constitutional. The Court declined to call the bill unconstitutional, and it was returned to the Senate.

On the last day of this extraordinary legislative session of 1894, HB 48 was passed forming a new official, a Public Trustee who would administer the foreclosure transaction, collecting fees set by statute. This office has been noted as the most significant achievement of Gov. Waite's administration. Since its inception, the Public Trustee system has met successfully the balance of procedural rights between borrowers and lenders.

Celebrating the 100<sup>th</sup> anniversary of the Public Trustee system, the "Ute Pass Courier" on March 3, 1994, described Teller County's Public Trustee Gaynell Holcomb as the image of a Public Trustee: "To do an effective and fair job, be an arbitrator or a mediator, one must be bound by impartiality. Steady, purely fact-finding and entirely non-emotional work is the order of the day when you are in the role of a middle person."

Jefferson County Public Trustee for the 100<sup>th</sup> Anniversary, on March 5, 1994, was Helen D. Phillips. County Commissioners Betty J. Miller, Chairman, Gary D. Laura, and John P. Stone, proclaimed March 5, 1994, as Public Trustee Day.

All actions of the Office of Public Trustee are strictly governed by Chapter 38 of the Colorado Revised Statutes:

- Administration of Deeds of Trust within the County that name the Office of Public Trustee as Trustee. Almost all Deeds of Trust do this. This includes:
  1. Releasing Deeds of Trust when a loan has been satisfied
  2. Foreclosing on Deeds of Trust, in the event of default
- The Public Trustee is also responsible for the collection of tax accounts for Land Purchase Contracts for Deed within the County

## **The Importance of a Release of Deed of Trust**

A Release of a Deed of Trust removes all or a portion of the property from the lien created by a Deed of Trust. A Release of a Deed of Trust is a written request by the mortgage company or lender, their agent or attorney, or a title insurance company to the Public Trustee. The purpose of the release is to remove all or a portion of the property from the lien created by a Deed of Trust.

When recorded, a Deed of Trust creates a lien against the Grantor's property. When the terms of the Deed of Trust are satisfied, a request for a Release of Deed of Trust must be record to remove the lien from the property.

## **The Foreclosure Process**

Foreclosure is defined as the forced sale of a piece of property to repay a debt. Foreclosures are conducted by the Office of the Public Trustee on Deeds of Trust containing a power of sale (right to sell property at public auction in the event of default).

The procedure for conducting the foreclosure sale is set by Colorado Revised Statutes and must be followed exactly. Jefferson County's foreclosure sales are held promptly at 10 a.m., Wednesdays, in Room 1540 of the Jefferson County Administration and Courts Facility.

While all 64 Colorado counties have Public Trustees, they come to office in various ways. Jefferson County and the other nine counties of the Second Class are appointed by the Governor and serve at the pleasure of the governor. Statutes require that the Public Trustee in those 10 counties file quarterly reports with the governor. The city/counties of Broomfield and Denver have separate requirements for the Public Trustees. In the remaining counties, the Treasurer serves as the Public Trustee because of the lower volume of Releases and Deeds of Trust.

Another unique aspect of the Office of the Public Trustee is that all costs of running the office, including salary, must be covered by the fees that are charges for the services rendered. All fees are set by Colorado statute. Fees not used to covered statutory expenses are sent quarterly to the Treasurer for the general fund. The Office of the Jefferson County Public Trustee sent excess funds to the Treasurer: \$921,343.74 in 2007; \$708,047.99 in 2008; \$833,046.08 in 2009; and \$639,852.06 in 2010.

When the most recent foreclosure crisis started in 2007, Jefferson County foreclosure filings hit record numbers: 3,588 in 2007; 3,669 in 2008; 4,027 in 2009; and 3,849 in 2011. Filings are down for 2012. However, predicting the rate of foreclosures in next to impossible because of the fluctuation of economic activity.

At the time of Jefferson Counties Sesquicentennial, the Office of the Public Trustee was fully staffed with professional deputies, a change instituted by the Public Trustee Margaret T. Chapman. She was appointed Trustee by Gov. Bill Ritter in 2007 and reappointed by Gov. John W. Hickenlooper in 2011.

Chief Deputy Catherine Bortles joined the Public Trustee staff in 1984. Other deputies are: Barbara Lyons, Jenniffer Johnson, Desiree Peterson, Nancy Jensen, Diana Ogden, Stacy Mosier, and Ruth Freyta.

All Jefferson County Public Trustee records are available without charge on its website: <http://jeffco.us/pubtrust>. This includes statistical, historical, and financial information for the office; policies and procedures; forms; sale information; instruction for filing for a foreclosure; and individual foreclosure cases. Reports include: Pre-Sale List, List of Election and Demand Notices Filed, Final Sale Continuance List, Post Sale List, and Pre-Sale Continuance List by Attorney.

The office is open all hours that the Jefferson County Administration and Courts Facility is open. The address is 100 Jefferson County Parkway, Suite 2510/1540, Golden, CO 80419. Phone: 303-271-8580. Fax: 303-271-8588. Email: [eforeclosures@jeffco.us](mailto:eforeclosures@jeffco.us).

*Information compiled from unattributed documents in the Office of the Jefferson County Public Trustee and the records of the Public Trustees' Association of Colorado.*