



# NINETEENTH JUDICIAL DISTRICT WELD COUNTY COMBINED COURTS

## **RULE CHANGE EFFECTIVE 3/1/18**

**PLEASE NOTE:** By law, the Court is not permitted to give you legal advice. This information being provided to you is intended to provide clarification and guidance to self-represented litigants. If you require additional information, please contact an attorney.

### **Information for Rule 120 Respondents**

*If you have been served with court papers indicating that you are a party in a foreclosure (Rule 120) action, please read the following information carefully.*

#### **What is a Rule 120 proceeding?**

Rule 120 is a Colorado Rule of Civil Procedure which address “Court Proceedings for Sales Under Powers” which essentially means foreclosure. Foreclosure is a legal process used to take possession of property that is the collateral for a loan by forcing the sale of the property after the borrower defaults on the terms of the loan. Foreclosures in Colorado must follow the procedure in Rule 120 of the Colorado Rules of Civil Procedures. You can read the full Rule online at:

<http://www.lexisnexis.com/hottopics/colorado/>. Then click “I agree” → click on the Link Colorado-Local, State and Federal Court Rules→ Colorado Rules of Civil Procedure → Chapter 17 Court Proceedings: Sales Under Powers

#### **What is the Response Deadline?**

Any interested person who disputes, on grounds within the scope of a Rule 120 must file and serve a response and pay the required fee by the response deadline in the Notice of Response Deadline. Failure to timely file a response and pay the fee will result in the court granting the order authorizing sale.

#### **When are Rule 120 hearings held?**

If a response is filed and a fee paid, the Court shall set the matter for a contested hearing at a later date. The Court will hold a hearing to determine if the lender has the right to foreclose on the property and have it sold at a public auction. The Court may vacate (cancel) the hearing upon a motion and grant the lender’s request to authorize the sale of the property if the response is not within the scope of this Rule. The Court may make a decision in your case based on what is filed in the case (the pleadings) without holding a hearing.

To find out whether your hearing has been vacated or is still scheduled, you may check the court docket online or call the court at (970) 475-2400. You should assume a hearing is going forward unless you receive confirmation from the Court that the hearing has been vacated.

### **What will happen at a Rule 120 hearing?**

At the hearing, the judge follows the process outlined in Rule 120(d). He will examine the motion and response, and will determine whether there is a reasonable probability that a default (or other circumstance authorizing exercise of power of sale) has occurred. The judge will then grant or deny the motion.

### **How do I file a response?**

You must file a Verified (notarized) Response (also called an Answer) to the Rule 120 proceedings by the response deadline. Form JDF 621 (Verified Response to a Rule 120 Notice) is available online: <http://www.courts.state.co.us/Forms/PDF/JDF%20621%20Response%20Rule%20120%20Notice.pdf>.

Your response must include all defenses that you wish to raise before the Court. You should contact an attorney to discuss what defenses, if any, you may have and what information should be provided to the Court.

**The inability to pay is NOT a defense.** Common defenses to a Rule 120 Action include:

1. The money is not due;
2. The action is barred under the Service Member Civil Relief Act (SCR), 50 U.S.C. §520;
3. The petitioner is not the real party in interest.

Please be aware that the Court's review is very limited under Rule 120. The Court can only determine whether there is a reasonable probability of default and whether the Service Member Civil Relief Act bars this action.

The response and all supporting documents must be filed with the Court and served upon (mailed to) the other parties not later than the response deadline. You must pay \$158.00 to file your response unless you qualify to have a fee waived. Information about filing fee waivers is available here: [http://www.courts.state.co.us/Forms/Forms\\_List.Cfm?Form\\_Type\\_ID=176](http://www.courts.state.co.us/Forms/Forms_List.Cfm?Form_Type_ID=176). (Use JDF 205 and JDF 206).

### **What if I am working on a loan modification?**

In general, a modification or short sale agreement is between you and your mortgage company. The Court cannot intervene unless the agreement is complete and has final approval. You should talk to an attorney for more information about a modification agreement and your legal rights.

### **What if I have filed for bankruptcy?**

A bankruptcy may prohibit a Rule 120 action from being filed or from proceeding. You should consult a bankruptcy attorney for more information.

### **What if I have other questions regarding my Rule 120 case?**

Additional information is available at the Colorado Judicial Branch website:

1. Residential foreclosures: [http://www.courts.state.co.us/Self\\_Help/residentialforeclosures/](http://www.courts.state.co.us/Self_Help/residentialforeclosures/)

2. Verified Rule 120 Response forms and instructions:

[http://www.courts.state.co.us?Forms/Forms\\_List.cfm?Form\\_Type\\_ID=197](http://www.courts.state.co.us?Forms/Forms_List.cfm?Form_Type_ID=197)

You may also contact the Self-Represented Litigant Coordinators in Weld County Combined Court Information Center for help with general questions, resources and forms. You should contact an attorney for legal advice about your case. A HUD-certified housing counselor can also provide non-legal information about your loss mitigation options at no charge.