

RULE CHANGE 2010(18)

Chapter 17 – Court Proceedings: Sales Under Powers

Rule 120. Orders Authorizing Sales Under Powers

(a) [No change]

(b) Notice; Contents; Service. The moving party shall issue a notice describing the instrument containing the power of sale, the property sought to be sold thereunder, and the default or other facts upon which the power of sale is invoked. The notice shall also state the time and place set for the hearing and shall refer to the right to file and serve responses as provided in section (c), including a reference to the last day for filing such responses and the addresses at which such responses must be filed and served. The notice shall contain the following advisement: "If this case is not filed in the county where your property is located, you have the right to ask the court to move the case to that county. Your request may be made as a part of your response or any paper you file with the court at least five days before the hearing." The notice shall contain the return address of the moving party. Such notice shall be served by the moving party not less than 15 days prior to the date set for the hearing, by: (1) mailing a true copy thereof to each person named in the motion (other than persons for whom no address is stated) at the address or addresses stated in the motion and ; (2) by filing a copy with the clerk and by delivering a second copy to the clerk for posting by the clerk; and (3) if a residential property as defined by statute, by posting a true copy in a conspicuous place on the subject property as required by statute. Such mailing, and delivery to the clerk for posting, and property posting shall be evidenced by the certificate of the moving party or moving party's agent. For the purpose of this section, posting may be electronic on the court's public website so long as the electronic address for the posting is displayed conspicuously at the courthouse.

(c) – (h) [No change]

Rule 120.1. Order Authorizing Expedited Sale
Pursuant to Statute

(a) Motion; Contents. An order of the court authorizing an expedited sale may be sought in conjunction with the order authorizing sale. An eligible holder as defined by statute may file a verified motion, together with a supporting affidavit, in a district court seeking an order authorizing an expedited sale together with the motion for order authorizing sale pursuant to C.R.C.P. Rule 120. The affidavit shall state the following: (1) The moving party is an eligible holder as that term is defined by statute; (2) the subject deed of trust secures an eligible evidence of debt as that term is defined by statute; and (3) the property has been abandoned as defined by statute, or in the alternative, the grantor of the deed of trust requests an order for expedited foreclosure sale.

(b) Notice; Contents; Service. The moving party shall issue a combined notice, which shall include the provisions as specified in C.R.C.P. Rule 120 (b) and add a statement that the moving party is seeking in addition to the order authorizing sale, an order for expedited foreclosure sale. The moving party shall additionally state that the property is abandoned, or in the alternative that the grantor of the deed of trust has requested the order for expedited foreclosure sale. Such combined notice shall be prepared and served in Spanish and English. Such combined notice shall be served by the moving party as required by C.R.C.P. Rule 120 (b). In addition to the mailing of such combined notice, filing of such combined notice with the clerk and providing a second copy for the clerk to post, the combined notice shall be either personally served on the grantor of the deed of trust, or alternatively such combined notice shall be posted at the real property as provided in C.R.C.P. Rule 120 (b). Such mailing, delivery to the clerk for posting, and property posting shall be evidenced by the certificate of the moving party or the moving party's agent.

(c) Response; Contents; Filing and Service. The grantor of the deed of trust may dispute the

moving party's motion for expedited sale in the same time frame as provided in C.R.C.P. Rule 120.

(d) Hearing; Scope of Issues; Order; Effect. At the time and place set for the hearing or to which the hearing may have been continued, the court shall examine the motion and responses, if any. The scope of inquiry under this section shall not extend beyond the determination that the property is abandoned as that term is defined by statute, or that the grantor requests for an order for expedited sale. The court shall enter the order for expedited sale if there is clear and convincing evidence that the property has been abandoned or that the grantor of the deed of trust has requested such order. In order to establish clear and convincing evidence that the property has been abandoned, the moving party shall file an affidavit with the court as provided by statute. The court shall determine whether there is clear and convincing evidence that the property is abandoned.

(e) Hearing Dispensed with if no Response Filed. If no response has been filed within the time permitted by C.R.C.P. Rule 120(c), the court shall examine the motion and, if satisfied that the moving party is entitled to an order for expedited sale upon the facts stated in the motion and affidavit, the court shall dispense with the hearing and forthwith enter the order for expedited sale.

Amended and adopted by the Court, En Banc October 14, 2010, effective immediately.

By the Court:

Nancy E. Rice
Justice, Colorado Supreme Court